

## **An Analysis of The Implementation of The Zim Asset Pillar on ICT Development Policy in Achieving Results through Independent Regulation of The Telecommunications Sector in Zimbabwe: A Case Study of Mobile Telephony.**

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### **Abstract**

*This paper seeks to highlight the importance of having an independent regulator and gives a critique of International best practices vis-a-vis the role played by POTRAZ. International law plays a significant role in the regulation of telecommunications. The International Telecommunications Union recommends that a telecommunications regulator must be independent as agreed at the World Trade Organisation Fourth Protocol to the General Agreement on Trade Services Annex on Telecommunications provides for an independent telecommunications Regulator. Thornton et al highlights the importance of having an independent regulator as having an impact on the effectiveness of the market regulator, dependent on policy enforcement and market perception. Independence is not from regulation principles as contained in policies but rather an element that dominates the manner in which the policies are enforced. Independence as an essential element related to the functions and administration of the Regulator that strikes a balance between interests of the Mobile Network Providers and the interests of the consumers and potential market entrants.*

*The paper critiques the role of independence not only in the structures of the Regulator but in the manner in which the mandate as derived from the Act is carried out and juxtapose its role in implementing the national agenda as envisioned by the Zim Asset document. The question then begs whether independence of the POTRAZ will curb the market crisis in Zimbabwe. The role of an Independent Regulator as opposed to an ordinary Regulator that is not independent has significant benefits to the consumer and to potential market entrants, Where a Regulator is seen not to be independent as inferred by market occurrences then the role of independence also comes into play. The complex issue of interconnection policies will also be analysed.*

**Key Words:** Regulatory Independence, Transparency, Interconnection Regulation, Licensing Procedures, Enforcement of Zim Asset

### **Introduction**

Telecommunications provides the essential infrastructure for modern information economies. In the Zimbabwe Agenda for Sustainable Socio-Economic Transformation document hereinafter referred to as Zim Asset, the regulation of infrastructure of the telecommunications sector is addressed with the emphasis of direction being, "Towards an Empowered Society and a Growing Economy", The ICT cluster is focused on the rehabilitation of infrastructural assets and the recovery of utility services in Zimbabwe. Telecommunications is regarded as the backbone

to most services and is an essential component of all development strategies<sup>1</sup>. The purpose of the study is to come up with sustainable policy and regulatory strategies that encourage effective regulation of the telecommunications sector in light of the Zim-Asset economic blueprint.

The need for effective regulation of this sector is of paramount importance and cannot be understated. Lisa Thornton highlights the need for effective regulation in order to create a competitive and fair environment in the telecommunications sector. According to the International Telecommunications Union (I.T.U) an independent regulator must enforce the telecommunications sector. The position advocates for the same regulatory authority to be fair and free from political interferences.<sup>2</sup> Article 20 of the SADC Protocol on Culture, Information and Sport, provides that the member states should create conducive environments that will enable regulators to perform their duties without political interference.<sup>3</sup> The Constitution of Zimbabwe provides for the right to telecommunications in s23 hence enforcing the importance of the protection of the telecommunications sector.<sup>4</sup> The local telecommunications regulator in Zimbabwe is the Posts and Telecommunications Regulatory Authority in Zimbabwe hereinafter referred to as POTRAZ and The Broadcasting Agency of Zimbabwe (BAZ). The focus of this paper will be on POTRAZ.

The establishment and management of interconnection policies in relation to mobile telephony is a complex and contentious issue in Zimbabwe and in most developing countries, particularly in relation to licensing disputes and interconnection disputes. There is no single approach to regulation and many a time regulators are faced with regulatory dilemmas. The issues are related to either unbundled network elements UNE based competition, or facilities based competition in adopting measures encouraging investment in competing infrastructures , or service based competition by allowing resale. The quandary is how to deal with disputes in telecommunications regulation. Overall Assumption 3.1.4 (iv) of the Zim Asset document asserts that:

*“ Increased investment in infrastructure such as energy and power development, roads, rail, aviation, telecommunication, water and sanitation, through acceleration in the implementation of Public Private Partnerships (PPPs) and other private sector driven initiatives;”<sup>5</sup> The study seeks to analyse the effect of regulation on such vested interests particularly with regard to private investment in the telecommunications sector.*

## Methodology

Doctrinal analysis in relation to the principle of institutional independence was applied. An analysis of the doctrine of Independence was applied in analysing its relation to the composition of the regulatory authority as well as its functions

with specific attention to interconnection regulation and licensing procedures. A juxtaposition of market regulation was given in analysing the doctrine of independence as envisaged.

