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EXAMINING THE ADEQUACY OF ECONOMIC REGULATION RELATED PROVISIONS IN THE INFORMATION AND COMMUNICATION TECHNOLOGIES ACT 2009 OF ZAMBIA: PROGRESSIVE OR RETROGRESSIVE?

By:

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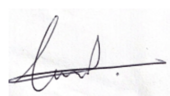
2025.

DECLARATION

I, **NOMSA GONDWE** of Student No. **LLB22215952,** do hereby declare that the contents of this research paper titled **"EXAMINING THE ADEQUACY OF ECONOMIC REGULATION RELATED PROVISIONS IN THE INFORMATION AND COMMUNICATION TECHNOLOGIES ACT 2009 OF ZAMBIA: PROGRESSIVE OR RETROGRESSIVE?"** submitted to the School of Law at the University of Lusaka, as part of the requirements for the award of the Bachelor of Laws (LLB) Degree is my original work and has not been previously submitted for the same award at any other tertiary institution.



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NOMSA GONDWE

2025.

SUPERVISORS RECOMMENDATION

I, **THOMAS MALAMA** do recommend that the dissertation titled **EXAMINING THE ADEQUACY OF ECONOMIC REGULATION RELATED PROVISIONS IN THE INFORMATION AND COMMUNICATION TECHNOLOGIES ACT 2009 OF ZAMBIA PROGRESSIVE OR RETROGRESSIVE,** authored by **NOMSA GONDWE** was done under my supervision be admitted by the university. I have checked it carefully and I am satisfied that it meets the requirements related to format as laid down by the university regulations.

...

MR THOMAS MALAMA

(Supervisor)

12th NOVEMBER 2025.

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First, all praise and glory be to God Almighty for the favour and grace he has shown to me throughout my law school journey and life in general. For it is by his grace that all things are made possible, this milestone inclusive.

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DEDICATION

This dissertation is dedicated to my family, friends and loved ones but most importantly, my mother Exilda and late father Prospard Gondwe. From playfully assigning careers to us as children with this career path as my own, it brings joy to my heart to be a step away from making that dream become a reality. This is for you.

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ABSTRACT

This dissertation examined the adequacy and appropriateness of the law governing economic regulation of the ICT sector in Zambia. Focus was primarily drawn to whether economic regulation provisions in the Information and Communication Technologies Act of 2009 are progressive or retrogressive in achieving the statute's intended objectives.

The methodology of this research was qualitative, relying on sources such as statutory authority, policy documents, academic literature and expert insights. Comparative lessons were drawn from jurisdictions such as South Africa and Mauritius where regulatory models have been more dynamic and inclusive.

Findings reveal that while Zambia's ICT Act provides comprehensive regulatory structure certain provisions within Part V exhibit shortcomings that may hinder market fairness and innovation. In particular, permissiveness towards predatory pricing and restrictive network access provisions that tend to favour dominant operators contrary to the Act's objectives of promoting competition and consumer welfare.

The research concluded that the existing legal framework, though progressive in intent, remains partially retrogressive in effect, necessitating targeted reforms to align the framework with international best practice and standards.

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1.0 CHAPTER ONE

1.1 Introduction

Information Communication Technology (ICT) has emerged as a cornerstone of modern economies globally, enhancing efficiency in international trade, enabling seamless online transactions and fostering social interaction. The goal of ICT is to improve the way humans create, process and share information with each other and among other things, foster economic and social development in society. [1] Therefore, in order to appreciate ICTs importance in today's world, it is essential to understand what it is and what it encompasses.

Information Communication Technology (ICT) is defined as the application of modern communications and computing technologies to the creation, management and use of information through the utilization of ICT infrastructure or services.[2] Examples range from the internet, mobile infrastructures powered by wireless networks, televisions, mobile phones and robotics.[3]

The ICT sector, like many others, often requires to be regulated and such regulation extends to economic – related aspects of the sector. This study seeks to zero in on and critically analyze such regulation as provided for under the Information and Communication Technologies Act 15 of 2009 (ICT Act.)

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[1] Paul Kirvan, Rahul Awati & Mary Pratt, 'What is ICT (Information and Communications Technology)?' (Tech Target, March 2025) https://www.techtarget.com/searchcio/definition/ICT-information-andcommunications-technology-or-technologies/ accessed on 11 April 2025.

[2] Information and Communication Technologies Act No.15 of 2009, Section 2.

[3] Ibid supra note 1.

1.2 Background of the Study

The Information Communication Technology sector is a critical driver of economic growth, innovation and social development in the world today. In Zambia, the enactment of The Information and Communication Technologies Act 15 of 2009 repealed and replaced the Telecommunications Act, thus operating as the primary legal framework of the sector. The Act seeks to provide comprehensive guidelines for economic and technical regulation, facilitate access to ICTs, protect both consumers as well as service providers from unfair competitive practices, and ensure efficient service delivery from service providers.

Part II of the Act establishes The Zambia Information and Communications Technology Authority (ZICTA) as the nation's ICT regulatory body, an autonomous body tasked with the duty to administer the regulatory framework in the ICT sector.[4] ZICTA's primary functions include among other things to license ICT service providers, oversee price regulation, regulate competition, promote consumer protection and promote Universal Access and Service.

The totality of ZICTA's functions can be categorized into among others, technical as well as economic regulation of the ICT sector. Regulation of the sector is vital in the scenario as the current one where the sector is liberalized and need exists to protect the interests of service providers and consumers alike. This study seeks to critically analyze provisions relating to economic regulation of the sector under the ICT Act with the aim of ensuring such provisions are adequate and appropriate for their purpose. This is imperative considering the fact that globally, the ICT sector has been proven to be the main driver of social and economic development.

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[4] Export.gov, 'Zambia – Ecommerce' (*4th April, 2019*) https://legacy.export.gov/article?id=Zambia-Ecommerce/ accessed 9 April 2025.

1.3 Statement of the Problem

Part V of The Information and Communication Technologies Act 15 of 2009 provides for Economic Regulation in the sector. This part largely covers competition - related matters including, but not limited to, Determination of Relevant Markets and players deemed to be dominant in such markets; Interconnection; Tariffs and Forbearance[5]. Despite its significance, Part V contains regulatory shortcomings that may impede the sector's ability to contribute to Zambia's socio- economic development. Key concerns include:

a) **Restrictive Network Access Section 43(2) (d)[6]**. This provision authorizes a licensee to turn down a request for access to elements of its network where in its own words: 'The licensees do not appear in the same category of licenses issued by the Authority for purposes of this Act.'

   Access plays a major role in extending services to areas where a particular licensee does not have a network. The provision thus, from that perspective, has the potential of hindering Universal Access and Service as it also implies that the categories of licenses referred to are not predetermined.

b) **Permissiveness towards Predatory Pricing Section 47(2)[7].** This provision allows service providers to exercise predatory pricing which is a prohibition under competition theory and undermines market fairness. It enables dominant players to eliminate competition through unsustainable pricing strategies, ultimately harming consumers once competition is eliminated. Though sections 48 and 50 of the Act suggest extra conditions may be imposed on dominant operators with respect to tariffs, the Act neither expressly nor necessarily prohibits charging below cost – even for such operators.

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[5] Information and Communication Technologies Act 15 of 2009, Part V.

[6] Information and Communication Technologies (Amendment) Act 3 of 2010, Section 43(2)(d).

[7] Ibid, Section 47(2).

c) **Lack of consumer Safeguards in Tariff Approval Section 47(9)[8].** This provision authorizes the introduction of new tariffs before they are published, seemingly overlooking ZICTA's primary function of protecting interests of consumers.

Considering their implications and importance, the aforementioned deficiencies call for a very critical analysis and scrutiny. This is to determine whether they align with the broader objectives of the ICT Act, which include promoting competition, ensuring consumer welfare and ultimately fostering sectoral as well as national social and economic development.

1.4 General Objective

This research seeks to examine the adequacy of Zambia's ICT sector economic regulatory framework. Such assessment seeks to determine whether the framework is progressive, adequate and beneficial in the quest for social and economic development of the nation. The study will also seek to analyze whether such framework aligns with international best practice.

1.4.1 Research Objectives

i. To explore the concept of economic regulation in the ICT sector.
ii. To explore legal framework governing economic regulation of the ICT sector in Zambia.
iii. To critically analyze the adequacy and appropriateness of Part V of the ICT Act providing for economic regulation to ascertain whether its provisions are progressive and in line with international best practice.

1.5 Research Questions

i. What is the concept of economic regulation in the ICT sector?

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[8] Ibid, Section 47(9).

ii. What are the select provisions of the legal framework governing economic regulation in the ICT sector in Zambia?

iii. How adequate and appropriate is Part V of the ICT in providing for economic regulation and are the provisions progressive and in accord with international best practice?

