POSTAL SECTOR REGULATORY FRAMEWORK

Africa Region

UPU
UNIVERSAL
POSTAL
UNION

Published by the Universal Postal Union (UPU), Berne, Switzerland

Printed in Switzerland by the printing services of the UPU International Bureau.

© Universal Postal Union – November 2024

All rights reserved.

Except as otherwise indicated, the copyright in this publication is owned by the Universal Postal Union. Reproduction is authorized for non-commercial purposes, subject to proper acknowledgment of the source.

This authorization does not extend to any material identified in this publication as being the copyright of a third party. Authorization to reproduce such third-party materials must be obtained from the copyright holders concerned.

Development and Cooperation Directorate (DCDEV)
UPU International Bureau
Weltpoststrasse 4
3015 BERNE
SWITZERLAND
Tel: +41 31 350 31 11
Fax: +41 31 350 31 10
E-mail: info@upu.int

Acknowledgments:

The DCDEV acknowledges the contributions of:

the Communications Regulators' Association of Southern Africa (CRASA) and, in particular, Mr Brian Mwansa, Head, Postal Regulation, for the research, development and drafting of the Framework, as well as facilitation of the validation process;

Mr Matano Ndaro, Director, Postal and Telecommunications Services and Chairperson of the Pan African Postal Union (PAPU) Policy and Regulation Committee for moderating the Validation Workshop and subsequent adoption of the Framework by Heads of African restricted unions: CRASA, COPTAC, EACO, PAPU, SAPOA and WAPCO.

POSTAL SECTOR REGULATORY FRAMEWORK

Africa Region

Abbreviations

AfCFTA	African Continental Free Trade Area
AU	African Union
DCDEV	Development Cooperation Directorate (UPU International Bureau)
DPO	Designated postal operator
EAC	East African Community
EMS	Express Mail Service
FTYIP	First Ten-Year Implementation Plan
GDP	Gross domestic product
GEA	Global Express Association
ICT	Information and communication technology
ITU	International Telecommunication Union
MSME	Micro, small and medium-sized enterprises
NRA	National regulatory authority
PAPU	Pan African Postal Union
PRC	Policy and Regulation Committee
QoS	Quality of service
RDP	Regional development plan
SADC	Southern African Development Community
SDG	Sustainable Development Goal (UN)
UPU	Universal Postal Union
USD	United States dollar
USO	Universal service obligation
WAPCO	West African Postal Conference

List of Tables

Figure 1: **Agenda 2063 aspirations potentially supported by the postal sector** 16

Figure 2: **Graphical illustration of regulatory framework** 18

Figure 3: **Scope of regulatory oversight** 19

Figure 4: **Summary of recommended continental postal sector policy objectives from the AU Agenda 2063 aspirations** 22

Figure 5: **Conditions for effective implementation of regulatory framework** 23

Figure 6: **Institutional setting affecting the postal sector (source: OECD, Broadband Policies for Latin America and the Caribbean, 2016)** 18

Figure 7: **Sample converged regulator organizational structure** 27

Figure 8: **Tabulation of best practice regulatory principles (Adapted from OECD, Broadband Policies for Latin America and the Caribbean, 2016)** 28

Figure 9: **Scope of regulatory oversight** 32

Figure 10: **ITU–World Bank, Best Practices in Consumer Protection (Adapted from Digital Regulation Platform, Consumer Requirements for Regulators, 2020)** 49

Table of contents

INTRODUCTION 7

REVIEW OF SELECTED LITERATURE 8

- African Postal Directive/Guidelines by PAPU 8
- Report on mapping of postal sector and regulatory agencies in Africa by the UPU 9
- Trade, Postal Regulation and the Express Industry in Africa (Global Express Association, 2021) 10
- Second Continental Report on Implementation of Agenda 2063 16

EXECUTIVE SUMMARY – OVERVIEW OF PROPOSED REGULATORY FRAMEWORK 17

SUGGESTED POLICY OBJECTIVES AND STRATEGIC PRIORITIES 20

CONDITIONS FOR EFFECTIVE IMPLEMENTATION OF THE FRAMEWORK 23

- Institutional setting 23
- Organizational structure 25
- Application of best practice regulatory principles 28

DETAILED PROPOSED REGULATORY FRAMEWORK 31

- Regulatory scope 31
- Legal framework 33
- Market access regulation 36
- Consumer protection 47
- Universal access and service regulation 50
- Technical regulation 53

CONCLUSION 56

REFERENCES 57

GLOSSARY OF TERMS 58

INTRODUCTION

Among the priority areas for the Africa region under the UPU's regional development plan for Africa (RDP) for 2022–2025 is the need for regulators to harmonize and enhance the postal sector's regulatory framework. This is an aspiration which is equally prominent in the Pan African Postal Union (PAPU) Quadrennial Programme of Activities for the same period, and is accordingly expressed as a combination of three key deliverables of the PAPU Policy and Regulation Committee (PRC), as follows:

- **Develop postal policy, regulation and legal frameworks, including in the following areas: logistics, digitized postal financial services, e-services, e-commerce and e-government services;**
- **Develop customer/consumer protection policy/framework; and**
- **Propose a framework for regulation of postal financial activities.**

Similarly, at a sub-regional level, the Southern African Development Community (SADC) Postal Strategy 2022–2025 also identifies "harmonization of the postal regulatory environment" as its first strategic outcome under the Market Integration and Trade Facilitation Pillar, with "harmonized regulatory frameworks (to international standards)" as the tangible deliverable.

Harmonization of the postal regulatory environment is an equally import objective in the West African sub-region, as expressed by the fifth objective of the West African Postal Conference (WAPCO): "to establish where necessary a single regulation freely accepted by all, and [which] each member should be committed to apply".

