IN THE FAIR COMPETITION TRIBUNAL

AT DAR ES SALAAM

TRIBUNAL APPEAL NO. 2 OF 2007

VODACOM TANZANIA LIMITED……..APPELLANT

VERSUS

1. **TANZANIA COMMUNICATIONS REGULATORY AUTHORITY (TCRA)……..RESPONDENT**
2. **SIX TELECOMMUNICATIONS CO. LTD……INTERVENER**

(APPEAL ARISING FROM THE DECISION OF TCRA IN DETERMINATION NO. 2 OF 2007 DATED2 27TH DECEMBER, 2007)

JUDGEMENT

This is an appeal from a decision of the TANZANIA COMMUNICATIONS REGULATORY AUTHORITY (TCRA) (also referred to in the Tanzania Communications Regulatory Authority and Tanzania Communications Acts as the **"AUTHORITY)"** in Interconnection Determination No.2 of 2007 issued on 27/12/2007.

TCRA (the respondent) a regulatory authority, is a body corporate established under Section 4 of the Tanzania Communications Regulatory Authority Act No.12 of 2003 (hereinafter also referred to as the Act or the TCRA Act) charged under Section 5 of the Act with the duty, in carrying out its functions as a regulator, to strive to enhance the welfare of Tanzania society by:

(a) promoting effective competition and economic efficiency;

(b) protecting the interest of consumers;

(c) protecting the financial viability of efficient suppliers;

(d) promoting the availability of regulated services to all consumers including low income, rural and disadvantaged consumers;

(e) enhancing public knowledge, awareness and understanding of the regulated sectors including-

(i) the rights and obligations of consumers and regulated suppliers;

(ii) the ways in which complaints and disputes may be initiated and resolved;

(iii) the duties, functions and activities of the Authority.

(f) taking into account the need to protect and preserve the environment."

The functions of TCRA are set out in section 6(1) of the Act, which are as follows:-

(a) "to perform the functions conferred on the Authority by the sector legislation;

(b) subject to the sector legislation-

(i) to issue, renew and cancel licences;

(ii) to establish standards for regulated goods and regulated services;

(iii) to establish standards for the terms and conditions of supply of the regulated goods and services;

(iv) to regulate rates and charges;

(v) **to make rules for carrying out the purposes and provisions of this Act and the sector legislation**; (Emphasis by Tribunal).

(c) to monitor the performance of the regulated sectors including in relation to-

(i) levels of investment;

(ii) availability, quality and standards of services;

(iii) the cost of services;

(iv) the efficiency of production and distribution of services, and

(v) other matters relevant to the Authority;

(d) to facilitate the resolution of complaints and disputes;

(e) to take over and continue carrying out the functions formerly of the Tanzania Communications Commission and Tanzania Broadcasting Commission;

(f) to disseminate information about matters relevant to the functions of the Authority;

(g) to consult with other regulatory authorities or bodies or institutions discharging functions similar to those of the Authority in the United Republic of Tanzania and elsewhere;

(h) to administer this Act;

(i) to **perform such** other functions as may be conferred on the Authority by this Act or any other law."

Under Section 16 of the Act the respondent has powers to regulate rates and charges. The relevant parts of sections 16, 17, 18 and 19 of TCRA Act read as follows:-

"S. 16-(1) Subject to the provisions of sector legislation and licences granted under the legislation, the Authority shall carry out reviews of rates and charges;

(2) In making any determination with regards to regulating rates and charges, the Authority shall take into consideration-

(a) the costs of making, producing and supplying the goods or services;

(b) the desire to promote competitive rates and attract the market;

(c) any relevant benchmarks including international benchmarks for prices, costs and return on assets in comparable industries;

(d) the financial implications of the determination;

(e) the consumer and investor interest;

(f) the return on assets in the regulated sector;

(g) any other factor specified in relevant sector legislation;

(h) any other factors the Authority considers relevant.

(3) The Authority shall publish in the Government Gazette all the rates tariffs and charges regulated by the Authority.

S.17.-(1) Where the Authority has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions, any officer of the Authority may, by summons signed by the Director General or Secretary of Authority served on that person, require that person-

(a) to furnish the information in writing, signed by him, in the case of a body corporate, signed by a competent officer of the body corporate;

(b) to produce the document to the Authority;

(c) to appear before the Authority to give evidence.

(2) A summons under this section shall specify the required time and manner of compliance.

(3) The Authority may require that any evidence referred to under this section to be given on oath or affirmation, and in that case, the Director General, the Secretary or any officer of the Authority may administer the oath or affirmation.

(4) Any person shall not be excused from complying with summons under this section on the grounds that compliance may tend to incriminate the person or make the person liable to a penalty, save that information, documents and evidence provided in answer to a summons will not be admissible in any proceedings against the person other than proceedings under this Act, sector legislation, the Fair Competition Act, 2003 or any environment protection legislation.

(5) Any person who without lawful excuse, refuses or fails to comply with a summons under this section, commits an offence and is liable on conviction to a fine of not less than the equivalent in Tanzanian shillings of United States dollars five hundred or to imprisonment for a term not less than six months or both such fine and imprisonment.

(6) Where the Authority has reason to believe that a person is in possession or control of any information or document which may assist in the performance of its functions and that person has refused or failed to supply such information or document, the Director General, Secretary or any officer of the Authority may apply to the Fair Competition Tribunal or a competent court for issuance of a warrant authorizing a police officer to enter into any premises believed to contain

or into which a document is kept or hidden and conduct search and make copies or take extracts of documents therein.

(7) On application under subsection (6), the Chairman of the Tribunal or any authorized person, may, on application issue a warrant authorizing any police officer to forcibly enter the premises to conduct the search and make copies or take extracts of documents there in.

(8) Any person, who knowingly gives false or misleading information or evidence in purported compliance with a summons under this section, commits an offence.

18.*-(1) The Authority may conduct an inquiry where it considers it necessary or desirable for the purpose of carrying out its functions.*

(2) The Authority shall conduct an inquiry before exercising power to-

(a) grant, renew or cancel a licence with an exclusivity period or universal service obligation;

(b) regulate any rates or charges;

(c) adopt a code of conduct.

(3) Where the Minister directs by notice in writing that an inquiry be conducted, or any specified subject matter of the inquiry, the Authority shall conduct the inquiry.

(4) The Minister may specify in a direction under section (3) a time within which the Authority shall submit its report following the inquiry and if so the Authority shall submit its report to the Minister within that time.