1.6 Significance of the Study

This research seeks to address the shortcomings of economic regulation – related provisions appearing under Part V of the Information and Communication Technologies Act 15 of 2009. Its significance lies in the fact that it has the potential of fostering consumer protection, competition and increased contribution of the ICT sector to national economic and social development.

The study is significant considering the fact that it has the potential of igniting legal reform that fosters adequate protection and participation of both consumers as well as service providers in the global digital economy, which is vital in spurring national economic and social development in this digital age.

The actionable recommendations this study will avail have the potential, if implemented, of playing a part in shaping a more progressive, inclusive and innovation- friendly ICT sector in Zambia.

1.7 Scope of Study

This research will focus on examining whether economic regulation – related provisions in the ICT Act 15 of 2009 are progressive, adequate and appropriate in achieving the stated goal and purpose of the said Act. This delineation ensures the study remains focused, feasible and analytical in addressing the core question as to whether the Act's provisions facilitate progress or hold back the sector's economic potential?

1.8 Definition of Key Terms

Consumer Protection: Safeguarding purchasers of goods and services against quality that does not meet standards, unduly high prices, unfair practices or fraud in the market place.[9]

Dominant Position: A position of economic strength enjoyed by a licensee enabling them to prevent effective competition maintained in the market by affording them the power to behave independently.[10]

Economic Regulation: The intervention of government or regulatory agency to manage aspects like competition, pricing, infrastructure access to ensure efficiency and equitable outcomes for consumers and operators.[11]

Market: A space where there is an exchange of goods and services related to technology and communication and may further be segmented by enterprise size, end-user industry and other factors.[12]

Predatory Pricing: A deliberate strategy used by a dominant firm, of driving competitors out of the market or preventing new entrants by setting low prices below their costs.[13]

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[9] Cambridge Dictionary, 'Consumer Protection' (*Cambridge Dictionary, 16 April, 2025*) https://dictionary.cambridge.org/dictionary/emglish/consumer-protection/ Accessed 17 April 2025.

[10] Information and Communication Technologies Act 15 of 2009, Section 2.

[11] ZICTA, 'Economic Regulation' (*ZICTA*) https://www.zicta.zm/services/economic-regulation/ accessed 11 April 2025.

[12] Mordor Intelligence, 'ICT Market Size & Share Analysis-Growth Trends & Forecasts (2025-2030)' https://www.mordorintelligence.com/industry-reports/information-and-communications-technology-market/ accessed 13 April 2025.

[13] NIQ, Predatory Pricing (*Nielseniq, 2025*) https://nielseniq.com/global/en/info/predatory-pricing/ accessed 16 April 2025.

Sector: Area in which employers and employees (or service providers and consumers) are associated for the carrying on of ICT related services.[14]

1.9 Literature Review

George J. Stigler, author of 'The Theory of Economic Regulation' conceptualized regulation as a product supplied in a political market place where industries use political influence to "buy" regulatory outcomes that benefit them such as subsidies, barriers to entry, price controls or restrictions on substitutes.[15] Stigler's theory closely associated with the concept that regulators tend to be dominated by the industries they are supposed to oversee often leading to outcomes that favor incumbent firms over consumers or new entrants. He highlighted how incumbent firms have greater incentives and organizational advantages to influence regulation compared to dispersed and less informed consumers.[16] Thus, through empirical studies he found that regulation frequently reduces consumer welfare and entrenches outdated or anti-competitive rules such as occupational licensing and trade protectionism.[17]

This research though in agreement – to an extent - with the aforementioned author seeks to emphasize that the picture painted by the author cited seems more to reflect a given experience of regulation than what it ought to be. What regulation ought to be or

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[14] Ibid supra, note 8.

[15] Christopher Carrigan and Cary Coglianese, 'Capturing regulatory reality: Stigler's The Theory of Economic Regulation' (*Research Gate, January 2016*) p.228 https://www.researchgate.net/publication/315376490_Capturing_Regulatory_Reality_Stigler's_Theory_of_Economic_Regulation/ accessed 9 April 2025.

[16] Sam Peltzman, 'How George Stigler Changed the Analysis of Regulation'(*Chicago Booth Review, 1 October 1993*) https://www.chicagobooth.edu/review/how-george-stigler-changed-analysis-regulation/ accessed 13 April 2025.

[17] Mark J. Perry, 'Nobel Economist George Stigler on Capture Theory' and the Inevitability of Businesses Seeking Regulation and Tariffs' (*AEIdeas, 23 April 2018*) https://www.aei.org/carpe-diem/nobeleconomist-george-stigler-on-capture-theory-and-businesses-seeking-regulation-and-tariffs/ accessed 13 April 2025.

theoretically is, seems to be not as gloomy as painted by the author cited above. This dissertation aims to unravel the defects in the ICT Act with respect to, among other matters, inadequate restriction of predatory pricing and other related ills in the ICT sector.

Alfred E. Kahn was a pivotal figure in regulatory economics, whose views centered on marginal- cost pricing and market competition over regulation. Prior to his belief that

"Even very imperfect competition is preferable to regulation", he emphasized markets' dynamism over bureaucratic control.[18] Kahn endorsed antitrust enforcement to prevent dominant firms from stifling rivals through unfair practices. Kahn established principles of deregulation that stress on cost-based pricing as well as vigilance against anticompetitive conduct. His work underscores the need for adaptable that balance competition incentives with consumer protection.[19] This research agrees with Kahn's view on the need for enforcement of laws that prevent dominant firms from stifling rivals through unfair practices. Section 47(2) gives dominant firms such room, which goes against restrictive business and anti-competitive trade practices theory as well as consumer protection policies.[20]

Mahmoud Makki et'al[21] argue that effective economic regulation in the ICT sector should focus on fostering an environment that encourages investment, innovation and competition. Therefore, they emphasized that modern regulation must be forward- looking

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[18] Paul L. Joskow and Roger G. Noll, 'Alfred E. Kahn, 1917- 2010' (*SIEPR, August 2012*) https://siepr.stanford.edu/publications/working-paper/alfred-e-khan-1917-2010/ accessed on 13 April 2025.

[19] Thomas Hazlett, 'Information Economy Project: Alfred E. Kahn Remembered' (*Clemson, 31st December 2010*) https://www.clemson.edu/centers-institues/iep/scholars/khan.html/ accessed on 13 April 2025.

[20] Competition and Consumer Protection Act No.24 of 2010, Part III & VII.

[21] Mahmoud Makki, Jad El Mir and Haidar Haider, 'Business unusual in ICT regulations: How regulating ICT should evolve in the digital era' (*Strategy& PWC, 2023*) https://www.strategyand.pwc.com/m1/en/strategic-foresight/sector-strategies/technology/ictregulations.html/ accessed on 18 April 2025.

and keep up with rapid change. Their perspective aligns with contemporary thinking that light- handed adaptive regulation is key to maximizing positive impact of ICT in the digital economy. This research agrees with the views of the authors on the importance of ICT regulation to keep up with rapid change and thus looks into examining whether certain economic provisions under Part V of the ICT Act 2009 are progressive or retrogressive for the ICT growth.

Nchimunya Hanyama & Dani Banda in their work acknowledged Zambia's implementation of policies and legal framework governing the ICT sector. However, they identified the need for reforms in areas such as internet access and usage, which posed notable challenges.[22] This research likewise, identifies the need for reform to regulation provisions that pose notable challenges towards ICT growth in Zambia. Unlike the above work, however, this dissertation dwells specifically on economic regulation provisions.

Martin Cave [23] through the ladder of investment approach advocated for favorable regulation to encourage new entrants to gradually build their own infrastructure rather than indefinitely relying on access to an incumbent's network. William H Melody**,** a renowned telecommunications law scholar argues that licensing and regulatory policies should be designed to promote competition and prevent abuse of market power by dominant players in the telecommunications sector.

Galperin and Mariscal, noted that Universal Access and Service ensures that all citizens, particularly in rural areas have access to ICT services if it is to achieve its crucial

[22] Nchimunya Hanyama and Dani Banda, 'Science and Technology: Policies and Legislation for Internet Access and Usage in Zambia' (*Scientific & Academic Publishing, 2017*) 7(3) 72-78 https://article.sapub.org/10.5923.j.scit.20170703.02.html/ accessed on 13 April 2025.

[23] Martin Cave, 'Telecommunications Policy: Encouraging infrastructure competition via the ladder of investment' (*Science Direct, 2006*) 30(3-4) 223-237 https://doi.org/10.1016/j.telpol.2005.09.001/ accessed on 11 April 2025.

role in socio- economic development.[24] This research in agreement with the views of the aforementioned authors endeavors to highlight challenges associated with the framework governing economic regulation which topic has an effect on competition, consumer protection and network access with its' potential hindrance to universal access. Furthermore, this research aims to suggest what reforms can be made to ensure licensing and tariff procedures are within the best interest of competitors and consumers.