In the East African sub-region, regulatory Harmonization is also an explicitly stated strategic objective for the communications sector of the East African Community (EAC), specifically calling for "harmonization of ICT policies, laws and regulations among the EAC partner states". It is, therefore, clear from the above strategic linkages that the development of a comprehensive regulatory framework for the postal sector in the Africa region is a common strategic imperative at global (UPU), continental (PAPU) and sub-regional levels, which has, to a certain extent, been initiated by PAPU, albeit with the majority of the planned actionable steps yet to take place.

It is on this basis that the UPU International Bureau's Development Cooperation Directorate (DCDEV), following the success and key recommendations of the capacity-building workshop on regulatory methodology and institutional set-up, held in Dakar, Senegal, from 23 to 25 May 2023, has, through the services of a consultant, Mr Brian Mwansa, proceeded to develop and recommend a comprehensive regulatory framework for the Africa region, as contained in this document.

In terms of key reference literature, it is worth mentioning that the African Postal Directive/Guidelines (authored for PAPU by Claude Defoundoux, 2019) and the Report on Mapping of Postal Sector and Regulatory Agencies in Africa (authored for PAPU by Haruni Lemanya, 2023) provided key foundational, contextual and directional insights for the development of the proposed African postal sector regulatory framework.

REVIEW OF SELECTED LITERATURE

African Postal Directive/Guidelines by PAPU

The 36th Ordinary Session of the PAPU Administrative Council passed resolution No. 18/PAPU/AC/XXXVI/2017 on postal regulation. Under this resolution, the Administrative Council instructed the General Secretariat to *"Draft guidelines for the African postal sector by drawing on existing sub-regional and international models"*. This resolution was implemented through the engagement of a consultant, Claude Defoundoux, who concluded and presented his report for validation and adoption in June 2019. In addition to carrying out and documenting a detailed situational analysis of the African postal sector, including a traditional PESTLE (political, economic, sociological, technological, legal and environmental) analysis, the report also provided a comparative analysis of postal sector policies and legislation in selected African countries, before going on to identify some of the determinants of postal sector development, and thereafter, articulating the content of the directive/guidelines itself.

In terms of content, the pertinent question that needed resolution was whether the envisaged African regulatory framework would end up being a duplication of the directive/guidelines or a useful, complementary document that would effectively contribute to the overall objective of continental harmonization of the postal sector regulatory environment.

A thorough review of the said directive/guidelines does conclusively address this question, revealing that the directive/guidelines primarily provides recommendations for the actual content of postal sector policy and regulatory instruments of individual member states to ensure that specific regulatory topics, of common importance and interest, are approached in a harmonized manner across the continent. These include:

- Recommendations for definitions of key terms such as postal services, postal items, authorizations and licences, basic postal services and public postal network;
- A common definition of universal postal service at African level;
- The definition and development of potential universal postal service financing facilities;
- Recommended accessibility targets;
- Recommended quality of service (QoS) standards and targets;
- Regulation of non-reserved postal services;
- Designation of the universal service provider; and
- Recommended functions of the postal sector regulator.

On this basis, the consultant has been able to establish a clear line of complementarity between the directive/guidelines and the proposed continental regulatory framework. While the former mainly contributes content-oriented recommendations, the latter is focused on the underlying rationale, purpose and structure of regulatory instruments and how these instruments combine to deliver the desired policy and regulatory outcomes in a harmonized manner.

Report on mapping of postal sector and regulatory agencies in Africa by the UPU

During the 2022/2023 period, the UPU DCDEV commissioned a consultancy mission involving the mapping of postal sector policies and regulatory agencies in Africa, in order to review some of the major postal sector reforms in Africa, particularly in French-, English- and Portuguese-speaking countries. The mission sought to elicit key policy-regulatory-related messages for postal operators at various stages of postal reform.

More specifically, the mission was expected to pursue the following objectives:

Provide recommendations for the development of model policy guidelines for national postal sector policies in Africa;

Provide Posts with knowledge on the scope of regulation of the postal sector and universal postal services, taking into account both the needs of the population and their national conditions;

Demonstrate the main benefits of postal reforms through focused policies and increased investment, and promotion of diversified use of the postal network for socio-economic development; and

Establish comprehensive, systematic guidelines on universal postal services incorporating the following key elements:

- Harmonized structures, plans, institutions and practices for providing universal postal services;
- Relating the provision of universal postal services to the new and diversified postal sector environment.

Of particular relevance to this regulatory framework, are the following recommendations from the consultant's report:

The need to redefine the universal postal service

The report concluded that the majority of African countries needed to establish a clear universal postal service concept relevant to their local conditions and environment, with realistic and measurable standards for universal service provision as guided by the UPU.

The need to rethink reserved postal services

The consultant observed the pressing need to rethink the idea of reserved postal services in the light of more and wider liberalization of the postal markets, considering economic and social aspects of universal service provision in African countries. He further concluded that, given the declining volume of mails, reserved services cannot finance the universal service obligation.

The need to develop coherent data management skills related to key universal accessibility measures

The report noted the importance of giving regulatory authorities the ability to establish and effectively monitor, through appropriate data-collection, management and analysis skills, the following indicators: (i) number of populations per post office; (ii) population per private office box; (iii) area per post office; (iv) accessibility; and (v) revenue and profitability per business area or product.

The need for governments to take more interest in ensuring that postal services are properly financed

The report observes that the financing of universal postal service obligations and investment in the sector is a big challenge for many countries. The consultant accordingly concluded that poor investment from governments would result in poor postal services and products, and would consequently lead to a failure to reap full benefits from the sector.