(5) The Authority shall give notice of an inquiry by –

(a) publishing a notice in the Gazette and in a daily newspaper circulating generally in Tanzania specifying the purpose of the inquiry, the time within which submissions may be made to the Authority, the form in which submissions should be made, the matters the Authority would like the submissions to deal with and, in the case of an inquiry conducted at the direction of the Minister, the Minister's terms of reference;

(b) sending written notice of the inquiry, including the information in paragraph (a), to-

(i) service providers known to the Authority whose interests the Authority considers are likely to be affected by the outcome of the Inquiry;

(ii) the Consumer Consultative Council;

(iii) industry and consumer organizations which the Authority considers may have an interest in the matter;

(iv) the Minister and other Ministers having an interest in the matter.

(6) The Minister shall, by order published in the Gazette, make rules for conducting inquiries under this section.

19.-(1) In carrying out its functions and exercising its powers under this Act, and under sector legislation in relation to particular markets for regulated services, the Authority shall take into account –

(a) whether the conditions for effective competition exist in the market;

(b) whether any exercise by the Authority is likely to cause any lessening of competition or additional costs in the market and is likely to be

detrimental to the public;

(c) whether any such detriments to the public are likely to outweigh any benefits to the public resulting from the exercise of the powers.

(2) The Authority shall deal with all competition issues which may arise in the course of the discharge of the functions, and may investigate and report on those issues, making appropriate recommendations to the Commission or any other relevant authority in relation to –

(a) any contravention of the Fair Competition Act, 2003 the Tanzania Bureau of Standards Act, 1975, or any other written law;

(b) actual or potential competition in any market for regulated services competition or additional costs in the market and is likely to be detrimental to the public;

(c) any determinants likely to result to the members of the public.

(3) Subject to the provisions of subsections (1) and (2), the Authority shall place on the Public Register a copy of any recommendation."

Under section 5 of the sector legislation which is the Tanzania Communications Act No. 18 of 1993 as amended by Act No.12 of 2003 (hereinafter referred to as "the TC Act") the respondent is in addition authorized and empowered to regulate the interconnection of and access to systems of operations of telecommunication services with a view to eliminating unfair business practices among the operators. The relevant parts of section 5 read as follows:

5.-(1) The functions of the Authority shall be-

(d) to exercise licensing and regulatory functions in respect of tele-communication and postal systems and services in the United Republic including the establishment of standards and codes relating to equipment attached to telecommunication and radio communications system;

(m) to regulate telecommunications tariff rates with a view to eliminate unfair business practices among operators; (Emphasis ours)

(2) In discharging the functions and duties imposed on it by subsection (1) the Authority shall have regard to-

(a) efficiency and economy

(b) satisfying reasonable demands for telecommunication and postal services;

(d) maintaining effective competition between persons engaged in the provision of telecommunication and postal system and services.

(e) enabling persons providing telecommunication and postal systems and services in the United Republic to compete effectively in the provision of such systems and services.

(3) Without prejudice to the generality of the functions specified in subsection (1) and (2), the Authority shall have power to do all such acts and things as may appear to it to be necessary, advantageous or convenient for the efficient discharge of its functions and may in particular exercise all or any of the powers specified in the Second Schedule.

In addition the Authority is under the second schedule to the Tanzania Communications Act empowered to, *inter alia,* regulate the interconnection of and access to systems of operators of telecommunication and postal systems and services and to resolve issues of interconnection between

networks where the operators involved are not able to reach agreement on terms of interconnection.

The rules for conducting inquiries under section 18 of the TCRA Act are set out in the Tanzania Communications Regulatory Authority (procedure for Rules of Inquiry) Rules 2004 G.N. No. 307 of 3/09/2004, the relevant parts whereof read as follows:-

"4.-(1) The Authority may conduct an inquiry where it considers it necessary or desirable for the purpose of carrying out its functions.

(2) The Authority shall conduct an inquiry before exercising its powers to-

(a) grant, renew or cancel a licence with an exclusivity period or universal service obligation;

(b) regulate any rates or charges;

(c) adopt a code of conduct

(3) Where the Minister directs by notice in writing that an inquiry be conducted on any specified subject matter of the inquiry, the Authority shall conduct the inquiry.

(4) The Minister may specify in a direction issued under paragraph (3) of rule 4, the time within which the Authority shall submit its report following the inquiry and if so, the Authority shall submit its report to the Minster within the specified time.

5.-(1) The Authority shall give notice of an inquiry by-

(a) publishing a notice in the Gazette and in a daily newspaper circulating generally in Tanzania.

(b) sending written notice of the inquiry to-

(i) service providers known to the Authority whose interests the Authority considers are likely to be affected by the outcome of the Inquiry.

(ii) the Consumer Consultative Council established under section 37 of the Act;

(iv) industry and consumer organizations which the Authority considers may have interest in the subject matter of the inquiry.

(2) The notice of the inquiry shall specify:

(i) the purpose of inquiry;

(ii) the place and time within which submissions may be made to the Authority;

(iii) the form in which submissions are to be made;

(iv) the matters the Authority may like the submissions to deal with and;

(v) in the case of an inquiry conducted at the direction of the Minister, the Minister's terms of reference.

6.-(1) The Authority shall, for each subject of inquiry, appoint a panel of inquiry consisting of three members of the Board and two employees of the Authority who are experts on the subject matter of inquiry and may co-opt experts, and the same shall form a quorum of the panel of inquiry.

(2) The panel shall submit its inquiry findings and recommendations to the Board for determination.

8.-(1) Except as may otherwise be provided in these Rules, the Authority shall determine the procedure at the inquiry;

(6) The Authority may during the inquiry allow any person who has made a submission on the inquiry to alter or add to his submission so far as may be necessary for the purposes of the inquiry;

Provided that the Authority discloses such written representation or evidence or any other document at the inquiry.

(8) The Authority may take into account any written representation or evidence or any other document received by it from any person who was served with notice of inquiry or who is proved to have an interest in the inquiry before the inquiry opens or during the inquiry;

Provided that the Authority discloses such written representation or evidence or any other document at the inquiry.

(9) The Authority may, from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice shall be required.

9.-(1) After close of the inquiry the Authority may opt to take into account or into consideration any new evidence or any new matter of fact which was not raised at the inquiry or in the submissions made by the parties who were served with the notice of inquiry and which it considers to be material to the determination of the inquiry.

The procedure for negotiating interconnection agreements and charges is set out in the Tanzania Communications (Interconnection) Regulations G.N. No. 264 of 2005 the relevant parts whereof read as follows:-

“2- These Regulations shall apply to all network service providers in relation to termination of traffic into operators’ network”.

Under regulation 3 of the Regulations-

“agreement” ,means interconnection agreement”

“dominant operator” means a licensee provider who acting alone can profitably and materially restrain or reduce competition in the market for a significant period of time and whose share of the market exceeds thirty five per cent;

“interconnection” means the physical or logical linking of one public electronic communication network to another network for the purpose of allowing the persons using one of them to be able:

(a) to communicate with users of another one; or,

(b) to make use of services provided by means of the other one.