1.10 Research Gap

This study differs from the various works considered in the literature review conducted above in that; the research is not based on the general subject of tariffs, interconnection, access or other topic. However, it is targeted at analysing specific provisions in a specific piece of legislation of a specific jurisdiction – economic regulation – related provisions under the ICT Act in Zambia.

1.11 Research Methodology

1.11.1 Research Approach

This research will take a qualitative approach. This entails an analysis and collection of non-statistical data through desk review. Primary sources such as legislation and secondary sources in form of publications such as articles, journals and various credible internet sources will be used.

1.11.2 Research Design

The research design will be descriptive and analytical. This will facilitate the carrying out of a comprehensive analysis on the subject matter of the research.

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[24] H. Galperin and J. Mariscal, *Digital Poverty: Latin American and Caribbean perspectives* (CRC Press, 2007) p7-9

1.11.3 Study Population

Study population for this research will comprise of experts, including, regulators and scholars on the subject.

1.11.4 Sample Size

For purposes of this research, the sample size is targeted at entities who possess sufficient knowledge on the subject matter preferably experts from ZICTA.

1.11.5 Sampling Technique

The sampling technique will be of purposive sampling.

1.11.6 Data Collection

Primary data required for the research will be deduced from either semi structured interviews or questionnaires conducted with respective persons mentioned in sample size and necessary ICT legislation. Secondary data will be collected from articles, journals regulatory decisions, research publications and any other credible internet sources.

1.12 Limitations

The researcher may be limited by data constraints – relying on publicly available reports, as proprietary industry data may be inaccessible. Dynamic regulatory changes- the ICT sector evolves rapidly thus some provisions may be subject to review. Conflicting views from persons of interest thus affecting objectivity.

1.13 Ethical Considerations

The researcher will abide by ethical guidelines given by the University of Lusaka with regard to research. The researcher shall obtain permission from the University to carry out interviews for the research. The researcher shall not only seek the consent of all respondents upon conducting the research but also explain the aim of the study to ensure that respondents understand the need for their involvement. Respondents' right to privacy and confidentiality will be respected. The researcher will endeavor to follow academic writing principles such as referencing and acknowledging other people's views.

2.0 CHAPTER TWO: EXPLORATION OF THE CONCEPT OF ECONOMIC REGULATION IN THE ICT SECTOR

2.1 Introduction

The regulation of ICT plays a vital role in shaping modern economies, particularly in liberalized markets where private actors dominate the delivery of telecommunications and digital services. Economic regulation ensures that market efficiency, competition and consumer welfare are maintained, while technological innovation continues to flourish. In the context of ICT, economic regulation becomes even more significant considering that the sector drives modern economies and powers national, economic and social development.

This chapter explores the theoretic concept of economic regulation in the ICT sector from a global perspective. It begins by defining the concept of economic regulation, followed by an exploration of its evolution, and then analyzes its underlying theories and principles. The chapter also discusses the models and approaches used in economic regulation and lastly, discusses its rationale, benefits and challenges.

2.2 Understanding Economic Regulation in the ICT Sector

Regulation broadly refers to the use of law or administrative rules to influence or control the behaviour of individuals and entities in a given sector. Thus, it may be defined as the sustained and focused control exercised by a public agency over the activities of a community.[25]

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[25] Robert Baldwin, Martin Cave and Martin Lodge, Understanding Regulation: Theory, Strategy and Practice second edition (*Oxford University Press, 2012*) p.2-3 https://books.google.com/books/about/Understanding_Regulation.html?id=x_lcrqoqb9oC/ accessed on 7 October 2025.

Economic regulation however focuses on controlling market activities to achieve efficiency and fairness in a community. It involves setting rules on pricing, licensing, competition and market entry to prevent monopolistic practices and ensure that essential services remain accessible and affordable. The goal is to correct market failures that would otherwise distort fair competition and consumer welfare.[26]

In the ICT sector, economic regulation addresses issues such as:

- Market entry and licensing – to ensure orderly competition;
- Interconnection and infrastructure sharing – to prevent dominant operators from excluding new entrants;
- Spectrum Management – governing the allocation of frequencies for communication services;
- Pricing and tariff regulation – to protect consumers from excessive charges;
- Competition oversight – to deter anti-competitive behaviour such as predatory pricing or abuse of dominance.[27]

Therefore, economic regulation ensures that benefits of liberalization are realized without compromising fairness and accessibility.

2.3 Evolution of Economic Regulation

The regulation of ICT has evolved through several phases. Initially, most telecommunications services were provided by state-owned monopolies, justified on grounds of natural monopoly and public service obligations.[28] Therefore, governments directly controlled pricing investment and service delivery with regulator's focus on

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[26] Ibid, p.15.

[27] ZICTA, Economic Regulation https://www.zicta.zm/services/economic-regulation/ accessed 11 April 2025.

[28] New Markets Lab, Regulatory Guide for ICT Services Sector (*newmarketslab.org, September 2016*) p.9-12 https://www.newmarketslab.org/assets/legal_guide/23.pdf?/ accessed on 7 October 2025.

ensuring universal service, controlling prices and ensuring network interoperability within national borders.

Around the 1990s, global economic liberalization and technological innovation led to market liberalization and privatization in several countries, which led to them introducing competition and establishing independent regulatory authorities.[29] Focus shifted from controlling a monopoly to creating competition through the introduction of licensing to multiple operators, interconnection, price cap regulation and asymmetric regulation.

The 1998 World Trade Organization (WTO) Agreement on Basic Telecommunications marked a major milestone in the telecommunications sector, as the WTO successfully concluded negotiations on market access for basic telecommunications services. Thus, establishing principles for competitive markets and transparent regulation.[30]

Therefore, this evolution reflects the transition from monopolistic – command and control approaches to competitive – incentive-based and flexible regulatory models, focusing on consumer empowerment, universal access and innovation.

2.4 Theoretical Foundations of Economic Regulation

The study of economic regulation is grounded in several theoretical frameworks that explain why regulation arises and how it functions:

2.4.1 Public Interest Theory

This theory holds that regulation serves to protect the public from market abuses and ensure equitable access to essential services.[31] Under this view, regulators act as neutral guardians by ensuring that prices, quality and access align with societal welfare. In the

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[29] Ibid.

[30] WTO, The WTO Negotiations on Basic Telecommunications (*wto.org, March 1997*) https://www.wto.org/english/news_e/pres97_e/summary.htm/ accessed on 9 October 2025.

[31] Johan Den Hertog, 'Review of Economic Theories of Regulation Discussion Paper 10-18' (*December, 2010*) p.2 https://www.uu.nl/rebo/economie/discussionpapers/ accessed on 13 October 2025.

ICT sector, this translates into balancing the interests of consumers and market players, by preventing monopolistic exploitation and promoting equitable participation in the digital economy.

2.4.2 Capture Theory

Advanced by Stigler, this theory argues that regulators may be “captured” by industries that they regulate resulting in regulation that favours incumbents rather than the public.[32] In ICT markets, large operators may influence regulators to maintain barriers to entry or limit competition.

2.4.3 Economic Efficiency and Market Failure Theory

Peltzman extended Stigler’s theory by suggesting that regulation stems from a balance of competing interests. Therefore, regulation is viewed as the product of political bargaining rather than pure efficiency considerations. [33]

2.4.4 Institutional Governance Theory

This theory stresses the role of institutional frameworks and governance structures in shaping regulatory effectiveness considering independent regulatory authorities are essential for effective impartial economic regulation, especially in politically sensitive sectors like telecommunications.[34]

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[32] Sam Peltzman, ‘How Stigler Changed the Analysis of Regulation’ (Chicago Booth Review, 1 October 1993) https://www.chicagobooth.edu/review/how-george-stigler-changed-analysis-regulation/ accessed 13 April 2025.

[33] Ibid supra note 31 p.4.

[34] Hank Intven, Jeremy Oliver and Edgardo Sepulveda, ‘Telecommunications Regulation Handbook: Module 1 Overview of Telecommunications Regulation (*itu.int, 2000*) p1.4 https://www.itu.int/ITU-D/treg/Documentation/Infodev_handbook/ accessed on 9 October 2025.