The need for governments to consider supporting postal development by being key strategic consumers of postal services

The consultant observed that the consumption of postal services by governments could contribute significantly towards the financial well-being of designated postal operators (DPOs).

The need for the express and courier segment to be accommodated in the licensing framework

Finally, the report concluded that there was a need for the licensing frameworks in some member states to be reviewed in order to ensure that regulatory oversight in the postal sector covered all relevant market players.

Once again, in the context of the proposed African regulatory framework, the above recommendations are all pertinent and are particularly valuable in identifying specific policy and regulatory thematic areas and/or topics that need to be addressed in the framework. While the majority of the said recommendations place a notable emphasis on the universal service obligation – its definition, financing and measurement – the creation of a fit-for-purpose licensing regime that takes all relevant postal sector players into account is also a noteworthy priority.

Trade, Postal Regulation and the Express Industry in Africa (Global Express Association, 2021)

Another relevant piece of literature that was reviewed in the drafting of this proposed framework was the position paper on Trade, Postal Regulation and Express Industry in Africa published by the GEA in 2021. The value of this document is that it provides a somewhat opposing, yet equally important perspective, presumably on behalf of the majority of private courier operators on the African continent, insofar as the subject of postal sector regulation is concerned.

In this regard, the GEA raises a number of concerns that do need to be addressed in order for the proposed framework to have the required buy-in from what is arguably the key target (private courier operators collectively) of the regulatory measures proposed in the document. The said concerns, and the associated commentary, are presented on the following pages for consideration:

GEA CONCERNS

Express and postal are distinct and separate sectors:

- → Across Africa, postal legislation treats express firms as if they were postal operators; the sector is viewed as a mere subset, or else as a derivative of, "postal services" or "non-reserved postal services".
- → The economic and legal case for oversight of Posts by national postal regulators rests on the monopoly rights that they typically enjoy and the obligation that their governments require of them to deliver a range of universal postal services for which they may receive state financing.
- → Express delivery networks are not, however, postal networks, whether in terms of market definition, of operations, services or products offered, or of cost characteristics.
- → Express delivery and postal services are separate and distinct services, each with specific features catering to different consumer needs, with express carriers operating in competitive markets, both domestically and cross-border, and the Post enjoying monopoly rights.
- → The express sector is further subject to all relevant national and international regulations, including general commercial law, competition law, consumer protection regulations, customs and aviation security regulations.
- → Moreover, express delivery networks are designed with a far greater focus on cross-border trade as compared to national Posts.
- → For these reasons, express carriers should not be regulated in a manner similar to local Posts. The extension of postal regulation to the private express companies is inappropriate; according to UPU data, Africa's Posts account for a tiny proportion of parcel exports (just 0.2% of global parcel exports).

CONSULTANT'S COMMENTARY

1. Contrary to the GEA's assertion, the express delivery/courier services sector is very much within the scope of the postal sector, particularly in terms of market definition, operations, services and products. This conclusion is drawn from the fact that both postal operators and express delivery/courier operators justify their existence on the basis of accepting, processing, conveying and delivering "mailable items" which take the form of either documents or goods.
2. While it is true that express delivery/courier operators distinguish their service offering by a wide array of value-added features – tracking, end-to-end visibility, proof of delivery, speed, time-definite delivery, insurance, choice of delivery location, and so on – the underlying service remains the acceptance, processing, conveyance and delivery of either documents or goods, and it is this fundamental commonality that places the express delivery/courier services sub-sector in the same market as postal operators.
3. It is agreed that express delivery/courier services do operate in a competitive environment which is also subject to various international regulations. However, this does not negate the need for domestic regulatory oversight, especially where there is no evidence that the market is sufficiently well-developed for competitive forces alone to guarantee all the desired policy and regulatory objectives and outcomes for the sector.
4. Moreover, ensuring adherence to the said international regulations is a key mandate for the sector regulator, and this is increasingly being achieved increasingly through collaborative regulatory oversight.

GEA CONCERNS

Broadly drawn postal reserved areas:

- → While it may be reasonable for national governments to grant monopoly rights to national Posts in respect of the provision of basic letter services, there are negative economic and trade consequences if these rights are too broadly drawn and extend to express delivery services.
- → South Africa's postal law, for example, arguably extends the monopoly rights of the South African Post Office to all items up to 1 kg in weight.
- → Some 65% of express items fall under this weight threshold, with the result that a large part of the market is potentially foreclosed to express operators, which offer traders a distinct service compared to the public postal operator.
- → Other African countries also attempt to extend local Posts' monopoly rights to items that contain any type of goods, irrespective of the features of the service provided, and thus limit the choices available to business and traders. As consumer bodies emphasize, where postal monopolies are too broadly drawn, consumers and business users of the service can be adversely impacted.

CONSULTANT'S COMMENTARY

1. The GEA observation regarding reserved services is a valid one. Not only is reservation problematic for the reasons advanced in the association's arguments, but it is also difficult to apply and enforce from a regulatory perspective.
2. Moreover, the actual revenue that may be derived from the reserved services themselves is seldom sufficient to cover the cost of the universal service obligation, greatly negating its effectiveness as a USO funding mechanism.