“Interconnection charges” means the price charged by a network service licensee to another network service licensee for the purpose of terminating traffic into a network;

“interconnecting operator” means the network services licensee seeking to be connected to another network service licensee for the purpose of origination and termination of traffic;

“network service provider” means an entity licensed by the Authority to provide electronic communications network services;

“point of interconnection” means a physical point where the system of one network service provider is connected to the system of another provider for routing of calls from one system to the other;

"electronic communications services" means any transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choice.

Regulations 5, 6, 7, 8, 9, 10, 16 and 17 read as follows:

5. The Authority shall issue an interconnection negotiation procedure and guidance on approval or rejection of interconnection agreements on the grounds of conditions set out in regulation 6. (Emphasis ours)

6.-(1) The interconnection agreements shall be subject to the following general conditions-

(a) interconnecting network service providers shall conclude agreements based on transparency and non-discriminatory principles;

(b) the network service provider engaged in the provision of electronic communications services, shall not apply less favorable technical and commercial conditions to any competitor than it would apply to itself, its subsidiaries or affiliates in the delivery of services;

(c) a network services provider shall interconnect with another network service provider at cost based interconnection charges;

(d) a network services provider shall offer an interconnecting provider adequate capacity to ensure that the interconnecting provider renders similar levels of quality of service; and

(e) interconnecting network service providers shall agree on interconnection charges for the delivery of electronic communication services; and

(f) quality of service standards shall constitute part of the conditions of interconnection agreement.

(2) The Authority shall make, each agreement approved in accordance with this Regulation accessible to public at a fee as shall be determined from time to time by the Authority.

(3) Where network service providers wish to amend the interconnection agreement, they shall submit to the Authority the proposed amendments for approval whether or not the terms and conditions remain just, reasonable and non-discriminatory.

7.-(1) Any interconnection agreement shall include, without limitation, the following-

(a) method to be adopted to establish and maintain the connection;

(b) connecting points of the network in which the connection is to be made;

(c) necessary capacity to ensure reasonable quality of the signal, taking Into account the overall capacity of the interconnecting network.

(d) form in which signals must be transmitted and received at the terminal points of the network, including numbering arrangements and signaling methods.

(e) way to ensure that any signal is received with a quality consistent with the recommendations of the International Telecommunications Union (ITU).

(f) connection arrangements between the parties for signals transmitted to third parties by virtue of Interconnection, within or outside Tanzania; and

(g) payment and payment methodology.

8. The licensee shall, within three months of a request by another licensee, enter into an interconnection agreement with such other licensee.

9. Any network service provider shall have the right to interconnect with the network of any other network service provider in the United Republic and permit such other network service provider to interconnect its network on reasonable terms and conditions set out in an Interconnection Agreement.

10. Interconnection Agreement between any network service provider and other operators shall be submitted to the Authority within one month before the licensee's network becomes operational.

16.-(1) All network services providers shall agree on a price for the delivery of an electronic communication service based on:

(a) the design of the interconnection rates based on forward looking economic long run average incremental costs;

(b) compensation arrangement which is reciprocal for the transportation and termination of traffic;

(c) coverage of the appropriate cost of providing the physical inter-

network links and associated equipment; and

(d) availing to an interconnecting network service provider, information required to determine the interconnection charges within a month.

(2) In the event that the network service provider fails to avail another network service provider with the necessary information within the time stipulated under paragraph (d) of sub-regulation (1), the Authority shall direct in writing the other network service provider to avail the information within a period which the Authority may stipulate.

17.-(1) Where the period for negotiations has lapsed and there is failure to reach agreement or a dispute arises between parties under an interconnection agreement, then any aggrieved party may petition to the Authority to arbitrate any open issues and submit a copy of the same to the other party."

The appellant VODACOM TANZANIA LTD is a limited liability company with its registered office at PPF Tower, Garden Avenue/Ohio Street in Dar es Salaam engaged in and carrying on the business of supplier/provider of telecommunications services.

The brief undisputed background to this matter is that by G.N. No. 247 of 14th December 2007 the respondent gave notice to the general public of its intention to hold an inquiry for the purpose of reviewing the cost based interconnection rates applied among the telecommunication operators. The inquiry was duly held. On 27th December 2007 the respondent issued a Determination on the Review of Telecommunications Network Interconnection rates in the United Republic of Tanzania, Interconnection Determination No. 2 of 2007 and by letter dated 28/12/2007 the respondent informed the telecommunication operators of the decision reached on the interconnection rates. The Determination aforesaid was communicated to the appellant on 28th December 2007. The appellant was aggrieved with the decision of the respondent in the Determination. On 31st December 2007 the appellant filed in this Tribunal Notice of Appeal from Interconnection Determination No.2 of 27th December 2007.

The Determination complained about reads as follows:

"3. The DETERMINATION

The Authority hereby determines Interconnection rates to be applied among the Telecommunication network operators in the United Republic of Tanzania as follows:

3.1 The appropriate cost-based interconnection rates shown in glide path shown in table 3 below shall be used from 1st January 2008 to 31st December 2012:

Table 3: Glide path for cost-based Interconnection rates (US$ cents) with effect from 1st January 2008 to 31st December 2012:

	1st January 2008	1st January 2009	1st January 2010	1st January 2011	1st January 2012
Voice call termination rates	**7.83**	**7.65**	**7.49**	**7.32**	**7.16**

3.2 A review of the interconnection rates may be carried if the Authority deems necessary.

3.3 Though the interconnection rates are in US dollars Cents, settlement shall be made in Tanzanian Shillings (TZS) based on be based on a weighted average exchange rate as provided by the Bank of Tanzania for the previous 12 months to 15 December of every year issued by the Authority before 1st

January of each year of the glide path. For the first year of the glide path the interconnection rate is determined at TZS 97.00.

3.4 The Authority determines that outgoing international calls are not subject to regulation because an international gateway operator must pay to an international carrier to terminate a call in a foreign country basing on charges arrived at by commercial negotiations.

3.5 The Authority determines that the incoming international calls transiting through the international gateways within Tanzania irrespective of their origin pay cost for terminating calls on the national network, and hence is subject to the Tanzanian Communications (Interconnection) Regulations 2005 and this determination.

3.6 The Determined rates are appropriate cost based interconnection rates for termination of traffic into telecommunications networks in the United Republic of Tanzania. For avoidance of doubt, international incoming traffic transits through an international gateway within Tanzania and terminates on a national network fall under the ambit of this Determination.