2.5 Models and Approaches to Economic Regulation in ICT

Economic regulation may be implemented through several models, which among others include:

- Ex Ante Regulation – which regulation involves the setting of preventive rules before market abuse occurs.[35] For example, regulators may pre-approve tariffs or mandate infrastructure sharing between or amongst entities.
- Ex Post Regulation – which regulation involves intervention after anti-competitive behaviour is detected.[36] For example, where dominant players or incumbent firms hinder minor firms from accessing certain services or infrastructure to constrain market permeability of minor firms.
- Hybrid Models – a combination of both approaches and is normally undertaken in many African countries where competition is still emerging.
- Licensing regimes – this typically involves a system set by government, individuals or corporate entities to issue licenses as well as oversee and control licensed activities. For instance, entities seeking licenses to operate must apply to a designated authority to obtain such a license, which then allows such an authority to control who can enter specific markets.[37]

Regulation also operates through price control mechanisms and competition oversight. However, the level of regulatory intervention usually depends on market maturity and the dominance of particular players.

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[35] Colin Blackman & Lara Srivastava 'Telecommunications Regulation Handbook' 10th edition (*digitalregulation.org*) p.33 https://digitalregulation.org/wp-content/uploads/ITU-infoDev_Handbook-2010.pdf/ accessed on 13 October 2025.

[36] Ibid.

[37] Colin Scott, 1 Licensing as a Tool of Regulation and Governance (*University College Dublin, 2014*) p.4 https://researchrepository.ucd.ie/rest/bitstreams/19097/retrieve#:~:text=Typically%20licensing%20requires%20legislation%20under,(iii) accessed on 9 October 2025.

2.6 Principles that Guide Economic Regulation

Globally, several core principles guide the design and implementation of economic regulation in the ICT sector. International bodies such as, the Organization for Economic Co-operation and Development (OECD) and the International Telecommunications Union (ITU) endorse these principles:

2.6.1 Accountability

Independent regulation needs to take place within a framework of duties and policies set by a democratically accountable government. Roles and responsibilities between government and economic regulators should be allocated in such a way as to ensure that the body that has the legitimacy and expertise takes regulatory decisions to arbitrate between the required trade-offs. Therefore, decision-making powers of regulators must be within the constraints imposed by the need to preserve commercial confidentiality, exercised transparently and subject to appropriate scrutiny and challenge.[38] In preserving independence, government can ensure regulators make decisions autonomously from any political body.[39]

2.6.2 Focus

The role of economic regulators should be concentrated on protecting the interests of consumers by ensuring the operation of functional and contestable markets where appropriate. Regulators can also design a system of incentives and penalties that replicate possible outcomes of competitive markets. Therefore, economic regulators

[38] Department for Business Innovation & Skills, Principles for Economic Regulation: Government's Principles for Economic Regulation (BIS, April 2011) p.4 https://assets.publishing.service.gov.uk/media/11-795-principles-for-economic-regulation.pdf/ accessed on 10 October 2025.

[39] Ibid, p.7.

should have clearly defined statutory responsibilities focused on outcomes and adequate discretion to choose these outcomes.[40]

2.6.3 Predictability

The framework for economic regulation should provide a stable and objective environment enabling all those affected to anticipate future decisions and make long-term investment decisions with confidence. Regulatory frameworks must allow efficient and necessary investments to receive a reasonable return, subject to normal market risks.[41]

2.6.4 Coherence

Regulatory frameworks should form a logical part of government's broader policy, consistent with established priorities. Regulatory frameworks should enable cross-sector delivery of policy goals where appropriate.[42]

2.6.5 Adaptability

Economic regulatory frameworks need capacity to evolve and respond to changing circumstances to continue being relevant and effective with time.[43]

2.6.6 Efficiency and being Proportionate

Policy interventions must be proportionate and cost-effective, whilst decision-making must be timely and robust.[44] Economic regulation imposes costs on regulated companies. These are costs incurred in the process of regulating the sector and imposed on regulated

[40] Ibid supra note 38.

[41] Ibid, p.5.

[42] Ibid.

[43] Ibid.

[44] Ibid.

institutions which costs tend to be passed on to consumers. It is pertinent that they are proportionate considering the benefits to consumers.[45]

2.7 Benefits of Economic Regulation in the ICT Sector

- **Promotion of Competition**

  Economic regulation helps shape markets that are competitive -making it is easier to penetrate and exit in a given market. These conditions lead market actors to compete to offer the highest value at lowest prices which is beneficial to consumers.[46]

- **Consumer Protection**

  Regulation can benefit consumers in the sense that in markets where there is a disparity in market power between producers and customers, it prohibits fraudulent and deceptive practices. Additionally, it improves consumer information and drives the production of consumer-friendly products thus boosting consumer experience and confidence.[47]

- **Efficient Resource Allocation**

  Spectrum and numbering resources are finite and must be managed in ways that maximize social benefit. Therefore, regulators impose licensing regimes to regulate and ensure efficient spectrum management.

- **Investment, Innovation and Technological Advancement**

  Predictable and stable regulatory environments attract private capital and technological innovation. Regulation can help shape markets that are more likely to reward innovation and that thereby create contexts that encourage more people to innovate. In Intellectual Property, regulation is set to provide inventors with time-

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[45] Ibid p.11.

[46] Sam Burger, Regulations are a Critical Part of a Functioning Economy (*sensiblesafeguards.org, May 2025*) https://sensiblesafeguards.org/regulations-are-a-critical-part-of-a-functioning-economy/ accessed 13 October 2025.

[47] Ibid.

limited monopolies on the use of their inventions through patents to allow other inventors to build upon or improve those inventions after the time limit lapse.[48]

2.8 Challenges of Economic Regulation in the ICT Sector

- **Rapid Technological Change**

  New technologies such as Artificial Intelligence, Over-The-Top services (OTT) and 5G outpace regulatory frameworks considering how fast they advance.[49]

- **Convergence of Markets**

  Convergence of markets is coming together of technology and services, which has been a relatively recent experience in the ICT sector. However, this blending of telecommunications, broadcasting and internet services complicates cross-sector regulation fostering conflicts in jurisdiction and regulatory scope.[50]

- **Regulatory Capture**

  Risk of industry influence, more particularly dominant industries can compromise regulatory impartiality.[51]

- **Institutional Limitations**

  Many regulators face constraints in expertise, funding and enforcement capacity.

- **Balancing Innovation and Oversight**

  Overregulation may stifle investment, while under regulation may lead to market abuse. [52]

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[48] Ibid.

[49] ITU, Regulatory Challenges and Opportunities in the New ICT Ecosystem (*itu.int, April 2018*) p.25 https://www.itu.int/dms_pub/itu-d/opb/pref/D-PREF-BB.REG_OUT03-2018-PDF-E.pdf/ accessed 12 October 2025.

[50] Mahmoud Makki, Jad El Mir and Haidar Haidar, Business Unusual in ICT Regulation: ICT regulator tensions (*Strategy &PWC, 2023*) p.10 https://www.strategyand.pwc.com/m1/en/strategic-foresight/sector-strategies/technology/ict-regulations.html/ accessed 18 April 2025.

[51] Ibid.

[52] Ibid.

2.9 Conclusion

This chapter explored the concept of economic regulation in the ICT sector, firstly by defining the concept of economic regulation, identifying what it encompasses and further touching on its' evolution. The chapter considered theoretical foundations, models and principles that govern economic regulation as well as identified its benefits and challenges. The following chapter will explore the legal framework governing economic regulation in the ICT sector, with much focus drawn to salient provisions.

3.0 CHAPTER THREE: EXPLORATION OF THE LEGAL FRAMEWORK GOVERNING ECONOMIC REGULATION OF THE ICT SECTOR IN ZAMBIA

3.1 Introduction

Zambia has established legal framework to govern and safeguard the ICT environment and for purposes of this research, focus shall be narrowed down to specific pieces of legislation and their provisions relating to economic regulation in the ICT sector in Zambia.

This chapter will highlight the most significant laws that play a crucial role in economic regulation. This legal framework includes the Information and Communication Technologies Act 15 of 2009 (ICT Act) which is the primary legal framework governing ICT and economic regulation in the ICT sector. This chapter will also consider the Competition and Consumer Protection Act No. 24 of 2010 - the leading piece of legislation governing in a cross-sectoral manner competition – related matters in Zambia.

3.2 The Information and Communication Technologies Act No.15 of 2009

3.2.1 Preliminary Provisions

The preamble prescribes the major purpose of the Act. Which is to provide regulation of information and communication technology; facilitate access to information and communication technologies to protect the rights and interests of service providers and consumers; repeal the Telecommunications Act of 1994 as well as the Radiocommunications Act of 1994; and provide for matters connected with or incidental to the foregoing.[53]

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[53] Information and Communication Technologies Act 15 of 2009.