GEA CONCERNS

Licensing express carriers:

- → Postal laws in many African states permit regulators to impose a postal licence requirement on express carriers. In principle, there can be economic merit in licensing firms where they enjoy a franchise or monopoly status on behalf of a government, or where there is some scarcity of resource which needs to be managed by national governments, for example in the case of the extraction of minerals or the use of the telecom spectrum. There is, however, no principled case to license express firms providing networks for trade and commerce, particularly in markets with competing networks (such as freight transport) and for firms that are already subject to national and international regulations of all kinds.
- → The licensing of express carriers in Africa appears to have simply rolled over approaches from the telecoms sector with the result that administrative costs, complexity and frictions are introduced which hinder investment in express networks, and so restrain trade growth.
- → The enforcement of licence conditions is also disproportionate, often involving criminal sanction, potential imprisonment of company executives or significant financial penalties.
- → If a light-touch licensing regime were judged to be necessary, such a regime should be based on best-practice international principles: simple, stable and low-cost; proportionate to the objectives to be achieved; impartial and non-discriminatory; and objective and transparent, with no intrusive regulation of commercial terms and conditions. Licence fees should be limited to covering the costs of administering the licensing regime.
- → To secure a licence, express carriers (though not other transporters of goods) must pay a fee of between one and seven percent, typically not based on a set amount but on operators' gross annual revenues, and often labelled as a contribution to the universal service fund. Such fees are often rationalized as a financial support mechanism for the national Post (or as a funding contribution to the national postal regulator), additional to the funding secured for the Post through a reserved area.
- → While a few countries do not levy a licence fee, the trend across the continent is for regulatory frameworks to be adjusted to levy such fees even though this disincentivises express carriers from expanding their coverage and employing more staff. Licence fees ultimately represent an additional charge of one to seven percent on intra-African and world exports.

CONSULTANT'S COMMENTARY

1. Contrary to the assertion of the GEA on this issue, the justification for licensing service providers, even in a competitive market, includes:
   - » The need to regulate market access to ensure that only service providers with the required capabilities are allowed to enter the market;
   - » To create a binding regulatory relationship between the licensees and the licensor (regulator) which may be used to regulate the behaviour of the latter in line with the desired policy and regulatory objectives and outcomes.
2. Once again, the mere presence of competition cannot negate the need for regulatory oversight, especially where no steps have been taken to ascertain whether the competitive forces are actually bringing about the desired outcomes.
3. The GEA does, nevertheless, make a valid and compelling case for the licensing framework to be **simplified, stable, proportionate to the regulatory objectives, objective, transparent, non-discriminatory, and not constituting an undue administrative and financial burden** on the targeted licensees. These principles should indeed be adhered to in the design and implementation of the licensing regime, and this approach has been further expanded in the relevant section of this document.
4. Also in relation to the financial burden imposed on licensees, the nature and quantum of licence-related fees is indeed worthy of further deliberation. While the principle of a one-off market access/entry fee combined with an annual operating fee is generally accepted by the industry, the contribution to a universal access/service fund (particularly as a percentage of gross annual turnover) is more openly contested by private sector operators, especially in the absence of trust and transparency in the use of such funds.