### **History of Telecommunications law**

The term 'telecommunications' is an amalgam of Greek and Latin roots meaning conveying information from a distance telecommunications is an integral part of daily associations, hence the need for an effective regulation of the telecommunications market. Telecommunications is today broadly defined as the transmission of information by means of electromagnetic signals over copper wires, co-axial cable, fibre optic strands or the airwaves. Telecommunications is cannot be regulated by the birders of any one country as its regulation goes beyond borders and national policy, hence the attributes of international regulation policies. Domestic regulation of telecommunications law is regulated in the Constitution of Zimbabwe and through domestic policies.

A natural monopoly existed in the telecommunications industry primarily because of the large costs involved in setting up a telecommunications network and the concept that monopolistic structure were deemed necessary to enable cross subsidies between different users. Secondly the need to regulate telecommunications was necessary as it is deemed to be the backbone of public utilities and policy implementation. Thirdly the nature of telecommunications in allocating scarce resources of frequencyradio spectrum which is a vital element of the industry, if not controlled effectively then anarchy will reign.

The history of telecommunications law in Zimbabwe commenced in 1890 when the first Post Office was opened in the Southern Rhodesia now known as Zimbabwe. The British South African Company established the first postal service and ran it as a self-governing entity under the Ministry of Post and Telecommunications. After gaining independence in 1980 the Zimbabwe Postal Services Amendment Act was promulgated through Statutory Instrument 175, paving way for the enactment of the Post and Telecommunications Act. The Post and Telecommunications Act established the Post and Telecommunications Act of Zimbabwe whose core mandate was to provide postal and telecommunications services. PTC was a wholly owned government company and the sole provider of telephone services in Zimbabwe. The government sought to create a monopolistic franchise in exchange for the operator to provide a reasonable flow of services at reasonable rates. Bulk services to the previously disadvantaged would be provided for through the monopoly in promoting Universal service and universal access goals. In telecommunications, the concept of 'universal service' refers to the policy of providing telephone services to all community members and is based on the North American concept of 'a telephone

in every home' (TeleCommons Development Group, 2002). In Zimbabwe universal service is not contextually achievable, thus a more realistic goal is *universal access*, where a working and affordable telephone should be within the reach of the whole population of a country. In telecoms, 'universal service' is used to refer to the process of ensuring that every citizen in a country - particularly the rural poor - has got access to a television or radio service. In Zimbabwe the figure has been boosted due to the introduction and development of mobile telephony. It is for this reason this article will focus on mobile telephony rather than broadcasting. A large number of beneficiaries are in the urban markets rather than the rural markets.

The courts role is to exercise judicial authority over the whole of Zimbabwe. The Supreme Court opened up the telecommunications market in 1998. The privatisation of the mobile telephony sector came about as facilitated for through a landmark ruling, *Masiyiwa V Minister of Posts and Telecommunications*.<sup>6</sup> The right to freedom of expression was interpreted to mean not only the right to speak or the right to be hear speech, but also includes the right to have access to such communication. The privatisation of the telecommunications industry is meant to bring about competition will allow for better services and provide for innovative, efficient and inexpensive services to the public. The more liberalised the market then the more pronounced the benefits would be to the consumer. The regulators role is to ensure effective market competition and to protect the interests of the consumers. The Postal and Telecommunications Regulatory Authority was established in 2000 through the Postal and Telecommunications Act. The regulator formally ended the monopoly of the PTC. Mobile telephony became the new child on the market and the government introduced NetOne as the government owned mobile telephony provider. Two private companies were allowed to commence operations in Zimbabwe namely Enhanced Communications Network Wireless (Econet Wireless) and Telecel Zimbabwe. A fourth provider Powertel was registered in 2014.