3.2.1.1 Definitions

Section 2[54] provides for the definition of key terms used in the Act. The following are a sample of definitions of terms provided in the ICT Act and the same will be adopted for purposes of this research:

- **Authority**: The Zambia Information and Communication Technology Authority.
- **Co-location**: Accommodation of two or more electronic communications network equipment in or on a single building, tower or structure.
- **Consumer**: A person to whom an electronic communications service is rendered and includes any person who purchases electronic communications products otherwise than for the purpose of re-sale, but does not include a person who purchases any electronic communications products for the purpose of using them in the production and manufacture of any other goods or articles for sale;
- **Dominant position**: A position of economic strength enjoyed by a licensee, which enables them to prevent effective competition in a market by affording the licensee the power to behave independently of their competitor's and consumers.
- **Electronic Communications Market**: An area of activity identified by the Authority, as constituting a single market within the Information Communication Technology sector;
- **Information and Communication Technology**: the application of modern communications and computing technologies to the creation, management and use of information (the utilization of hardware, software, networks, and media for the collection, storage, processing, transmission and presentation of information and related services);
- **Interconnection**: The physical or logical linking of one electronic communications network to another for the purpose of allowing the persons using one of them to be able to - (a) communicate with persons using the other electronic communications

[54] Ibid.

network; or (b) make use of services provided by means of the other electronic communications network.

- **Licensee**: A holder of a network license, service license, class license or individual license.
- **Universal Access**: Access by all Zambians to Information and Communications Technology services.

3.2.1.2 Supremacy Clause

Section 3[55] of the Act provides for supremacy of the ICT Act, stating that, in the event of any inconsistencies between its provisions and those of any other law governing ICT, other than the Constitution, the provisions of this Act shall prevail.

3.2.1.3 The ICT Regulating Authority

Section 4[56] provides for the continuing existence of the Communications Authority established under the repealed Act. The section also renames the regulator the "Zambia Information and Communications Technology Authority" indicating that it shall be a body corporate with separate legal identity in **sub-section 4(2)**.

Section 5[57] provides for the autonomy of the body in conducting its functions.

Section 6[58] provides for the functions of ZICTA in a nutshell, with **sub-section 6(1)** stating that it shall regulate the provision of electronic services and products and monitor of the performance of the sector, including levels of investment and the availability, quality, cost and standards of electronic communication services.

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[55] Ibid.

[56] Ibid.

[57] Ibid.

[58] Ibid.

Section 8 compels the Authority to consult the Zambian Competition Commission on any matter relating to competition in the sector.

3.2.2 Salient Provisions of Economic Regulation-Related Provisions in the ICT Act

The Information and Communication Technologies Act provides for economic regulation particularly under Part V of the Act, under **Sections 39 – 52. Section 39** [59] indicates that a licensee referred to under this part are or holders of a network or service license or both.

3.2.2.1 Relevant Markets and Dominant Market Players

Section 40[60] of the Act provides for relevant markets and dominant market players, with **subsection 40(3)**[61] stating that the Authority shall consider a licensee as holding a dominant position in the electronic communications market in accordance with such guidelines as the Authority may issue pursuant to subsection 4. **Subsection (4)**[62] provides that the Authority shall publish in a daily newspaper of general circulation in Zambia the guidelines on the definition of an electronic communications market and of the determination of a licensee that holds a dominant position in the market.

3.2.2.2 Interconnection

Section 41(1)[63] provides that a licensee may, and where solicited in writing by Interconnection another licensee, shall negotiate, in good faith, for the purposes of enabling the provision of electronic communications services to the public, an agreement for interconnection, in respect of electronic communications networks.

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[59] Ibid.

[60] Ibid.

[61] Ibid.

[62] Ibid.

[63] Ibid.

Section 41(3) provides that where a licensee refers an interconnection dispute to the Authority, the Authority is empowered to order the licensees who failed to reach an agreement to interconnect their electronic communications networks on such terms and conditions as the Authority may determine.

Section 41(8)[64] provides that under matters related to interconnection, an interconnection agreement will not be implemented without the authority's approval, which approval will only be obtained if the agreement meets essential requirements specified in the section.

3.2.2.3 Access Agreements

Section 43(2)[65] *provides that a licensee may reject an agreement for access to an element of electronic communication network of the license where –*

(a) The access is not reasonably feasible; (b) The access requested by the other license is likely to lead to harmful interference; (c) Viable alternatives to access are open to the other licensee and have not been reasonably explored; or (d) The licensees do not appear in the same category of license issued by the Authority for the purpose of such access.

3.2.2.4 Co-location

Section 44(1)[66] provides that a licensee who has the right under this Act to install Co-location facilities on, over or under public or private land, or to use private property, shall, where requested in writing by another licensee for the purpose of providing electronic communications services to the public, negotiate an agreement for co-location with that other licensee.

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[64] Ibid.

[65] Ibid as amended by the Information and Communication Technologies (Amendment) Act 3 of 2010.

[66] Ibid supra note 53.

Subsection 4[67] further provides that, notwithstanding subsection 1, a licensee may reject a request for such collocation agreement on grounds that -

(a) The space available is insufficient to accommodate the physical co-location requested and virtual co-location is not feasible; (b) the co-location may cause harmful interference; or (c) viable alternatives to co-location are open to the requesting party and have not been reasonably explored.

3.2.2.5 Tariffs for Services to Public

Section 47(1)[68] provides that a licensee may set and revise tariffs, and in so doing, **subsection (2)** provides that licensees shall ensure that the tariffs are transparent and non-discriminatory, and based on costs not greater than that of providing the service. Furthermore, **subsection (9)**[69] speaks to the introduction of tariffs, stating that a licensee shall upon approval of the new tariffs by the Authority –

(a) Publish the tariffs at the licensee's own expense in at least two daily newspapers of general circulation in Zambia at least seven days immediately following their introduction; and (b) provide its electronic communication services in accordance with the published tariffs.

3.2.2.6 Tariffs for Services Offered by Licensee Holding Dominant Position

Section 48(1)[70] provides that a licensee that holds dominant position in a retail electronic communications market shall submit to the Authority the tariffs they intend to charge including the justification, prior to the introduction of the said tariffs. According to **section**

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[67] Ibid.

[68] Ibid supra note 65.

[69] Ibid.

[70] Ibid.

48(3) like tariffs for all other licensees, these tariffs are also required to be transparent, non-discriminatory, and based on costs not greater than the cost of providing the service.

Section 47(6) *indicates conditions for the approval of an application for introduction or revision of tariffs lodged in by a licensee holding a dominant position.*[71]

3.3 Economic Regulation of the ICT Sector by other Legislation

Section 6(8) of the ICT Act referred to the fact that in relation to competition related matters in the sector, the Authority shall consult the Zambia Competition Commission. Therefore, it is important to explore the legal framework that provides for the commission, its objectives as well as functions of the said commission.

3.4 The Competition and Consumer Protection Act 24 of 2010

The preamble of this Act outlines its objectives as to safeguard and promote competition; protect consumers against unfair trade practices; provide for the establishment of the Competition and Consumer Protection Tribunal; as well as repeal and replace the Competition and Fair-Trading Act 1994.[72]

3.4.1 Scope of Application

Section 3(1)[73] provides that: Except otherwise provided for in this Act, the Act shall be applied to economic activity within, or having an effect within Zambia. **Subsection (2)**[74] indicating that the Act binds the State in so far as it or an enterprise wholly or partly owned by it engages in trade or business for the production or provision of any service within a market that is open to participants by other enterprises.

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[71] Ibid.

[72] Competition and Consumer Protection Act 24 of 2010.

[73] Ibid.

[74] Ibid.

Section 4(1)[75] provides for the continued existence of the Zambia Competition Commission established under the repealed Act and it being renamed the Competition and Consumer Protection Commission.

3.4.2 Functions of the Commission

Section 5[76] provides for the functions of the commission, which for purposes of this research include, among others –

Review the operation of markets in Zambia and conditions of competition in those markets. Act as a primary advocate for competition and effective consumer protection in Zambia. Advise Government on laws affecting competition and consumer protection. Co-operate with and assist any association or body of persons to develop and promote the observance of standards of conduct for ensuring compliance with the provisions of this Act.

3.4.3 Salient Provisions in Relation to Economic Regulation

Part III of the Act speaks on the prohibition of anti-competitive behaviour. **Section 9(1)**[77] provides that a horizontal agreement between enterprises is prohibited per se, and void, if the agreement directly or indirectly fixes trading conditions among others.

Subsections (2) and (3)[78] further provide that such an act is an offence and subject to a fine or imprisonment.

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[75] Ibid.

[76] Ibid.

[77] Ibid.

[78] Ibid.

Section 12(a)[79] provides that, subject to sections eight, nine and ten, an agreement between enterprises is prohibited if the Commission determines that –

(a) The agreement has the effect of preventing, distorting or restricting competition or substantially lessening competition in a market for any goods or services in Zambia; and
(b) The agreement is not exempted under the part under which section 12 falls.