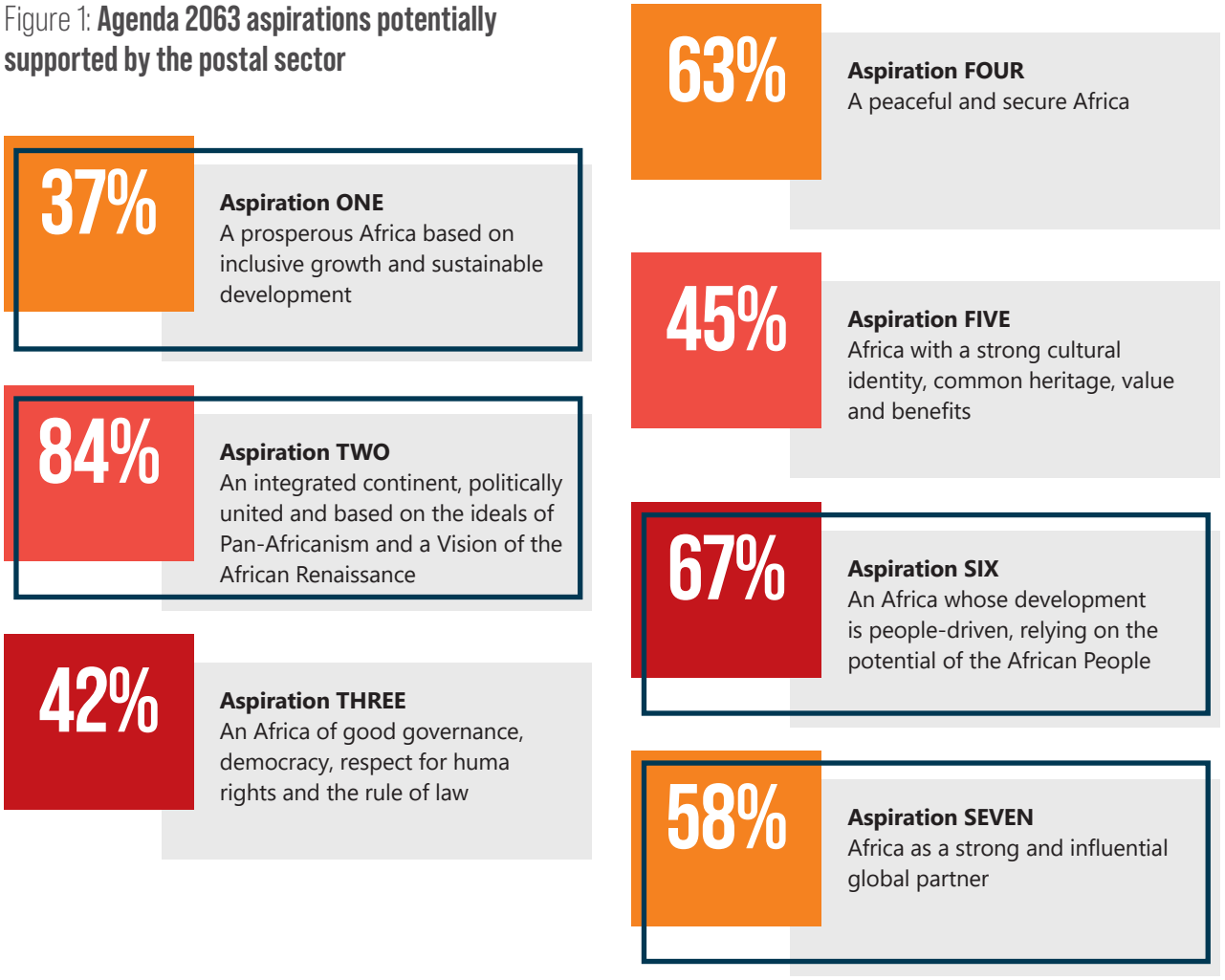
GEA CONCERNS	CONSULTANT'S COMMENTARY
Imposition of terms and conditions: Licensing of the express industry is used to impose obligations on express operators which should otherwise be determined by the market. Imposition of terms and conditions on commercial express companies is unnecessary. Such terms are subject to national horizontal legislation such as consumer protection laws. Imposition impairs a country's trade infrastructure and weakens local industries' supply chains, such as being able to reduce inventory costs yet rely on secure, just-in-time spare parts express delivery needed to keep production lines working.	While there is some merit in the arguments advanced by the GEA in defence of its position on this matter, it should be clarified that the nature of regulatory oversight being proposed in this specific area is not necessarily the imposition of terms and conditions but rather the imposition of the obligation for licensees to overtly communicate the applicable terms and conditions to their consumers.
Weight and item restrictions: In several countries, postal laws and express licences prevent express networks from moving certain trade-related items. Express carriers may, for example, be blocked from delivering parcels under 1 kg. Restrictions are also imposed which prevent express carriers from importing or exporting shipments over (or under) 20 kg, the international weight threshold for the exchange of postal parcels between DPOs . Some countries impose a fee of up to 5% of express carriers' gross revenues for shipments below 30 kg, and other African states prevent GEA members from shipping certain items (such as coffee – a restriction that does not apply to local courier companies).	The implications of the GEA observation, though specifically contesting the principle of reservation based on weight, go beyond this initial disapproval to encompass the much debated issue of defining the limits of the postal sector as a whole, on the basis of a weight threshold. As argued by the consultant in the relevant section of this framework, there is a need for regulators to build some consensus around the application of weight in the postal market definition in order to ensure the necessary regulatory clarity for all stakeholders.
Regulating service levels: Licensed express firms may be subject to conditions which regulate service levels, typically required of the universal service provider. Express firms operate in competitive markets and the level of service provided should be determined by market forces.	Once again, the fact that express/courier operators operate in a competitive environment does not fully absolve the regulator from the responsibility of ensuring that there are industry-wide, minimum QoS standards that all licensed operators must adhere to. It is only when there is sufficient evidence that market forces alone are able to guarantee such standards that regulatory oversight may be relinquished in this regard.
Dangerous goods: Rules originally designed for postal networks are imposed on the more secure, more data-informed and more advanced express networks. The safe movement of dangerous goods, for example, is a necessary economic activity, and the extension of prohibitions on their movement from postal to express networks (though not in freight forwarder networks) makes little sense in trade terms.	The GEA argues that express/courier operators are more secure, data-driven and advanced in terms of their networks and should therefore not be subject to rules for dangerous goods that are applied to DPOs. This argument is fundamentally flawed on the basis that postal security and integrity are unconditional requirements that the whole industry, regardless of the level of technological advancement, must adhere to, especially where network interconnection is a possibility. Moreover, any dangerous goods prohibitions enforced by postal regulators emanate from the relevant national authorities in the interest of public safety.

GEA CONCERNS	CONSULTANT'S COMMENTARY
Inspection requirements: Item inspection regimes developed to maintain security in open postal networks are extended by national authorities to the inspection of trade flows in the express sector, irrespective of the far higher security protocols used by express operators from the controlled point of induction and throughout the transport and delivery process.	The GEA argues that express/courier operators should not be subject to security screening or inspections on the basis that they have far superior security protocols throughout their operations. This argument cannot, however, be sustained because of the non-negotiable, multi-stakeholder nature of postal security and integrity. This may only be mitigated through the application of risk-based approaches which take the existence of such protocols into consideration.
Imposing postal liability limits: Licences are further used by national governments to impose liability and other obligations on express operators in contradiction of the international standard set in the Montreal Convention 1999.	Once again, the interest of the regulator is to ensure adherence to the said international standards while compelling operators to appropriately communicate these to their consumers.
Fair competition and a level playing field: However, as the volume of letters has declined, so national Posts have sought to expand their services into the competitive express market, with little or no control exercised by national postal regulators in respect of cost allocation, and unfair cross-subsidies of postal EMS services. Postal EMS services are also not subject to corporation tax, nor the licence fees imposed on express operators. The GEA welcomes competition, but the AfCFTA and national competition rules require that such competition must be fair, free from state subsidy and based on cost-reflective prices. Indeed, a level playing field can enhance the entire network of communications and delivery services.	The GEA makes a valid point regarding the treatment of the DPOs' EMS business within the express/courier sub-market. To all intents and purposes, the regulatory framework must recognize EMS as being in a competitive environment and subject to the same regulatory requirements as other express/courier operators.