The role of Potraz is to implement telecommunications policies, foster effective and fair competition on the market and to allow a fair playing field for participants on the market.

The Postal and Telecommunications Act provides its duties as follows:

1. To exercise the licensing and regulatory functions of postal and telecommunications services in Zimbabwe
2. To exercise the licensing and regulatory functions of the allocation, and use of satellite orbits and the radio frequency spectrum in Zimbabwe, including the establishment of standards and codes relating to the same
3. To secure that reasonable demands for postal and telecommunication services are satisfied
4. To promote the interests of consumers, purchasers and other users, in respect of the quality and variety of postal and telecommunications services provided and telecommunication apparatus supplied

5. To maintain and promote effective competition between persons engaged in the provision of postal and telecommunication services
6. To monitor tariffs charged by cellular telecommunication, postal and telecommunication licensees with a view to eliminating unfair business practices among such licensees (Part II, Section 4).

The Zim Asset Blueprint mission statement places emphasis on the document, "To provide an enabling environment for sustainable economic empowerment and social transformation to the people of Zimbabwe". Effectively the Zim Asset document calls for the regulation of the telecoms industry so as to foster an environment conducive to allow for economic progress and to stimulate the sector.

### **Elements of an effective regulator**

The Zim Asset document calls for the improved regulatory environment of the ICT sector as 3.14 requires the government to create a robust infrastructure network and system plays a fundamental role in the socio-economic development of Zimbabwe<sup>7</sup>. Therefore the paper will analyse the benefits of effective regulation on the telecoms market.

The World Trade Organisation (hereinafter referred to as the WTO) is the International body which monitors national trade policies and provides for trade negotiations and dispute resolution.

WTO membership binds members including Zimbabwe to an open trade system with requirements to adhere to specific principles when trading with WTO memberstates. These principles are freer trade through tariff reduction, non-discrimination against foreign players, market liberalisation, increased competition and policy transparency. The WTO is responsible for the administration of the General Agreement in Trade of Services (GATS) that includes an Annex on Telecommunications and a protocol regarding basic telecommunications services, known as the Fourth Protocol to GATS. Article 5 of the WTO reference Paper provides:

*"There shall be established by the members, a regulatory body that is separate from, but not accountable to any supplier of basic telecommunication services and the decisions of the regulator shall be impartial with respect to all market participants."*<sup>8</sup>

The crux of the independence of the regulator as developed above underlies that Independence ought not to be an autonomous body, but must be free from political influence and lobbyists in the industry but not from the role of government in creating operational policies in the industry. The delicate balance of the two

positions is the focus of the article. Melody is of the opinion that though independent it remains a part of the government. The logic being that independence implies the ability to acquire specialised skills to be managed without interference and to be held accountable for the results according to the set standards of performance.<sup>9</sup> The African Telecommunications Union (hereinafter referred to as the ATU) is the significant continental body with a bearing on the telecommunications sector and Zimbabwe is a member state. ATU membership does not require compliance with specific objectives, rather the ATU enjoins Zimbabwe to participate in the vision of the Union, being a working partnership between the ICT industry and African governments.<sup>10</sup> The focus at the ATU is on *capacity building* in various strategic areas, such as policy and human resources rather than on implementation. Ecowas member states have set out criteria for assessing independence of the regulator according to Wu (2004), a framework was designed to evaluate an agency's independence. The factors include:

1. Stability of leadership - This concerns the nature in which the leadership of the regulatory agency is selected and removed. The
2. Scope of its authority - What are the functions of the regulator and to what extent are they exclusively the purview of the regulator. The functions must be explicitly outlined as well as the role of the relevant Minister. The Minister must not have absolute influence over the decisions of the regulators. Such excessive influence may lead to undue influence in the decision making process of the regulator.
3. Financial independence - refers to how the regulator is funded. Where the Regulator is largely dependent on government funding, there is questionable independence in enforcing policy particularly in favour of the market entrants. In instances where salaries of the regulatory officers are derived solely from government then there is a risk of biased decisions in favour of government owned providers.
4. Ownership of incumbent - refers to the level of privatization of the incumbent operator and the level of the state's financial interest in it. Where the incumbent is deemed to be a dominant factor in the industry, development will be limited in allowing competitors on the market. The regulator must ensure the incumbent allows for fair competition.
5. Movement of staff from industry to regulator - staff may be less influenced by external interests if there is discouragement of a "revolving door" between the regulator and private industry.
6. Representation of consumer concerns - the degree to which the regulator can and does represent the interests of consumers. Ideally an effective regulator will react to market change and improvements. Some of these obligations can include (but are not limited to), issues such as: timely and accurate billing (in telecommunications); customer contract policies and procedures, protection of consumer privacy; and terms of reference for

suspension of services (in the case of telephony and satellite TV services). Public interest concern is of paramount importance that must be upheld. An example would be where a regulator will call for a reduction in call rates citing improved technology allowing the service providers to reduce the costs to the consumers.

7. Ethical guidelines - what kind of guidelines exist internally that deal with ethical issues that arise in the course of normal operations. The preventative measure will apply where there is an issue in question to the integrity of the regulatory officials' decisions rather than in how the regulator applies policy directives.<sup>11</sup>

The above mentioned guidelines assist in encouraging transparency required in ascertaining interconnection policies and regulation of the market.

### **Regulation and interconnection**

Interconnection has several meanings that capture certain key elements related to policy. The ITU describes it as, "a set of legal rules, technical and operational arrangements between network operators that enable customers connected to one network to communicate with customers of another network." The emphasis here relates to regulation. The World Bank describes interconnection as the physical and logical linking of a public electronic communications networks used by the same or a different undertaking to communicate with the users of the same or another undertaking or to access services involved or other parties who have accessed the network." The emphasis relating to be more concerned with the physical and logical linking aspects rather than legal rules and commercial elements. The Zim Asset Document calls for improved communication including access and utilisation being infrastructure sharing.<sup>12</sup>

### **Elements of Interconnection**

The WTO recommends that interconnection shall be provided by the major supplier under non-discriminatory terms and in a timely fashion. It further recommends that cost-oriented rates be implemented that are transparent, reasonable and unbundled. The major supplier should make all interconnection agreements available to the public as part of the transparency factor. Furthermore in the event of an interconnection dispute it recommends that these be settled by an independent domestic body.<sup>13</sup>

- i. Basic interconnection services that include call termination, call origination and transit services.
- ii. Ancillary service that includes director enquiries, operator assistance and emergency.

- iii. Rental of physical components that include support structures, building and land on which facilities are located, towers , ducts ,poles ,co-location, interconnection circuits and cables or lines.
- iv. Use of network elements that include local loops , switched transmission facilities, operational support systems, network interface devices, signalling systems and call related database.
- v. Enabling functionalities, including equal access pre-selection and number portability.

### **Rationale behind infrastructure sharing**

The two main rationales for telecommunications regulation are firstly to maximise economic efficiency by controlling market power(economic regulation) and secondly to ensure the provision of universal service obligations as well as the enforcement of some consumer and environmental protection requirements, (social regulation).<sup>14</sup>This paper analyses how effective regulation impacts on interconnection policies. The theory being that where the regulator is complacent in enforcing policy then the market would be in anarchy. Telecommunications industry is networkbased and providers of telecommunications services need to have access an infrastructure in order to be able to provideservices to the market, that derive their value from connecting the originator of a message to the recipient. <sup>15</sup>

Interconnection pricing is a critical issue in developing the telecommunications sector whose effective management cannot be understated. The delicate balance between interrelated objectives has to be implemented.