Section 16(1)[80] provides that an enterprise shall refrain from any act or conduct if, through abuse or acquisition of a dominant position of market power, the act or conduct limits access to markets or otherwise unduly restrains competition, or has or is likely to have adverse effect on trade or the economy in general. **Subsection 3**[81] equally provides that an enterprise that contravenes this section be subject to a fine payable to the Commission.

Part IV provides for matters relating to mergers while **Part V,** providing for market inquiries, provides that the Commission may initiate market inquiries where it reasonably suspects restriction or distortion of competition within a particular sector of the economy[82] or particular type of agreement occurring across various sectors.[83]

Part VI of the Act caters for sector-regulated activities under which **section 42**[84] provides that subject to section 3, the economic activities of an enterprise whose regulator exercises statutory power is subject to the requirements of this Act.

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[79] Ibid.

[80] Ibid.

[81] Ibid.

[82] Ibid Section 38(a).

[83] Ibid Section 38(b).

[84] Competition and Consumer Protection (Amendment) Act 21 of 2023.

Section 43[85] provides that the commission shall for purposes of coordinating and harmonizing matters relating to competition and consumer protection in other sectors of the economy, enter into a memorandum of understanding with any regulator in that sector, in the prescribed manner and form.

Section 44[86] goes on to provide that, where the Commission determines that a regulated sector is unduly restrictive of competition, it will conduct a market inquiry into the sector in accordance with provisions under Part V.

3.5 Conclusion

This chapter considered salient provisions of legislation forming the legal and regulatory framework governing economic regulation in the ICT sector. The next will conduct a critical analysis of the adequacy and appropriateness of Part V of the ICT Act, the legal and regulatory framework governing economic regulation in the ICT sector.

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[85] Ibid.

[86] Ibid supra note 72.

4.0 CHAPTER FOUR: ANALYSIS OF THE ADEQUACY AND APPROPRIATENESS OF ECONOMIC REGULATION – RELATED PROVISIONS UNDER PART V OF THE ICT ACT 2009 TO ASCERTAIN THEIR ADEQUACY, APPROPRITENESS AND ALIGNMENT WITH INTERNATIONAL BEST PRACTICE.

4.1 Introduction

This chapter undertakes a critical examination of selected provisions under Part V of the ICT Act of 2009, assessing their adequacy and otherwise appropriateness in catering for economic regulation in Zambia. The chapter will further ascertain whether the selected provisions are progressive and align with international best practice and standards.

4.2 Assessing the Adequacy of Economic Regulation-Related Provisions

4.2.1 Comprehensive Scope

From a doctrinal perspective, the ICT Act of 2009 provides coverage of core issues pertaining to economic regulation in the sector. Part V provides for determination of different segments of the ICT sector market and for which licensees are dominant in such segments under **section 40**[87] to facilitate adequate, effective and orderly regulation of competition. The Act provides for interconnection under **section 41**[88], as well as Access and collocation under **sections 43**[89] and **44**[90] respectively**,** all aimed at facilitating due regulation of dominance and fair competition. These provisions aim to prevent dominant firms from excluding new entrants.

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[87] Information and Communication Technologies Act 15 of 2009.

[88] Ibid.

[89] Information and Communication Technologies Act 3 of 2010.

[90] Ibid supra note 87.

4.2.2 Practical Tariff Toolbox

Part V of the Act covers price and tariff regulation from **sections 47[91] to 52.[92]** These provisions seek to ensure both fair competition as well as protection of consumers from exploitation by service providers – shielding them from exorbitant tariffs.

Additionally, **Section 51[93]** of the Act empowers the Minister to, by statutory instrument, make regulations on the determination and publication of tariff rates for respective services provided by the licensees under this Act. The Minister, invoking these powers, issued the **Information and Communication Technologies (Tariffs) Regulations of 2018** via Statutory Instrument 41 of 2018.[94] By authorizing ZICTA to regulate tariffs, Part V strikes a balance between encouraging investment and protecting consumers from monopolistic behaviour, which reflects the rationale behind economic regulation discussed in Chapter Two.

4.2.3 Cross - Sectoral Collaboration

The Act compels sectoral collaboration between the ICT sector and Competition sector on matters associated with competition in the sector under **section 8**.[95] This not only enhances more adequate competition regulation but also growth within the ICT sector – through the exchange of information between the two sectors. The above tallies with the concept of due competition oversight.

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[91] Ibid supra note 89.

[92] Ibid supra note 87.

[93] Ibid.

[94] Information and Technologies (Tariffs) Regulations S.I 41 of 2018.

[95] Ibid supra note 87.

4.2.4 Delegation to a Specialised Regulator

The Act sets out by establishing ZICTA as the autonomous regulatory body to govern the ICT sector, which aligns with economic regulation principles of independence and accountability. The Minister however, is empowered to issue general directives to ZICTA.

4.3 Institutional Governance under Part V

The Authority has a Department of Economic Regulation, which is composed of three units namely; The Markets & Competition Unit, Policy & Research Unit and Postal Unit. Both Markets & Competition as well as the Policy & Research Units derive their mandates from **Part V** as well as **section 6** of the ICT Act, whilst the regulatory functions of the Postal Unit are enshrined in the Postal Act 22 of 2009.[96]

4.4 Assessing the Appropriateness & Progressiveness of Economic – Regulation Related Provisions in alignment with International Best Practice.

4.4.1 Jurisdictional Conflict between ICT Sector and Competition Sector on Competition-Related Matters.

Section 8 compels the Authority to consult the **Competition and Consumer Protection Commission (CCPC)** on competition related matters in the ICT sector. Despite there being a memorandum of understanding between the two sectors through this provision, it does not clearly guide on who assumes a leading role on matters that constitute a breach in the competition sector. The Competition and Consumer Protection Act (CCPA), which is overseen by an entirely different entity, govern matters pertaining to competition. The Act does not obligate the Authority to be bound and abide by the advice of the competition regulator. The compulsion is merely to liaise or consult with the said regulator.

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[96] ZICTA, *Economic Regulation* (ZICTA) https://www.zicta.zm/services/economic-regulation/ accessed 11 April 2025.

The ICT Act, it will be noted, has a supremacy clause declaring that its provisions will prevail all other pieces of legislation, other than the Constitution, in the face of a contradiction pertaining to ICT sector regulatory – related matters. It is to be observed that the Competition regulator is a cross sectoral regulator of competition at national level and expert in that field. The above, therefore, may be problematic where certain provisions in the Act contravene other laws (such as competition laws) governing the sector. Such shortcomings pose challenges in resolving issues due to jurisdictional conflict between or among sectors.

Like Zambia, South Africa's ICT sector regulatory body, the **Independent Communications Authority of South Africa (ICASA)** regulates sectoral competition (including ex-ante regulation,) whilst, the Competition Commission enforces general competition law across all sectors. South Africa has, however, a better arrangement regarding liaison between the two regulators than Zambia as may be observed below:

Section 67(9) – (12) of the Electronic Communications Act 36 of 2005[97] in South Africa provides:

- **(9)** Subject to the provisions of this Act, the Competition Act applies to competition matters in the electronic communications industry.
- **(10)** The Authority is, for the purposes of the Competition Act, a regulatory authority defined in section 1 of that Act.
- **(11)** The Authority may ask for and receive from the Competition Commission, assistance or advice on relevant proceedings of the Authority, including proceedings under this Chapter.
- **(12)** The Competition Commission may ask for and receive from the Authority, assistance or advice on relevant proceedings of the Competition Commission.

[97] Electronic Communications Act 36 of 2005.

On the other hand, **section 21** of the **Competition Act 89 of 1998**[98] in South Africa empowers the Competition Commission to, among others, –

(a) participate in the proceedings of any regulatory authority; and
(b) advise, and receive advice from any regulatory authority:

It is to be recalled that section 67(10) of the Electronic Communications Act 36 of 2005 in South Africa declares that ICASA is, for purposes of the Competition Act in South Africa, an authority. This implies that the Competition Commission of South Africa is empowered to participate in the proceedings of ICASA – especially as they relate to deliberations of competition – related matters.

It may be clear from the above that the competition regulator in South Africa is accorded by far more power and discretion to involve itself in ICASA's competition – related proceedings and therefore have more influence than CCPC in Zambia has in ZICTA's proceedings.

4.4.2 Determination of Market Segments and Dominant Licensees

Section 40 of the ICT Act provides that:

(1) The Authority shall, not later than 31st December of each year, determine and publish in the Gazette a list for the following calendar year of –

(a) all retail and wholesale electronic communications markets that the Authority determines warrant the regulatory control provided for in this Part; and

(b) licensees considered to hold, for each electronic communications market identified under paragraph (a), a dominant position.