3.7 There shall be single termination rate for all types of networks irrespective of service and technology used.

3.8 All operators are required to enter into new Interconnection Agreements and submit the same to the Authority by 31st January 2008."

In the Memorandum of Appeal lodged in this Tribunal on 31/12/2007 the appellant has raised the following grounds of appeal:-

1. "The decision to alter interconnection charges was reached without being based on evidence.
2. The Respondent did not accord the applicant adequate opportunity to be heard during the enquiry process.
3. The Respondent acted without jurisdiction when it purported to regulate non interconnection operators in its determination.
4. The Respondent issued the determination without the authority of or passing through the Board.
5. The Respondent made the determination before the network service provider had agreed on a price for delivery of electronic communication service.

The respondent has resisted the appeal.

In the Reply to the Memorandum of Appeal filed by the respondent, the respondent has maintained that the decision complained about cannot be faulted, that while the respondent is not bound to base its decision for reviewing/altering interconnection charges on evidence provided by the operators, the respondent had taken into consideration the views collected/availed from/by all the network operators in the country including the appellant and other stakeholders, that adequate opportunity to be heard was accorded to all the operators including the appellant, that the respondent has jurisdiction to regulate domestic and international telecommunication services as it deems fit, that the Interconnection Determinanation No.2 of 2007 was issued after it was duly approved by the Board of Directors of the respondent, and that in the absence of agreement among the network service operators, it is lawful for the respondent to determine cost based charges on the best information available, as it in fact did in the instant case.

The Intervener Six Telecommunications Co. Ltd in its statement of intervention strongly opposed the appeal and maintained that the decision of the respondent in Determination No. 2 of 2007 cannot be faulted, that it was lawful and that in arriving at the new rates of interconnection charges the respondent had properly

applied the principles and used the methodology applicable in making such determinations.

At the hearing the appellant was represented by Mr. Galeba of G.R.K. Advocates, assisted by Ms Samah of IMMMA Advocates, while the respondent was represented by Mr. Henry Chaula of C & M Advocates. The intervener was represented by Mr. Mahebe of Law Associates (Advocates).

Besides the record of appeal the appellant brought one witness. In his oral evidence WALARICH NITTU (AW1) who heads the Legal Services Department of the appellant basically testified that on Friday 14/12/2007 the appellant was served by the respondent with a Notice of Inquiry about a review of Interconnection rates. According to this witness they did not receive a detailed analysis of the proposed rates which was necessary for the appellant to prepare their submissions. On 17/12/2007 the appellant was visited by the panel of Inquiry as scheduled. On 18/12/2007 the appellant was required to attend a seminar organized by the regulator's consultants on the interconnections rates' review. According to AW1 the appellant had only one free day in which to make a thorough analysis of all costs and the proposed rates as well as to prepare their submissions, as (according to the Notice of Inquiry) the appellant was required to

file its submission by 20/12/2007. AW1 said that the appellant was not afforded sufficient time to prepare its submissions. He claimed that the regulator had improperly regulated incoming international calls while at the same time leaving rates of outgoing international calls unregulated. According to this witness the appellant was adversely affected by Determination No.2 as the regulated rates of interconnection charges on incoming international calls were lowered from U.S. cents 10 per minute to U.S cents 0.8 on a five year declining model. No proof was brought by this witness to substantiate that the appellant suffered due to the review aforesaid. He also admitted that the appellant was represented at the public inquiry held at Karimjee Hall on 21/12/2007 and that the appellant had prepared and presented to the regulator a submission on the proposed review. However he said the time given was not sufficient to make a proper analysis of the proposed rates. In his testimony AW1 admitted that despite the downward review of the interconnection charges the appellant had made profits during the 2008 financial year. He, however, added that the appellant was adversely affected in the long term because of the capital expenditure the appellant had invested, given that the review of the rates was on a declining basis for five years. He also admitted that prior to the Notice of Inquiry the appellant had on 20/11/2007 received the letter from the respondent dated 19/11/2007 notifying

operators that a meeting for a review was to be held and an inquiry was going to be conducted on 21/12/2007. But he told the Tribunal that the proposed interconnection rates were not brought to the notice of the appellant until 14/12/2007 though the appellant was required to prepare detailed analysis in the submissions on the basis of the proposed rates.

The respondent brought 3 witnesses.

DR. RAYNOLD C. MFUNGAHEMA (RW1) told this tribunal that as the Director of Consumer and Industry Affairs of TCRA his duties are to regulate the costs and charges/consumer rates and to generally balance the interests of (a) the investors/operators who are interested in profits, (b) the consumers who are interested in affordable efficient services and (c) the government which is interested in economic development and therefore in collection of taxes, in accordance with the provisions of the TCRA Act 2003. In his testimony he stated that in the telecommunication industry it is initially necessary for networks to interconnect to allow seamless connection between operators, that is, to allow consumers from one network to call another consumer in another network or access the services of another network, that interconnection is not an option, that

the operators are by law required to interconnect, and that they may negotiate the charges but if they fail to agree on the charges the regulator will intervene.

According to this witness Determination No.2 of 2007 was not imposed upon the operators, and that it was the operators who, having seen the benefits of Determination No.1 of 2004, had requested the respondent to conduct a review and determine the interconnection rates, and thereupon on 23 May, 2007 a High level Consultative Forum on the Interconnection Arrangement Post 31/12/2007 was convened and held with the objective of reviewing the interconnection charges. RW1 said that during the stakeholders High Level meeting the operators who were all represented, requested a review of the interconnection rates by the regulator and the consensus was that the regulator should continue determining the interconnection rates. According to this witness after the high level stakeholders meeting in which the appellant had participated there was a series of consultations between the respondent and the operators in the industry presided by an independent consultant U.K. Analysis for reviewing the interconnection rates. According to RW1 it was U.K Analysis who had done the cost study and review of the interconnection charges leading to Determination No.1 of 2004 which was due to expire on 31/12/2007.

According to RW1 from the respondent's analysis the whole industry benefited from the downward review of the interconnection rates in Determination No.2 of 2007, the tariffs were lowered, the number of subscribers in the industry increased from 8,000,000/= to 20,000,000/=, and by December 2007 the appellant alone had 3.8 million subscribers and by December 2009 the number of the appellant's subscribers had risen to 7.2 million as exhibited in exhibit R1 (which exhibit was not disputed by the appellant). He added that the lowering of the charges and fixing of the interconnection rates brought stability to the industry and as a result there are no disputes and the players may focus on their business. RW1, who was also one of the panelists at the public inquiry, testified that the appellant was given sufficient notice and time to prepare and present its submissions, and that the appellant had fully participated in the public Inquiry and presented well argued detailed submissions. According to RW1 the stakeholders forum/meeting of 23/05/2007 was prompted by the coming to an end of Determination No.1 of 2004 and the respondent as a regulator was by law duty bound to intervene when the operators failed to agree or submit a negotiated agreement for interconnection charges.