Second Continental Report on Implementation of Agenda 2063

Agenda 2063 is Africa's development blueprint to achieve inclusive and sustainable socioeconomic development over a 50-year period. The continent aims to achieve this objective through the realization of five ten-year implementation plans. The First Ten-Year Implementation Plan of Agenda 2063, spanning 2014 to 2023, outlines a set of goals, priority areas and targets that the continent aims to achieve at national, regional and continental levels. The first phase had its achievements and shortcomings, as documented by the first and second continental reports on its implementation. Reports recorded achievements in the African Continental Free Trade Area; however, there needed to be more areas of economic transformation and job creation, among things (Nebiyu Daniel Meshesha, 2023). Of particular relevance to the postal sector in this regard is the need for the institutionalization of horizontal cooperation of the regional bodies and establishment of global partnerships in line with the continental Agenda. This is in addition to the ongoing pursuit of the relevant developmental aspirations of the Agenda itself.

Figure 1: **Agenda 2063 aspirations potentially supported by the postal sector**



EXECUTIVE SUMMARY – OVERVIEW OF PROPOSED REGULATORY FRAMEWORK

The proposed regulatory framework for the Africa region is premised on the understanding that regulatory intervention is required in the postal sector in order to establish and cultivate certain desirable regulatory outcomes that would not occur without such intervention. It is further understood that regulation itself is actually a means to an end: what matters are those desirable outcomes, not necessarily the regulatory rules. Care has therefore been taken to avoid unnecessary complexity in the proposed regulatory framework with the deliberate pursuit of simplicity and clarity to ensure effectiveness and ease of implementation, with a lighter burden imposed on both the regulator and regulated entities.

It is also worth noting that, while the primary focus of this document is the regulatory framework and its key elements, the institutional setting, corporate governance and some of the operational aspects of the regulatory institutions that are charged with the responsibility of implementing the said framework have also been covered to a limited extent. Additionally, some of the principles and expected practices of effective regulators have also been identified and referenced accordingly. These inclusions acknowledge that the essence of good regulation and the successful implementation of the framework is not only the quality and applicability of the various recommendations in each section of the document; it also requires the application of best practices in the organizational set-up of the regulatory authorities and the execution of their mandates. The crucial role of regulatory professionals, boards of directors and management has also been alluded to, noting that the personal commitment and professionalism of these individuals is an indispensable ingredient in the effective implementation of the framework.

Furthermore, the Agenda 2063 Aspirations are closely related to specific United Nations Sustainable Development Goals which provide additional, global strategic impetus for the sectoral policy objectives that have been suggested in the framework.

The sectoral policy objectives provide the underlying rationale for regulatory oversight in the postal sector which is primarily focused on market access, on the one hand, and regulation of service provision on the other. The policy objectives are also the basis for the legal framework that essentially establishes and sets out the legal mandate and system for postal sector regulation in the jurisdiction.

The legal framework for any regulated sector may, in this regard, be understood to be a combination of the following:

Supranational treaties, laws, standards and/or commitments: supranational bodies such as the UPU often have a mandate to set out common regulatory requirements and standards for member states, some of which are legally binding on the basis of the governing treaties;

The constitution of the country: the supreme law of the land that sets out the fundamental rights of all citizens, regardless of the sector involved;

Primary legislation: enacted by a legislative body which has the law-making authority in the jurisdiction (e.g. parliament);

Subsidiary legislation: made by authorities authorized by the primary legislation to make secondary legislation that operationalizes the primary legislation;

Decisions, determinations, guidelines, practices, or procedures: implemented by authorities authorized by the primary legislation (regulators in this context); and

Legal precedent/case law/ jurisprudence and/or the customs applied by the courts, depending on the jurisdiction involved.

The legal framework is therefore an essential and integral component of the regulatory framework, which is completed by the licensing framework and licence conditions that create the binding regulatory relationship between the sector regulator and the regulated entities. Industry standards, developed by industry players for the purpose of self-regulation, are also part of the overall regulatory framework where such standards are available.

The above notwithstanding, the backbone of the regulatory framework is the interplay between primary and secondary legislation and how these are developed, interpreted and implemented by the mandated authorities in the jurisdiction. For the purpose of this particular framework, it is also important to highlight the regulatory focus areas, which are essentially the legal scope of regulation and regulatory oversight, illustrated below and further elaborated in the relevant sections of the document.