[98] Competition Act 89 of 1998.

It is needless to say that the determination of segments of the ICT sector market and licensees that are dominant in each of those segments is absolutely essential as it forms the basis of understanding the sector and preparing to adequately regulate competition. The above also plays a cardinal role in the protection of rights of consumers, which may not be guaranteed where dominant licensees are not identified and consequently not adequately regulated. An ICT sector that is not adequately regulated may lead to consumers being exploited, with tariffs in such a sector typically being high despite the quality of service being low.

Given the importance of identifying markets and determining which licenses hold dominant positions, this process should involve the participation of all key stakeholders, including consumers and service providers. However, the current wording of Section 40 does not provide assurance that such stakeholder participation is guaranteed.

The section firstly, does not compel the Authority to conduct a thorough analysis of the ICT sector market out of which will emerge the basis of the determination of which licensee is dominant in each market. At the end of a given year, the Authority may declare a particular licensee as being dominant - say for instance – based on a study that was conducted a few years before.

Secondly, section 40 does not in any way, compel the Authority to consult or involve service providers or consumer in the process of such determination.

The above presents a weakness, as knowledge is not confined solely to the Authority but is instead dispersed across society and within the Authority itself. For instance, members of the public may raise insights on the market conditions, determination of dominance, or appropriate responses to such findings – insights that could greatly assist the Authority in its decision-making process.

It is also a shortcoming considering the fact that the public, who are directly affected by the outcome of any such determination relating to the sector, have a right to be involved in the process or at the very least, consulted.

4.4.3 Restrictive Network Access

Section 43(2)(d) of the ICT Act authorizes a licensee to turn down a request for access to elements of its network where the licensees do not appear in the same category of licences issued by the Authority for purposes of the Act.

Access, however, plays an important role in extending services to areas where a particular licensee does not have network. Universal Access and Service seeks to ensure that all citizens are able to access ICT services, goods and products both in rural and urban areas. Such access plays a crucial role in not only sectoral growth but also socio-economic development.[99] This provision therefore has the potential of hindering universal access and service, which goes against the Acts' main objective of facilitating access to information and communication technologies provided in its preamble.

The provision also restricts competition and entry into the market by not facilitating the two, but rather making it more difficult for new service providers to use access to an existing licensee's network as a means of extending the provision of its services geographically.

Furthermore, the provision presents a conflicting outcome in relation to that of the public interest theory explored in Chapter Two considering it holds that, regulation must ensure equitable access to essential services in order to benefit society as a whole and not just service providers.

What compounds the above shortcoming of the legal and regulatory framework is that the provision implies that the categories of licenses referred to are not predetermined – and they, in practice, indeed are not. This goes against the principle of transparency and predictability, which are cardinal elements of regulation. Without such pre- determination,

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[99] Hernan Galperin & Judith Mariscal, *Digital Poverty: Latin American and Caribbean Perspectives* (CRC Press, 2007) p7-9.

a corrupt regulatory administration could unduly use such categorization effectively to deny a licensee opportunity to survive in the ICT sector market or expand its service coverage economically. This, the regulator can do by delimiting the categories in such a manner as will prohibit the targeted victim licensee from being able to interconnect with its preferred licensee.

Mauritius' ICT regulatory framework the **Information and Communication Technologies Act** caters, in Part VI,[100] for licensing and interconnection, among other matters.

Section 28[101] of the Act, which provides for interconnection agreements reads:

(1) Every network licensee or public operator shall grant access to his network in accordance with this section.

(2)

- **(a)** A network licensee who intends to have access to the network of another network licensee shall make an application, in writing, to the network licensee.
- **(b)** The application referred to in paragraph (a) shall be copied to the Authority.

(3)

- **(a)** Where a network licensee receives an application he shall, unless the Authority otherwise determines, negotiate the terms of an interconnection agreement with the applicant in good faith.
- **(b)** Either party' to the proposed agreement may request the Authority to depute a representative to attend, and assist in the negotiations.

Therefore, it is undisputed that the interconnection legal and regulatory framework in Mauritius does not restrict interconnection between licensees based on whether or not

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[100] Information and Communication Technologies Act 44 of 2001, Section 24.

[101] Ibid, Section 28.

they are in the same obscure class that is not predetermined, and whose criteria for such categorization is undisclosed.

4.4.4 Permissiveness towards Predatory Pricing

Section 47(2) of the Act does not expressly and out rightly prohibit service providers to exercise predatory pricing, providing, in its own words, that licensees must ensure that tariffs are <u>based on costs 'not greater' than that of providing the service.</u>

This implies that a licensee may lawfully set tariffs whose cost component is either equal to or even below the cost of providing the service in question. Where a licensee opts to set tariffs whose cost is calculated using figures that are less than the cost of providing the service, such tariffs themselves, may actually be below the cost of providing the service.

While it is conceded that the term "predatory pricing" is associated with dominant operators, the Act does not expressly exclude them from the application of section 47(2) per se. This means, theoretically, even they may potentially set tariffs that are below the cost of charging for the given service. It is also conceded that **Sections 48** and **50** empowers the Authority to set extra conditions to be imposed when approving tariffs applied for by a dominant operator. The point, however, is that that a condition prohibiting a dominant operator from predatory pricing would be introducing an exception to the rule that allows licensees to engage in such practice.

Considered in context, section 47(2) potentially authorizes a scenario in which a dominant operator may exercise predatory pricing which might lead to the elimination of meaningful competition.

Predatory pricing is renowned for eliminating competition after which, consumers are subjected to as high tariffs as the surviving dominant operator can lawfully charge. This is also usually followed by a drop in quality of service on account of the reduced or eliminated competition that has the effect of maintaining high service quality. **Section**

47(2) prior to being amended by Act 3 of 2010 correctly provided as follows but was nonetheless inexplicably amended to its current version:

"A licensee shall, in setting any tariffs under **subsection (1)**, observe the following principles:

- **(a)** tariffs shall be transparent and non-discriminatory, and be based on the cost of providing the service;
- **(b)** cross subsidies shall be eliminated; and
- **(c)** tariffs shall not contain discounts that unreasonably prejudice the competitive opportunities of other licensees providing electronic communications services to the public."

It is argued, that the aforementioned provisions fostered fair competition in the market and ultimately protected the consumers as was explained above.

It also to be noted that **Section 47(2)** is in direct conflict with **CCPA Section 16 (1)** as read with **Section 16(2)(g)** whose relevant portions reads**:**

- **(1)** An enterprise shall refrain from any act or conduct if, through abuse or acquisition of a dominant position of market power, the act or conduct limits access to markets or otherwise unduly restrains competition, or has or is likely to have adverse effect on trade or the economy in general.
- **(2)** For purposes of this part, "abuse of a dominant position" includes selling goods below their marginal or variable cost."

While no Zambian reported cases of predatory pricing were able be found, some pertaining to other jurisdictions were located. In the case of ***AKZO Chemie BV v Commission***[102] it was determined by the **ECJ** that predatory pricing can be identified as prices below average variable costs (those that vary depending on the quantities

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[102] AKZO Chemie BV v Commission (1991) C-62/86.

produced) by means of which dominant undertaking seeks to eliminate a competitor and must be regarded as abusive.

The gap created by this provision leaves room for dominant players to set prices below international recommended standards thus breaching competition laws.

4.4.5 Lack of Consumer Safeguards in Tariff Approval

Section 47(9) of the ICT Act, as amended by Act 3 of 2010, authorizes the introduction of tariffs before they are published which overlooks ZICTA's primary function of protecting consumer's interests and potentially contravenes the CCPA's objective of protecting consumers against unfair trade practices.

Authorizing the introduction of tariffs before their publication presents several issues that harm consumers as end users because it affects their ability to make informed purchasing decisions without accurate pricing information. This also hinders them from anticipating changes to their bills.

Lack of public disclosure gives room for firms to engage in anti-competitive practices such as discriminatory pricing considering the uncertainty surrounding unadvertised rates. This, in turn, erodes consumer trust in both service providers and the Authority. Consequently, ITU member states and particularly their National Regulation Authorities are expected to uphold principles of transparency and disclosure when mandating pricing practices. This requires clear and comprehensive disclosure of pricing principles and publication of tariff price lists.[103]

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[103] ITU, *Principles for Tariff Regulation of Data Services* (Recommendation ITU-T D.265(04/2025) https://www.itu.int/epublications/publication/itu-t-d-265-2025-04-principles-for-tariff-regulation-of-data-services/ 23 October 2025.

4.5 Conclusion

While the ICT Act of 2009 incorporates several progressive features in alignment with international standards of economic regulation, the appropriateness of certain provisions remains debatable because of their potential to undo the very harm economic regulation seeks to remedy in the ICT sector.