RW2 LUCAS MWALONGO, a principal economist in the respondent's department of Consumer and Industry Affairs, dealing with Industry Analysis and Tariff

Regulation, said that in international calls the termination operator (the final destination of a call) is the one which is paid the interconnection charges, that what is paid for is the cost of terminating a call and that the respondent does not regulate outgoing international calls which originate in the country and terminate outside because the respondent has no control over them.

RW3 JOHN DAFFA, the principal legal officer of the respondent was a member of the secretariat of the panel of the public Inquiry held by the respondent in December, 2007 leading to the issuance of Determination No. 2 of 2007. According to him the public Inquiry was conducted because the operators did not submit a negotiated agreement on interconnection charges as required by the law and Determination No.1 of 2004 was due to expire on 31/12/2007 and that a notice of Inquiry was issued to all interested parties, that the respondent was duly served with the Notice of Inquiry on 14/12/2007 and the process was finalised on 21/12/2007 when the interested parties were called to present their submissions on the proposed interconnection rates. He testified that the appellant like all the interested parties submitted their submissions as directed under item 4 of the Notice and no objection was made by any interested person with respect to the itiniery/schedule regarding the filing of submissions. This witness too testified that prior to the public Inquiry the regulator had called a meeting of stakeholders

– the High Level Consultative Forum held on 23/5/2007 for the purpose of informing the stakeholders of the process of reviewing the interconnection arrangement post 31/12/2007 and also in order to give them the opportunity to avail their views and recommendations to the respondent on what would be the ideal interconnection arrangement post 31/12/2007, effective from 1/01/2008. According to RW3 at the Forum the stakeholders had recommended that the respondent should carry out a study of Interconnection charges so that the authority could determine the cost based interconnection charges, that the appellant had attended the stakeholders' meeting, that after the aforesaid meeting the respondent did not receive any agreement/proposal on interconnection rates, that during the public Inquiry every operator was given the opportunity to be heard, to prepare and present submissions and further the panel members visited their offices including the appellant's office and held meetings with each operator at its premises, and that during the public hearing the appellant was fully represented and had in addition submitted orally by a power point presentation. RW3 further testified that after the public inquiry the panel had prepared and submitted a report with their recommendations to the Board of Directors of the respondent for their consideration, that on 27/12/2007 a meeting of the Board of directors was convened and after deliberations

Determination No.2 of 2007 was approved and issued and all the operators were served with a copy of Determination No.2 of 2007.

In his written submissions filed in support of the appeal Mr. Galeba learned counsel for the appellant began by arguing ground 5 and thereafter grounds 4, 1, 2 and 3 in that order. On ground 5 he submitted that the respondent had failed to comply with regulation 5 of the TCRA (Interconnection Regulations) G.N. No. 264 of 2005 requiring the respondent, as the regulator, to issue an interconnection negotiation procedure and guidance and that failure or omission by the respondent to initiate the negotiation of interconnection rates as required under regulation 5 had fatally offended the regulations providing the process for reaching interconnection rates. Mr. Galeba asserted that the issuance of the Interconnection negotiation procedure and guidance documents is the first step in the process, and that the High level Consultative Forum was inapplicable in the process for setting interconnection rates. He contended that only after obtaining the guidance of the respondent by the issue of the interconnection negotiation procedure and guidance could the operators have commenced to negotiate and conclude interconnection agreements under regulation 16(1) of the Interconnection Regulations. Mr. Galeba contended that due to non-compliance with regulation 5 the respondent had denied the operators the right and benefit

of payment and payment methodology provided in regulation 7(g) of the Regulations by proclaiming the rates in the Determination and further denied them the right to have the interconnection rates negotiated commercially and fixed by agreement between parties as provided in regulations 10 of the Regulations.

Learned Counsel submitted that lawful interconnection charges must be contained in an agreement negotiated by the parties and any fixing of the rates by a regulator or by any other procedure is unlawful and void and that the regulator may only intervene, under regulation 17(1) where the parties have failed to reach agreement, as an arbitrator upon petition by any of the aggrieved parties.

As regards ground No.4 Mr. Galeba submitted that the Board meeting which made the Determination was not properly constituted as the quorum was below the statutory minimum of 4 required under section 7 of the TCRA Act read together with item 5 of the schedule to the Act. He contended that the Determination having been approved and adopted by an improperly constituted board meeting is bad and offends the mandatory provisions of rule 6(2) of the Inquiry rules.

On ground 1 of the appeal Mr. Galeba contended that the Determination was made without evidence from the operators on their investment and the financial implications of the Determination on the operators including the appellant who as investors are the persons most affected by the Determination. He asserted that the omission to take into account the investment costs and return on the investment of the investors is in contravention of section 5(c) of the TCRA Act,

In support of ground 2 it was submitted that the appellant was not given sufficient time for making consultations and preparing well reasoned submissions in respect of the proposed review of rates, nor was the appellant availed with necessary information or "model document" showing the basis of the new rates. As regards ground 3 learned counsel submitted that the respondent has no mandate to regulate international gateway operations, whether incoming or outgoing calls, and that the respondent had improperly regulated incoming calls, that is international calls terminating in the country while at the same time leaving outgoing calls unregulated to the detriment of the Tanzanian Consumers.

In response Mr. Henry Chaula learned counsel for the respondent strongly maintained that the decision reviewing and lowering the interconnection rates in Determination No. 2 of 2007 cannot be faulted and that the appeal is

misconceived and devoid of merit. Mr. Chaula submitted that in the absence of agreements among the network operators it is lawful under sections 16(1)(2) and 17 of TCRA Act, and section 5(1) and items 7 and 32 of the second schedule to the TC Act No.18 for the respondent to determine price based rates on the basis of the best information available. It is his contention that the network service providers are by law required to negotiate and agree on interconnection charges on the basis of terms and conditions set out under regulation 16(1) (a) to (d) of the Tanzania Communications (Interconnection) Regulations, G.N. No. 264 of 2005, that under the law interconnection charges may be fixed:- (a) by the regulator in a determination after conducting an inquiry and (b) through commercial negotiation by the network service providers as provided in regulations 8, 16(1), 17, of the Regulations. He argued that where the parties fail to negotiate and agree on the rates the respondent may intervene and regulate the rates by making a determination after conducting a public Inquiry. He added that regulations 5 and 10 are inapplicable to the instant case, and that they apply to newly licensed network operators, not to existing operators like the appellant which had existing interconnection agreements with other network service providers under the provisions of regulation 6(3) of the Interconnection regulations, G.N. No. 264 of 2005. As regards ground 4 learned counsel, while

admitting that under s.7(1) of TCRA Act the Board of Directors is composed of 7 members and under item 5 of the schedule to the TCRA Act the quorum at any meeting of the Board is required to be half of the members he asserted that the law is silent on what constitutes a half of seven human beings. He basically asserted that in the circumstances it would be wrong to say that 4 members present would constitute a half of seven (7) members of the Board.