Figure 2: **Graphical illustration of regulatory framework**

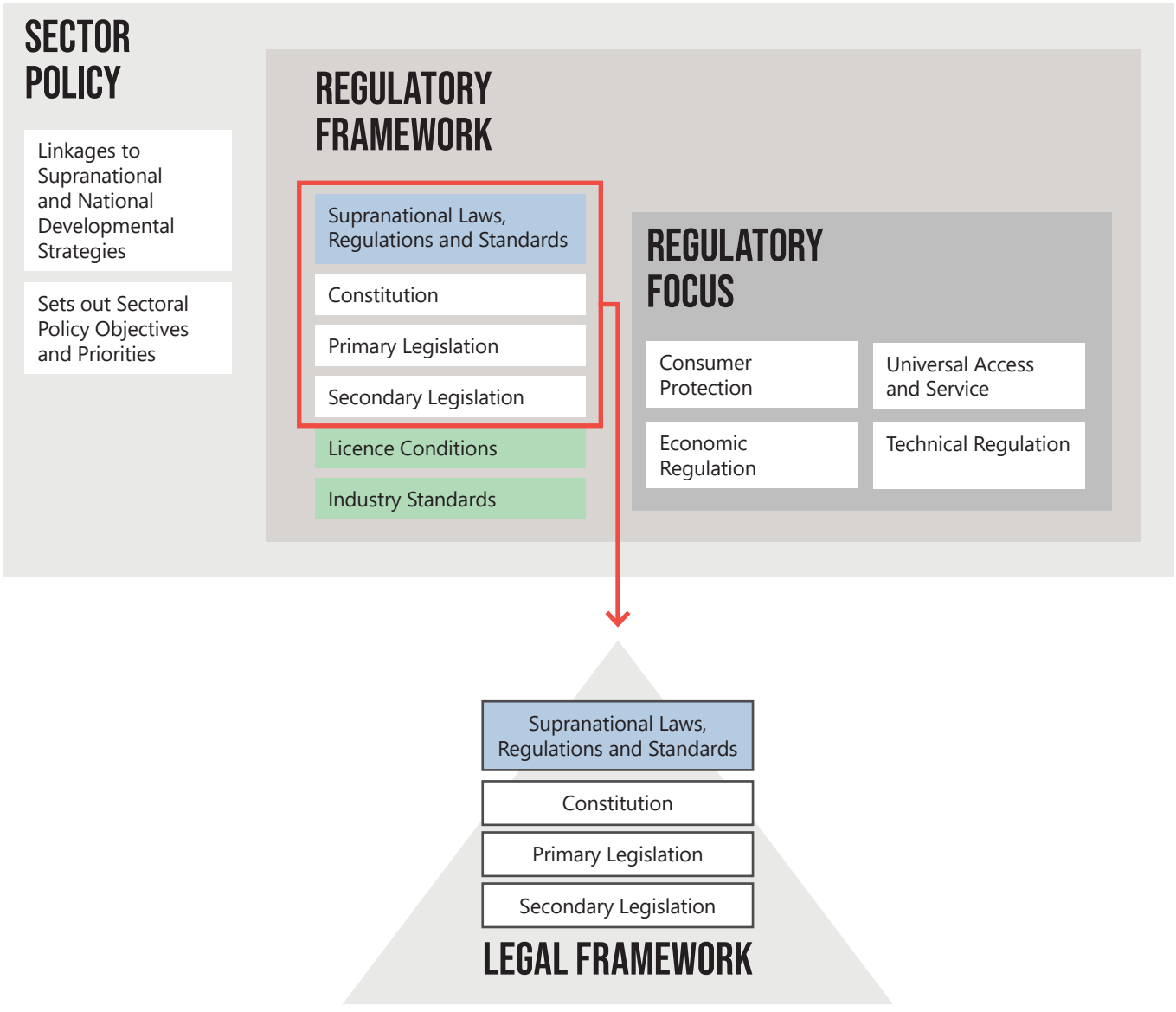
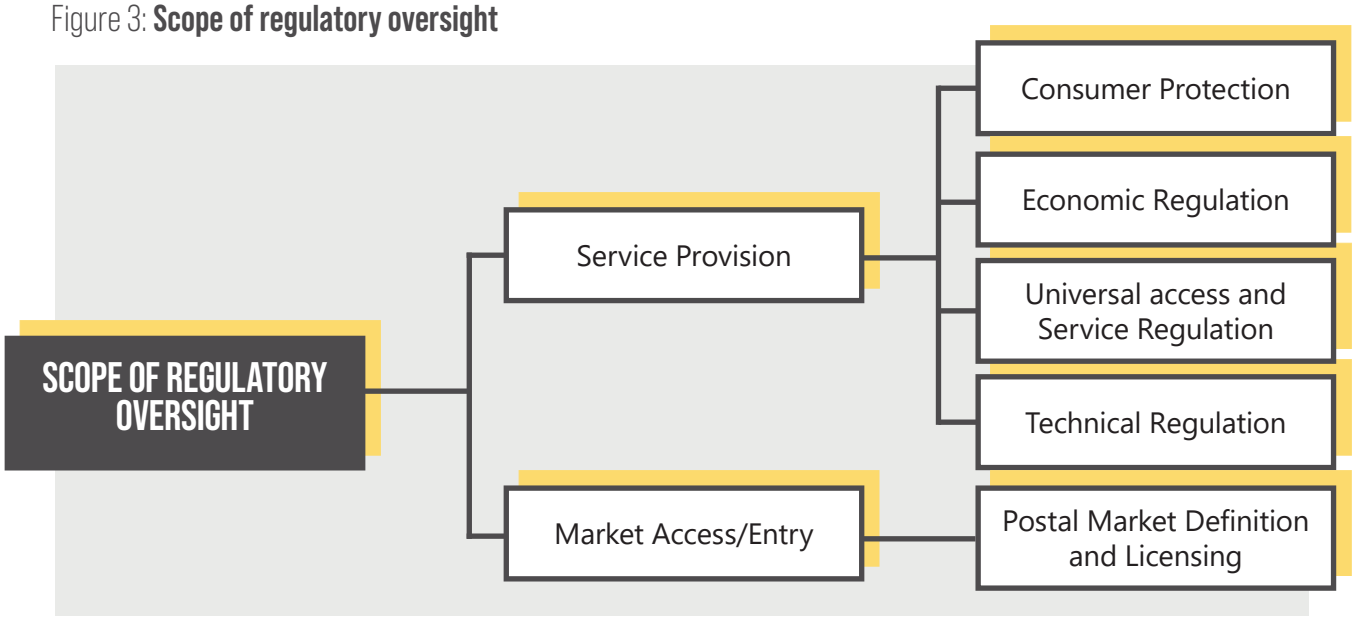


Figure 3: **Scope of regulatory oversight**



Section summary:

A. To summarize the overview, the proposed regulatory framework for the postal sector in the Africa region consists of the legal framework, which establishes the legal mandate and legal system for effecting sector regulation.