This chapter has critically examined the adequacy and appropriateness of economic regulation-related provisions of the ICT Act of 2009 often in light of international best practices and comparative experiences from jurisdiction including South Africa and Mauritius. The following chapter will wrap up this study with a summary of the previous chapters, recommendations and conclusion.

5.0 CHAPTER FIVE: SUMMARY AND RECOMMENDATIONS

5.1 Introduction

This chapter marks the tail end this study, which sought to conduct a critical analysis of the adequacy and appropriateness of Part V of the Information and Communication Technologies Act No. 15 of 2009 providing for economic regulation. Noted was the fact that the said Part V of the Information and Communication Technologies Act No. 15 of 2009 provides for matters relating to the following among others:

(a) Relevant markets and dominant market players;
(b) Interconnection;
(c) Access agreement;
(d) Colocation; and
(e) Tariffs

The above subject was, in this dissertation, deliberated in five chapters inclusive of the current one with each of the chapters discussing various components and facets of the subject matter. Below is a summary of what facet each of the four chapters prior to this current one discussed:

5.2 Summary of Chapters

5.2.1 Chapter One

Chapter One formed the proposal of the study discussing preliminary matters with its content being foundational to the study as a whole.The chapter introduced the subject of the study provided background as well as projected the problem statement. The chapter laid out the scope of the study, its importance as well as the research objectives and research questions after which it conducted a literature review. The literature review explored various authors and their works related in one way or another to this study with the chapter indicating such relationship while at the same time, contrasting it to the current study. The chapter also laid out key definitions related to the subject matter as well as the research methodology the study would adopt and concluded with ethical considerations.

5.2.2 Chapter Two

This chapter explored the concept of economic regulation in the ICT sector. The chapter observed that regulation may, broadly, be defined in various ways including –

(a) The use of law or administrative rules to influence or control the behaviour of individuals and entities in a given sector; or

(b) The sustained and focused control exercised by a public agency over the activities of a community or entities.

The chapter noted that economic regulation focuses on controlling market activities to achieve efficiency and fairness in a community and involves setting rules on pricing, licensing, competition and market entry to prevent monopolistic practices and ensure that essential services remain accessible and affordable.

The chapter considered the evolution of economic regulation before delving into the various economic theories including –

(a) Public Interest Theory;
(b) Capture Theory;
(c) Economic Efficiency and Market Failure Theory; and
(d) Institutional and Governance Theory.

The chapter considered various models and approaches regulation could adopt or be implemented by and these included ex - ante regulation; ex - post regulation and hybrid models. The chapter also noted licensing regimes, price control mechanisms and competition oversight are means by which regulation may be achieved. Lastly, the chapter also considered among other regulation – related subjects, principles, benefits and challenges associated with the principle and practice under discussion - regulation.

5.2.3 Chapter Three

Chapter Three explored the legal framework governing economic regulation of the ICT sector in Zambia highlighting primary legislation playing the most crucial role in economic regulation. The chapter, in this regard, explored salient provisions of the following pieces of legislation:

(a) Information and Communication Technologies Act No. 15 of 2009 (ICT Act) governing the ICT sector comprising among others, electronic communication network construction, ownership and service provision and electronic communication service provisioning including telecommunication and internet service provisioning; and

(b) Competition and Consumer Protection Act No. 24 of 2010 - the leading piece of legislation governing in a cross sectoral manner competition – related matters in Zambia.

5.2.4 Chapter Four

This chapter conducted a critical analysis of the adequacy and appropriateness of the above legal and regulatory framework in providing for economic regulation in the face of international best practice. The chapter considered noted various shortcomings in the above referred to legal and regulatory framework including the following among others –

(a) Jurisdictional conflict between ICT sector and competition sector regulation on competition-related matters;

(b) Lack of stakeholder participation in determination of market segments and dominant licensees;

(c) Authorizes of licensee to turn down request from another licensee for reasons that the two do not appear in the same category of licenses issued by the Authority;

(d) Authorization of predatory pricing; and

(e) Authorization of introduction of tariffs after their introduction.

The chapter noted that the above practices authorized by the ICT Act were contrary to both ITU – backed regulatory theory as well as international best practice as observed in jurisdictions such as South Africa and Mauritius.

5.3 General Summary of Findings

As was observed while highlighting contents of chapter four, the Zambian ICT sectors' economic regulation legal and regulatory framework as provided in the ICT Act exhibits the following shortcoming:

(a) Jurisdictional conflict between ICT sector and competition sector regulation on competition-related matters;

(b) Lack of stakeholder participation in determination of market segments and dominant licensees;

(c) Authorization of licensee to turn down request from another licensee for reasons that the two do not appear in the same category of licences issued by the Authority;

(d) Authorization of predatory pricing; and

(e) Authorization of introduction of tariffs after their introduction.

The above shortcomings may potential be massively detrimental to not only the ICT sector in Zambia, but also the economy as whole. This is considering the fact that the ICT sector has been proven to be the driving engine of economies in modern democratic states. An impaired ICT sector will invariably contribute very little to the national economy and this will negatively affect the economic and social development of the country.

5.4 Recommendations

5.4.1 Resolve Jurisdictional Conflict between ZICTA and CCPC

It is recommended that the ICT Act should be amended to compel the Authority to involve the CCPC in deliberations on competition issues with CCPC being part of the decision.

5.4.2 Decision and Lead on Competition – Related Matters

It is further recommended that the two bodies be compelled to enter into a formal MOU, which will streamline their collaboration on competition – related matters including how to settle mattes where there is a conflict of decisions.

5.4.3 Stakeholder Involvement in Determination of Market Segments and Dominant Licensees

It is recommended that **Section 40** of the ICT be amended to compel the Authority to engage stakeholders, in the process of determination of market segments within the ICT sector and licensees dominant in each market. Therefore, the Authority should be compelled to hold public hearings in all ten provincial capitals for purposes of consulting the public and other stakeholders and take submissions on the same.

5.4.4 Encourage Network Access

It is recommended that **Section 43(2)(d)** of the ICT Act which authorizes a licensee to turn down a request for access to elements of its network where the licensees do not appear in the same category of licenses be repealed. Licensees should, instead be allowed to request for access with licensees only allowed to turn down such request only where -

(a) The access is not reasonably feasible;
(b) Access requested by the other licensee is likely to lead to harmful interference; or
(c) Viable alternatives to access are open to the other licensee and have not been reasonably explored.

5.4.5 Expressly Prohibit Predatory Pricing

Section 47(2) of the Act, should be amended to expressly prohibit predatory pricing by dominant operators.

5.4.6 Compel Licensees to only Introduce Tariffs after Thorough Advertising

Section 47(9) of the ICT Act should be amended to prohibit introduction of tariffs prior to advertising for not less than 14 days in a daily newspaper of wide circulation.

5.5 Conclusion

This study proposes the aforementioned recommendations which when implemented may lead to a legal and regulatory framework reform that has the potential of positively transforming the ICT sector. Such transformation in turn holds the potential to drive social and economic development.

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EXAMINING THE ADEQUACY OF ECONOMIC REGULATION RELATED PROVISIONS IN THE INFORMATION AND COMMUNICATION TECHNOLOGIES ACT 2009 OF ZAMBIA: PROGRESSIVE OR RETROGRESSIVE? 4 6 11 14 15 22 27 34 36 SCHOOL OF LAW By: NOMSA GONDWE LLB22215952 AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE. 22 27 2025. DECLARATION I NOMSA GONDWE of Student No. LLB22215952 do hereby declare the contents of this research paper titled "EXAMINING THE ADEQUACY OF ECONOMIC REGULATION RELATED PROVISIONS IN THE INFORMATION AND COMMUNICATION TECHNOLOGIES ACT 2009 OF ZAMBIA: PROGRESSIVE OR RETROGRESSIVE? 1 4 6 9 10 11 12 13 15 16 17 19 20 21 22 23 25 26 27 32 33 34 35 38 hereby submitted to the School of Law at the University of Lusaka as part of the requirements for the award of the Bachelor of Laws (LLB) Degree is my original work and has

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L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: NOMSA GONDWE **STUDENT NUMBER: LLB22215952**

SUPERVISOR: MR THOMAS MALAMA **TOPIC: EXAMINING THE ADEQUACY OF ECONOMIC REGULATION RELATED PROVISIONS IN THE INFORMATION AND COMMUNICATION TECHNOLOGIES ACT 2009 OF ZAMBIA: PROGRESSIVE OR RETROGRESSIVE?**

Stage	Supervisor's Comments	Supervisor's Signature & Date	Student's Signature & Date
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Chapter 1 – Introduction	Approved following corrections relating to footnotes and revision of literature review & research methodology.	15/10/2025	15/10/2025
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