With respect to ground 1 Mr. Chaula argued that while under section 17(1) the respondent is not required to obtain information or take evidence from the appellant or other stakeholders when carrying out a review of interconnection charges of calls terminating in Tanzania, the respondent did involve all the stakeholders in the industry and in addition obtained advice from other independent sources such as the consultant Analysis (UK) Ltd to carry out a review of interconnection charges in Tanzania. Mr. Chaula argued that in any case there is no evidence that the appellant was adversely affected by the reduction of the interconnection charges since the number of its subscribers increased and it made a profit and clearly Determination No.2 was not in any way prejudicial to the appellant. As regards grounds No. 1 and 2 learned counsel submitted that the appellant was given adequate opportunity to be heard and a public Inquiry on interconnection rates was duly held preceded by other

consultative meetings between the respondent and the operators including the appellant, in particular the High level Consultative Forum on Interconnection Arrangement Post 31/12/2007 held on 23/12/2007, at which the appellant was represented.

While no submission was filed on behalf of the intervener, Mr. Mahebe during the cross examination of AW1 made it clear that he was fully supportive of the submissions made by Mr. Chaula on behalf of the respondent.

We have carefully read the respective arguments advanced by learned counsel in the context of the relevant provisions of the law reproduced herein.

It is not disputed that a High Level Consultative Meeting of the stakeholders in the mobile phone Industry was held on 23/05/2007. The record of the aforesaid Forum (details whereof will be given hereinafter) is not disputed and was in fact relied upon by both sides during the hearing of the appeal.

It is true that the respondent is under regulation 5 of the Interconnection Regulations 2005 required to issue an interconnection negotiation procedure and guidance clearly intended to guide the network operators when negotiating interconnection agreement. It is undisputed that no such guidelines had been issued by the time the Inquiry preceding Determination No.2 of 2007 was held.

However there is no evidence that the appellant was prejudiced by the omission to issue the guidelines on the Interconnection negotiation procedure. Neither the appellant nor any other network service provider has been penalized by the respondent for not negotiating and submitting interconnection agreements to the respondent. There is no evidence that the appellant had at any time after the coming into effect of the interconnection regulations, during the High Level Consultative Forum on 23/5/2007 or even at the Public Inquiry, sought guidance on the negotiation procedure or complained about the omission by the respondent to issue the interconnection negotiation procedure and guidance provided for in regulation 5.

More importantly, nowhere in the relevant provisions of the law, the principal legislations and in particular the interconnection Regulations 2005, is it provided that interconnection charges or any rates shall be fixed only by negotiation and agreement between the operators.

Now it is undisputed that no negotiated agreement between the network operators had been submitted to the respondent by 23/5/2007 when the High Level Consultative Forum was held or even by 21/12/2007 when the public inquiry was held.

Under Sections 16(1) and (2) and 17 of the TCRA Act and 5(1) of the TC Act No. 18/1993 as amended by Act No.12 of 2003 and items 7 and 32 of the schedule to the TC Act No.18 of 1993 the respondent is empowered to regulate rates and charges and to carry out reviews of rates and charges and it is lawful for the respondent as a regulator to determine price based rates on the basis of the best information available and other relevant benchmarks including international benchmarks for prices, costs and return on assets and other considerations provided in S.16(2) of the TCRA Ac t and S.5 of the TC Act.

Admittedly under the Regulations the network operators are required to negotiate and agree on interconnection charges on conditions set out in the regulations upon the issuance by the respondent of an interconnection procedure and guidance. But this procedure does not preclude or bar the respondent as a regulator from exercising its powers under the substantive Act and the sector legislation making a determination of the charges after conducting a public Inquiry. On the other hand unless the regulator issues the procedure and guidance under regulation 5 of G.N No. 264 of 2005 it is not possible for the operators to negotiate interconnection agreements as contemplated in the interconnection regulations. Indeed in our view the Interconnection Regulations are meant to facilitate the negotiation of interconnection agreements and the

entering into such agreements by operators subject to the regulator's powers to regulate under the Acts.

However it is elementary that the regulations being subsidiary legislation cannot and indeed are not intended to take away the regulator's powers to regulate the rates charges and tariffs whether by carrying out reviews or approving negotiated agreements subject to the relevant provisions in the TCRA and TC Acts.

In the instant case it seems clear that due to the omission by the respondent to issue the interconnection negotiation procedure and guidance as provided in regulation 5 the operators could not negotiate and enter into interconnection charges.

In the premises in the instant case we are in entire agreement with Mr. Chaula that in the absence of interconnection agreements among the network service providers it was lawful and proper for the respondent as the regulator to determine the interconnection rates as provided under s.16 (1) (2), 17 and 18 (1) and (2) of the TCRA Act and S.5(1) and items 7 and 32 of the schedule to the TC Act. Indeed under the aforesaid provisions clearly even the negotiated agreements are subject to review by the regulator. Ground 5 has no merit.

As regards ground 4 we will say without further ado that the complaint is devoid of any merit. In the first place there is on record a resolution and minutes of a meeting of the Board of Directors of the respondent held on 27/12/2007 evidencing that the Determination complained about was duly approved at a meeting of the Board of Directors held on 27/12/2007. Unless fraud is alleged (which is not the case in the instant appeal) a board resolution is conclusive proof that the matter was approved. Secondly as evidenced by the aforesaid minutes of the Board Meeting, the quorum of the meeting of the Board of Directors was determined at the commencement of the meeting when the meeting was declared properly constituted; this does not preclude one or even more members from leaving before the meeting is concluded. In the instant case it cannot be said that there was no quorum merely because the members of the board who participated in the inquiry process and who were clearly in favour of the Determination were requested to step out during the deliberation of the Determination by the Board, but after the meeting was declared properly constituted.

With regard to ground 1 we are satisfied that the respondent when carrying out the review of the interconnection rates did involve the stakeholders in the industry and in addition after holding consultations with the operators obtained

expert advice from independent sources such as the Consultant, Analysis (U.K) Ltd who had carried out a cost study of the review and further that the respondent had taken into consideration the factors provided in section 16(2), in particular section 16(2) (c) of the TCRA Act. Indeed under the provisions of section 5 of the TCRA Act other than protecting the financial viability of efficient suppliers it is the duty of the respondent in carrying out its functions and exercising its powers as a regulator to promote effective competition and economic efficiency and to protect the interests of consumers and other objectives provided in section 5 aforesaid.