Where regulation is too rigid and overregulation is allowed then interconnection policies will be harsh on the incumbent and may run the risk of discouraging competition on the market. The focus of the regulator mustrather be on transferring value to the consumers as well as to create the value in ensuring continued development of networks and technological advancements. The regulator has the complex task of establishing a balance of the interests of the consumers and the network providers.

The framework of interconnection agreements between incumbents and competitors allowing carriers to negotiate contracts must essentially prohibit discrimination against other service providers.<sup>16</sup> The parties must allow the terms of agreement to be enforced without prejudice.It is not feasible for a single operator to ownall the networks required to switch calls, therefore interconnection agreements provide for end users to connect to other networks without having to sign up with a system-wide network monopolist. The benefits to consumers are heightened where interconnection fees are at a reasonable cost.<sup>17</sup>



### **Independent regulation and competition**

Competitive safeguards are to be effected in order to protect the market and encourage investment. Appropriate measures are to be taken in preventing any major supplier of telecoms from engaging in anti-competitive practices. A major supplier is a supplier with the ability to affect terms of participation with regard to price and supply in the market for basic telecom through control of essential facilities. The manipulation of the dominant market position is potentially dangerous as one provider will control the market. Essential facilities refer to facilities exclusively or predominantly by a single or number of carriers or those which cannot be feasibly or technically substituted. Zim Asset document calls for the public sectors transparency and accountability in attracting investment.<sup>18</sup>

The regulator must guard the industry from anti-competitive cross-subsidisation. In order to protect the market the regulator ought to make technical information about essential services and any commercially relevant information to provide services readily available to competitors in a timely basis.

Melody illustrates the need for effective competition being determinant on the regulator. The need for an environment that fosters transparency and accountability is vital in cultivating effective competition. The regulator must deal with the government at arm's length and desist from delving into political interference in order to facilitate the market to grow in healthy competition. Petrazzini points out that the impact of competitive markets on prices is beneficial as it may lead to a reduction of calling rates, thereby improving the quality of the competition on the market.<sup>19</sup> The King Code on Corporate Governance principles refers to independence as the absence of undue influence and bias, which can be affected by the intensity of the relationships between the director and the company. Similarly, if applied in the telecoms market influence must be free from the Minister of Communications and other political influence as the situation may dictate.<sup>20</sup>

Regulation of the Interconnection regime is enforced in the Postal and Telecommunications Act, which makes provision for the operators to agree negotiate and agree to a fee allowing interconnection. Such contract will then be approved by POTRAZ and the parties if in dispute will refer back to POTRAZ. Interconnection disputes have been at the centre of controversy in Zimbabwe's telecommunications sector. The case of Telecel Zimbabwe is an example of such instances where POTRAZ has seemingly failed to comply with policy regulation and where political influence may act as a hindrance to effective market regulation. Currently the Constitution ensures protection of communications.

### **Critique of regulation of POTRAZ.**

The Zim Asset document calls for an overall input in technological advancement of the ICT sector as a pillar of all essential frameworks for development clusters in Zimbabwe. In order to achieve stakeholder confidence the regulator must be seen to be independent in administering its duties. In liberalised market a trend has emerged in favour of reducing the extent of regulation in favour of public policy objectives and competition law.<sup>21</sup> Where the regulator is deemed to be influenced the market will lack credibility and deter potential investors from participating. The regulator is responsible for implementing policies pertinent to the development of the sector such as interconnection and licensing procedures.

### **Interconnection**

The regulator is responsible for interconnecting the networks. Reconciling the interests of governments, consumers, incumbents and new entrants is a complex task, taking into consideration the change in market dynamics. Interconnection pricing is of paramount importance as it effectively influences the telecoms industry. The focus should not be hinged merely on cutting the costs to the consumers but also on creating the value that will ensure the continued development of networks and technological innovation.