The report of the panel of Inquiry on the review of the interconnection rates which is the basis of Determination No. 2 of 2007 clearly shows that in making the recommendations for the proposed cost based interconnection rates the panel of Inquiry had besides relying on the report by Analysis (U.K), also taken into consideration the views and submissions of the operators, consumers and other stakeholders in the Industry.

In reviewing the proposed cost-based interconnection rates, the Panel of Inquiry considered the following factors:

"(a) The cost of making, producing and supplying the goods or services;

(a) The desire to promote competitive rates and attract the market;

(b) Any relevant benchmarks including international benchmarks for prices, costs and return on assets in comparable industries;

(c) The financial implications of the determination;

(d) The consumer and investor interest;

(e) The return on assets in the regulated sector;

(f) Any other factors specified in relevant sector legislation;

(g) Any other factors the Authority considered relevant including full liberalization policy of the sector since 2005, convergence of technology and services and the converged licensing framework."

The complaint about not being given adequate opportunity to be heard during the inquiry process in ground 2 has no merit. The process of the inquiry leading to Determination No.2 of 2007 as stated earlier herein clearly commenced in May, 2007 with the High Level Consultative Forum on Interconnection Arrangement post 31/12/2007 held on 23/05/2007 at which meeting, as stated earlier, all the operators including the appellant were fully represented/present. It is undisputed that the objective of the forum was to give to the operators the opportunity to avail their views and recommendations to the respondent on what would be the ideal interconnection arrangement effective from 1/01/2008. The

record of the meeting which is not disputed reveals that after a presentation by the respondent each member including the appellant was given the opportunity to present his views and recommendations on what would be the ideal interconnection arrangement effective from 1/01/2008.

Celtel's proposal was that a cost study be carried out to establish the costs and interconnection charges for the next 5 years while TTCL proposed inter alia the introduction of other methodologies of charging, such as usage based, capacity based or the hybrid model, while Mic (T) Ltd proposed that the existing interconnection rates be maintained. Vodacom, on the other hand, strongly advocated that interconnection rates should be negotiated commercially and asserted that the regulator should only intervene to address clearly identified market failures. Other operators including Zantel, BOL and Six Tel explained the difficulties they had encountered as late entrants in the market, and the length of time it took them to negotiate and agree on interconnection agreements with the existing operators. As a way forward Zantel, BOL and Six Tel recommended that the respondent as the regulator should carry out a cost study and determine the interconnection rates.

It is evident from the record of this Forum (which has not been challenged by any party) that after the deliberations it was resolved that:

"As a way forward and to ensure stability in the industry, the regulator (TCRA), *(the respondent herein*) should engage an independent consultant to carry out a cost study of telecommunications network in Tanzania. The study would guide TCRA in issuing a determination of cost based interconnection rates for the next five years".

There is no evidence that the appellant or any other operator contested this decision made by the forum held on 23/5/2007, although apparently there were more consultations to and from within the industry following the High Level Consultative Forum. Then by letter dated 19/11/2007 the respondent gave notice to all the operators about its intention to conduct a review of the Interconnection arrangement post 31/12/2007. The letter which was evidently received by the appellant on 20/11/2007 reads as follows:-

"RE: REVIEW OF INTERCONNECTION ARRANGEMENT POST 31ST DECEMBER 2007

Reference is made to the above subject matter.

Please be informed that the Authority shall conduct an Inquiry in accordance with section 18 of the Tanzania Communications Regulatory Authority, 2003 before reviewing interconnection rates to be applied after 31st December, 2007. The Inquiry will be carried out by a Panel of Inquiry appointed by the Authority from 13th December to 27th December, 2007.

The Panel of Inquiry will in the process visit you to familiarize with your network architecture and operations. Attached herewith find the work plan of the Panel of Inquiry for information and action. Your cooperation and commitment to this process is highly important to enable the accomplishment of the Inquiry on 27th December, 2007, and issuance of a determination of reviewed interconnection rates post 31st December, 2007.

Signed

Prof. John Nkoma

DIRECTOR GENERAL"

According to the work plan of the panel of Inquiry which was also sent to the operators the schedule was as follows:-

Date	**Projected Tasks**
30/11/2007	• Inaugural meeting • Discuss and approve notice of Inquiry, form of submissions and summons to appear before the Panel.
13/12/2007	Finalize notice of inquiry
14/12/2007	Visit to interconnection operators
Extelecoms PPF	1. TTCL
Tower Barclay	2. Vodacom (T) Ltd
House.	3. Six Telecom
15/12/2007	Submission and presentation of the Analysis Report to TCRA Board and Panel.
17.12.2007	Visit to interconnecting operators
Celtel House	1. Celtel
Kijitonyama	2. Benson Informatics
Lugoba Street	3. Tigo

18/12/2007	Travel to Zanzibar by Air (Panel and Secretariat)
19/12/2007	Visiting Zantel and returning to Dar es Salaam
	By Air. (Panel and Secretariat)
20/12/2007	Receive written submissions on notice of Inquiry from
TCRA	operators and stakeholders.
21/12/2007	Public Hearing
Karimjee Hall	Cross-examination and oral presentations.
22.12.2007	Panel to review submissions and prepare draft report
23/12/2007	Finalization of the report of the Inquiry
24/12/2007	
27/12/2007	Submission of the report to the Board
Board room	
29/12/2007	Issue Determination
Board room.	

Thereafter by the Tanzania Communications Regulatory Authority (Inquiry) Notice G.N. No. 247 (supra) published on 14/12/2007 the respondent gave notice to all

operators and stakeholders specified in the first schedule that an inquiry would be conducted for the purposes of reviewing interconnection rates. The notice aforesaid reads as follows:

"NOTICE

1.

2. Notice is hereby given to all operators and stakeholders specified in the First Schedule to this Notice that-

(a) the Tanzania Communications Regulatory Authority shall be conducting an inquiry with a view to reviewing the cost based interconnection rates to be applied amongst the telecommunications network operators; and

(b) the current applicable cost based interconnection rates resulted from Determination No.1 of 2004 on Cost based Interconnection Rates for Fixed and Mobile Telecommunication in the United Republic of Tanzania issued by the Tanzania Communications Regulatory Authority on 30th September, 2004, which became effective on 1st October, 2004 as shown in Second Schedule is being reviewed.