In order to effectively implement the Zim Asset Agenda the regulator may consider the following factors in highlighting interconnection principles and balancing those with interrelated policies:

- (i) To promote competition between the different operators;
- (ii) To preserve the incentives if the provider of interconnection being the incumbent to maintain and upgrade its network;
- (iii) To ensure that the incumbent has incentives to limit the actual costs of providing interconnection rather than the cost opposed to the opportunity;
- (iv) To design interconnection prices which maximise overall social welfare and;
- (v) To limit regulator costs for the regulator and operators as well as the risk of regulatory mistake or capture in the pricing process.<sup>22</sup>

In acknowledging that Zimbabwe is a developing country it is important to point out that mirroring the regulations of developed countries would damage the economics of a developing nation. The need for infrastructure sharing owing to the large capital required to establish networks is of paramount importance. Infrastructure sharing must not be imposed but must be encouraged by the regulator through contracts and willing participation. Where the government is seen to be demanding infrastructure sharing then the market will indefinitely respond aggressively. Competition law must be the major guideline as with regards

to pricing<sup>23</sup>. Operators must not collude and charge exorbitant rates. In the event of such connivance the regulator must call for a reduction in pricing.<sup>24</sup> In order to effectively carry out such mandate then the regulator must be independent and transparent in implementing the directives as set out.

### Licensing

The Zim Asset cluster on ICT development encourages sustainable development in the ICT sector calls for a transparent licensing procedure. In 2001, POTRAZ introduced a new licensing regime in line with the SADC Universal Service Guidelines, where universal service obligations were imposed on all operators. In the event of licensing; the regulator must be unbiased in applying the law. The regime urged the setting up of community access points ('Community Communication Centres') for telecoms services in rural and under-serviced areas. Where a license is required all criteria and period in which a decision will be made including the terms and conditions of the license must be made publicly available. In order to encourage transparency where the license is denied the reason must be made known to the applicant upon request.

The regulator must not be seen to be inefficient by allowing preferential treatment to the discrimination of the other players on the market. The unprecedented case of Telecel Zimbabwe which is still unlicensed to date has been operating without a license for five years. The regulator must be seen to apply the law relating to licensing equally across the board. Where the regulator is seen to be biased to the detriment of the other players on the market then potential investors will shun the market, thereby undermining the development in the country. In keeping in accordance with Zim Asset recommendations the regulator must be seen to be promoting economic policies in the ICT industry.

The Minister of ICT must not be seen as interfering with the licensing procedure as the regulator must deal with government at an arm's length. The Postal and Telecommunications Act must govern the licensing procedure and no preferential treatment must be granted. The Universal service Fund Is established under Section 74 of the Postal and Telecommunications Act. Its mandate amongst others is to:

1. To make grants to local authorities or their appointed agents for the purpose of assisting needy persons to obtain access to postal and telecommunication services;
2. To assist in financing the extension of postal and telecommunication services to under-serviced areas and community centres within or outside such areas and;

3. To promote and contribute towards the expenses of the adaptation or facilitation of the use of telecommunication services for the benefit of disabled persons, including the provision, without charge, of directory information services appropriate to meet the needs of such persons.

Every registered mobile telephony provider has to contribute towards the Universal Service Fund through the paying of operating licences. Where a provider fails to pay the licence fees the fund will suffer the consequences. Such failure to contribute will result in hindering the progression of the telecoms sector and the core values as provided for under the World Trade Agreement.<sup>25</sup>

### **The role played by the Minister of ICT, Postal and Courier Services**

The SADC declaration on ICT stipulates that all regulators in the field of electronic communications should be free to conduct their business without any form of interference. Section 25 of the Postal and Telecommunications Act grants authority to the Minister to give directives to POTRAZ as he/she considers "to be necessary in the national interest."<sup>26</sup> Functional independence of the regulator must be encouraged and may be achieved through dealing with the contentious issues that may influence the independence of the regulator. Lisa Thornton points out factors that influence functional independence and can be guaranteed by addressing issues that deal with the actual functions of a regulatory agency. Without functional independence, it is difficult and near impossible, for a regulator to gain the trust of both consumers and industry players. Both these elements are required to foster effective competition on the market.

These elements that encourage functional independence include the regulatory agency having a clearly defined mandate, with its decision making powers clearly stated. This will discourage the officials to deviate from the law and discourage undue influence from politics. The agency must secure its staff security of tenure so as to exercise its duties in a timely, consistent and transparent manner.

### **Financial Independence**

Prado emphasizes that,

"If the Executive branch can control the agency's budget, the President may control the agency. The power to undermine an agency's financial stability and viability might be comparable to the power to dismiss the agency's directors. Thus, one of the institutional guarantees of independence is alternative sources of income versus fiscal resources controlled by the Executive."<sup>27</sup> A comparative shall be given in respect of South Africa in this regard. The Independent Commissions Authority

of South Africa herein after referred to as ICASA was established in 2000 by the ICASA Act of 2000. It was established as the regulator and the main licensing body in the telecommunications sector. Independence is expressly provided for in S3 (3) of ICASA which is subject to the Constitution and the law maintain impartiality and functioning without interference from the political and commercial arena. South Africa is a member state to the WTO GATS Agreement. S6A empowers the Minister to establish a performance management system. The Minister determines the remuneration of the Councilors and the Chairperson of ICASA. This encourages the independence of the regulator as the institution is at liberty to make its own decisions without salary manipulated fear.

In Zimbabwe the board has been dissolved twice in the last two years by the relevant Minister, The lack of transparency in appointing and dissolving of the board ultimately makes it impossible for the board to be effective.<sup>28</sup> The Minister must articulate the reasons for the proposed dismissal prior to the actual event so as to allow the public insight into the boards misconduct if at all The lack of transparency may call for an abuse of the system by the Minister should he fall out of favour with the boards decisions. The system allows for the transparent removals and appointment of the board. This stance may be emulated by Zimbabwe in encouraging transparency of the appointment procedures.

## **Conclusion**

The Zim Asset cluster on ICT development would largely benefit from an independent regulator that is able to enforce policies without favour or fear of prejudice to market participants. The POTRAZ must be given latitude to make its decisions without undue political interference. International, standards must be adhered to in promoting the independence of the regulator so as to achieve results in relation to free and fair competition and the development of the telecoms sector in Zimbabwe. In adhering with national policy in order to achieve sustainable economic policies, the telecoms sector would benefit immensely from an effectively independent regulator. The mandate of independence would largely encourage competition on the market and increase benefits to the consumers in turn. In encouraging infrastructure sharing and allowing for reasonable interconnection policy the mobile telephony sector would benefit from the system in lowering rates to the consumers as well as encouraging innovative packages to the consumers. Potential investors will be encouraged to invest in an environment that is free from political over influence and that encourages transparent procedures. Where the regulator is seen to be a toothless bulldog, potential investors may be deterred from investing. The regulator must be transparent in the manner in which it operates. The regulator must be encouraged to be independent in performing its duties and must take steps to be accountable to the public.

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**Footnotes**

<sup>1</sup>Zimbabwe Agenda for Sustainable Socio-Economic Transformation document pg 30 at 3.5.1.vi, ICT is listed as a key driver for the success of the Economic blueprint.

<sup>2</sup> African Charter in Broadcasting and SADC Declaration on Information and Communication Technology on the Freedom of Expression in Africa

<sup>3</sup>SADC Protocol on Culture, Information and Sport .Article 20

<sup>4</sup>Constitution of Zimbabwe Act no 20 of 2013. Section 23 the right to privacy.

<sup>5</sup>Zimbabwe Agenda for Sustainable Socio-Economic Transformation document, pg 29.

<sup>6</sup>T.S. Masiyiwa Holdings (Pvt) Ltd Minister of Information, Posts and Telecommunications 1998 (2) SA 755

<sup>7</sup>Zim Asset Document pg 88.