3.-(1) All operators and stakeholders shall be required to make well reasoned written submissions to the Authority which shall be in relation to the proposed interconnection rates provided for under the Third Schedule.

(2) The written submissions made by operators and stakeholders under subparagraph (1) shall be in accordance with the Inquiry Submission Form provided in the Fourth Schedule and be filed with the Authority at TCRA Head Office at Plot No. 304, Ali Hassan Mwinyi/Nkomo Street before or on 20th December, 2007 at 1400 hrs.

(3) Operators and stakeholders who make submissions under this paragraph, shall be required to serve a copy of the submissions upon each of the parties listed in the First Schedule:

____

FIRST SCHEDULE

_____

(under paragraph 2)

1. Benson Information Ltd.

2. Celtel (T) Ltd.
3. MIC (T) Ltd.
4. Six Telecoms Company Ltd
5. Vodacom (T) Ltd
6. Tanzania Telecommunications Company Ltd
7. Zanzibar Telecom Ltd.
8. Minister for Infrastructure Development
9. The TCRA Consumer Consultative Council
10. Fair Competition Commission
11. Tanzania Chamber of Commerce Industries and Agriculture."

It is not disputed that the appellant received a written notice of the Inquiry on 14/12/2007, filed the submissions and fully participated in the public Inquiry held at Karimjee Hall on 21/12/2007 and that it even made a power point presentation. However the appellant's complaint is that there were not given sufficient time for preparation of their submissions, that the notice was too short for them to write well-reasoned detailed submissions and also that it was not until 14/12/2007 that the appellant first saw the new proposed rates of interconnection charges now challenged before this Tribunal. According to the appellant the one week's notice was not sufficient as the 15th and 16th December

2007 fell on a weekend (Saturday & Sunday) and the 17the and 18th were occupied in meetings and a workshop with the respondent, leaving the appellant with only one day for writing the submissions.

Upon careful consideration of the respective arguments we must disagree with the appellant. As stated earlier the appellant was indisputably well aware that Determination No.1 of 2004 was due to expire on 31/12/2007 and had participated in the High Level Consultative Forum of 23/05/2007. The appellant was well aware that there were no negotiated interconnection agreements and the respondent had carried out a study through a consultant with the view to reviewing the interconnection rates post 31/12/2007. Again by letter dated 19/11/2007 the appellant was notified about the intention by the respondent to hold an inquiry and review the interconnection rates. It is not as if they first became aware of the review on 14/12/2007.

Besides before the public Inquiry held on 21/12/2007 the Inquiry panel had visited and held a meeting with the appellant on 17/12/2007. The appellant did not seek an adjournment of the Inquiry to analyse the effect of the review which was possible under rule 8(9) or postponed the submission of its submission under

rule 8(8) and rule 9(1) of the public Inquiry Rules G.N. No. 307 of 2004 which permits the submission of new evidence/matter after the close of the inquiry.

In our opinion the appellant was well aware that there was going to be a review of the interconnection rates and that an Inquiry would be held in which they would be required to participate and make submissions. The procedure laid down in section 18 of the TCRA Act 2003 and the Tanzania Communications Regulatory Authority (procedure for Rules of Inquiry) Rules G.N. No. 307 of 2004 was, in our opinion, complied with. The respondent had in our view fulfilled its obligations for giving notice under sections 18(1), (2) and 5(b) and the Tanzania Communications Regulatory Authority (procedure for Rules of Inquiry) Rules G.N. No. 307 of 2004.

We are therefore satisfied that the appellant was afforded sufficient notice and adequate opportunity to be heard during the whole Inquiry process, notice of which was clearly given way back in May, 2007. The operators presented written submissions on 20/12/2007 and oral submissions during the public hearing conducted on 21/12/2007.

As a seasoned well-established service provider in the Industry the appellant ought to have been prepared to make well reasoned informed submissions within

the time stipulated. Indeed from the appellant's submission which is on record the appellant did give a detailed submission and analysis of the proposed review and its financial and other impacts. The fact that the appellant was clearly not in favour of the proposals does not mean that he was denied the opportunity to be heard. Accordingly ground 2 has no merit.

The complaint in ground 3 also is without merit. Clearly in its determination international outgoing calls are not subject to regulation by the respondent since as stated by RW1 and RW2 they terminate outside the country where the respondent has no authority and the costs are unknown. What are regulated are incoming international calls from outside Tanzania transiting through an international gateway within Tanzania terminating on a national network and transit arrangements in which cases the cost of terminating the call or transiting and routing the call within the country are known.

In the premises we find that the respondent had properly exercised its powers as a regulator when making the Determination complained about and that the procedures for holding a public Inquiry were duly complied with. We also find no evidence of any prejudice to or loss suffered by the appellant due to the

respondent's failure to issue the interconnection negotiation procedure and guideline under regulation 5.

Having said this we must add that the respondent as the regulator cannot be spared criticism for its noncompliance with regulation 5 of the Interconnection Regulations G.N. No. 264 of 2005 which are clearly intended to facilitate the negotiations of interconnection Agreement by operators upon the issuance of the interconnection procedure and guidance by the respondent as the regulator. Evidently no such procedure or guidance has been issued. It is unreasonable therefore for the respondent to blame the operators for failing to negotiate or submit negotiated interconnection agreements. Needless to say both the regulator and the regulated operators are required to comply with laws both principal legislation as well as rules and regulations. The respondent must therefore comply with regulation 5 by issuing the required interconnection negotiation procedure and guidance. It cannot be over emphasized that a regulatory authority must act in an exemplary manner. In order to regulate the regulated service providers it must not only comply with the law and the rules applicable but also must maintain and attain in the carrying out of its functions and duties the highest standards of efficiency and competency in accordance with the law without exception.

In the event, the appeal being devoid of any merit, save for the complaint about the failure by the respondent to issue the interconnection negotiation procedure and guidance under regulations 5 of Interconnection Regulations G.N. No. 264 of 2005, is hereby dismissed. Accordingly the decision of the respondent in Determination No. 2 of 2007 is hereby confirmed save for determination 3.8 which can only be implemented after the respondent complies with regulation 5 of G.N. No. 264 of 2005. In the premises determination 3.8 is hereby quashed. Each party will bear its own costs.

Razia Sheikh - Chairman/Judge

Mr. Ali Juma - Member

Mr. Felix Kibodya - Member

Dated at Dar es Salaam this 21st day of April, 2011.

Delivered this 21st day of April, 2011 in the presence of Mr. Galeba learned Counsel for the appellant and in the absence of the respondent and the intervener, duly notified, with Beda Tribunal Clerk present.

Razia Sheikh - Judge/ Chairman

Mr. Ali Juma - Member

Mr. Felix Kibodya - Member

21/04/2011