<sup>8</sup>World Trade Organisation Reference Paper on Telecommunications.Article 5. At [https://www.wto.org/ENGLISH/res\\_e/booksp\\_e/analytic\\_index\\_e/gats\\_03\\_e.htm](https://www.wto.org/ENGLISH/res_e/booksp_e/analytic_index_e/gats_03_e.htm)

<sup>9</sup>William. H. Melody. Meaning of and importance of independence in telecom reform.Telecommunications Policy. Volume 21 pg 97

<sup>10</sup>African Telecommunications Union.(ATU) Mission statement, chapter on objectives.

<sup>11</sup>" Decision on the harmonization of policies and the regulatory framework for the information and communication technology (ICT) sector," adopted at the 6th Meeting of the ECOWAS Ministers in charge of Telecommunications and ICT, Abuja, Nigeria, May 11, 2006.

<sup>12</sup>Zim Asset Document at pg 88.

<sup>13</sup>Despite the recommendations Zimbabwe mobile telephony providers have opted to settle disputes in a Court of Law rather than through arbitration. Netone dispute with Econet Wireless resulted in an out of court settlement.

<sup>14</sup> T. Prosser. Law and the Regulators. Clarendon Press, Oxford. 1997, pg 5. The rule of interconnection is to enable new entrants access to the infrastructure of the incumbent. The benefits are not only to the market entrants but to the consumer as well who benefits from reasonable interconnection costs.

<sup>15</sup> Peter Scott. Access and Interconnection. 2 (3)The Journal of Policy, Regulation and Strategy for Telecommunications Information and Media. June 2000 Volume 1 pg. 229.

<sup>16</sup>The dilemma of Net One became extensively complicated in 2013 when the provider of interconnection services Econet Zimbabwe argued that it would no longer provide services to the latter over non-payment of interconnection services provided. NetOne argued there was no interconnection agreement in existence and was therefore not obligated to pay for services. According to the Postal Act the interconnection agreements are to be made with the input of the regulator.

<sup>17</sup>Where the interconnection rates are prohibitive the consumer will bear the brunt of the calling cost. The WTO calls for a reasonable interconnection cost rate that will not hinder positive developments in the telecoms market.

<sup>18</sup>Zim Asset Document pg 126.

<sup>19</sup>Petrazini at <http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/282884-1303327122200/096ptrazzini.pdf> accessed 30 May 2015



<sup>20</sup>Institute of Directors Southern Africa. King Code of Corporate Governance of South Africa. 2009. *The need for independence cannot be understated in any organisation as it directly impacts on the performance of the organisation. For any recognised entity independence is of paramount importance, not only to the directors of the company but to how it is perceived in performing its duties.*

<sup>21</sup>Audrey Baudrier. *Independent Regulation and Telecommunications Performance in Developing Countries.* Annual ISNIE Conference: Institutions and Governance. Berkeley, California, USA. September 13-15, 2009 pg 5

<sup>22</sup>Damien Geradin and Michael Kerf. *Controlling Market Power in Telecommunications: Antitrust vs. Sector Specific Regulation,* Oxford University Press, London, 2003 at pg. 34.

<sup>23</sup>Competition Commission Act [CAP 14:28]

<sup>24</sup>POTRAZ caked for a reduction in calling rates in 2015. The reason being that the rate being charged by mobile phone operators was amongst the highest in Africa <sup>25</sup>Failure by Telecel Zimbabwe to pay its license fees essentially means that the company has not been contributing to the Universal Service Fund. This act is detrimental to the development of telecoms in the country.

<sup>26</sup>An example of Ministerial influence would be were recently the Minister has been widely published as being adamant that Econet Wireless must be made to participate in infrastructure sharing. The imposition of such demands is detrimental to company autonomy and will effectively discourage investors from the telecoms market.

<sup>27</sup>Mariana Mota Prado. *The Challenges and Risks of Creating Independent Regulatory Agencies: A Cautionary Tale from Brazil.* The need for freedom from the executive cannot be negated. It would be ideal to have the regulatory authority control its financial basis.

<sup>28</sup>Minister dissolved the POTRAZ board in 2014 and most recently in July 2015. The reason for dismissal being given as gross misconduct. The nature of the dismissal was not given in detail, hence it implies a lack of transparency in the process.