B. The Legal framework is underpinned by policy objectives and strategic priorities drawn from the relevant common continental developmental aspirations articulated in Agenda 2063.

C. Drawing from the legal framework, a key element of the overall regulatory framework is the licensing framework and licence conditions, which are not only a means for regulating market access, but also create the binding regulatory relationship between the regulator and regulated entities.

D. The regulatory framework also depends on the interplay between primary and secondary legislation and how this interplay is utilized by regulators to intervene in the postal market in order to establish and cultivate the desired policy and regulatory outcomes in the specific focus areas of consumer protection, economic regulation, universal access and service regulation, and technical regulation.

E. The regulatory framework is complemented, where available, by Industry standards that are developed by industry players themselves as a basis for self-regulation.

F. The recommended institutional setting, corporate governance and some of the operational aspects of regulatory institutions are also covered to some extent, along with some of the principles and expected practices of effective regulators.

SUGGESTED POLICY OBJECTIVES AND STRATEGIC PRIORITIES

As established above, an effective regulatory framework must be underpinned by clear policy objectives and priorities. Accordingly, the proposed regulatory framework for the Africa region has identified such objectives and priorities primarily through an analysis of the relevant continental developmental aspirations expressed in the African Union's Agenda 2063 – Africa's development blueprint for inclusive and sustainable socioeconomic development over the 50-year period. It is, in this regard, acknowledged that, while the articulation of sectoral regulatory frameworks at national level should be guided by national developmental strategies and associated policies, African heads of state have committed to domesticating Agenda 2063 by assimilating it into their national and sub-regional developmental strategies and implementing the associated interventions in a coordinated, harmonized manner. It is therefore fitting for this particular framework to draw its political impetus from the relevant Agenda 2063 developmental aspirations, as summarized below:

Aspiration 1

A prosperous Africa based on inclusive growth and sustainable development

As a continent, Africa did not perform very well in achieving this aspiration during the first ten-year period of Agenda 2063, mainly owing to the decrease in GDP per capita from 3,170 USD in 2019 to 2,910 USD in 2021, and high employment rates. There was, nevertheless, commendable progress in access to electricity and the Internet.[1] The postal sector is strategically placed to contribute to improving continental performance in this particular aspiration through further advances in digital transformation, and more directly through growth of the sector itself and its support for economic activity at domestic and continental levels.

In the context of this framework and the policy perspective in particular, the pursuit of this aspiration is closely linked to SDG 8: *"Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all"*, as it recognizes that the postal sector can be leveraged to increase employment opportunities and improve access to financial services to ensure sustained and inclusive economic growth.

SDG 13, *"Combat climate change and its impacts"*, is also legitimately tied to this aspiration, as the postal products and solutions that may be developed in support of inclusive economic activity should, to the greatest extent possible, incorporate cleaner, more resilient, low-carbon features at infrastructure and service-delivery levels.

Suggested continental policy objectives under Aspiration 1:

1. Encourage private sector participation and investment in the postal sector through promotion of fair competition that encourages entrepreneurship;

2. Encourage the development of innovative postal solutions that leverage the advancement of, and increased access to, digital technologies in order to support and facilitate economic activity;

3. Promote the development of postal products and services that are responsive to consumer needs and expectations.

1 African Union, Second Continental Report on Implementation of Agenda 2063, February 2022

Aspiration 2

An integrated continent politically united and based on the ideal of Pan-Africanism and the Vision for Africa's Renaissance

The strong performance of 84% (against 2021 targets) was realized mainly through progress in the signature and ratification of the African Continental Free Trade Agreement, which came into effect on 1 January 2021, and the establishment and operationalization of a well-functioning AfCFTA Secretariat in Accra, Ghana. During the period under review, there was also significant progress evidenced by improvements in road networks, air transport, electrification and ICTs.[2] Once again, the postal sector is expected to play a leading role in the further implementation of the AfCFTA by making its continental network available as a trade facilitation infrastructure and solution provider across the broad value chain of cross-border trade.

This aspiration also integrates elements of SDG 9, "Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation", particularly because the proposed investment in continental postal infrastructure is expected to contribute positively to trade-related economic growth and the empowerment of communities across the continent.

Suggested continental policy objectives under Aspiration 2:

1. Capacitate the continental postal network to enhance the provision of postal trade facilitation solutions across the length and breadth of the cross-border trade value chain;
2. Continue to recognize, integrate and promote the role of the postal sector in the implementation of the AfCFTA;
3. A postal sector that supports export-oriented MSME participation in intra-continental cross-border trade.

Aspiration 6

An Africa whose development is people-driven, relying on the potential of the African People, particularly its Women and Youth

During the period under review, the continent registered a slight increase in the proportion of women in the agricultural population who have ownership or secure rights over agricultural land, as well the proportion of seats held by women in national parliaments, regional and local bodies. However, Africa did not meet youth-related goals and targets, registering only a minimal reduction in youth unemployment rates.[3]

This is directly related to both SDG 1 and SDG 5 – "End poverty" and "Gender equality" respectively – bearing in mind the tremendous potential that the postal sector has in supporting the cross-cutting objectives of gender equality and poverty eradication through the direct and indirect creation of jobs and economic opportunities across the postal value chain.

Suggested continental policy objectives under Aspiration 6:

1. A postal sector that supports and facilitates socio-economic development, job creation and poverty reduction;
2. Utilize the postal sector to promote the socio-economic empowerment of women and youth.

Aspiration 7

Africa as a strong influential partner

The continent achieved an overall commendable performance of 58% evidenced by the proportion of public sector budget funded by national capital markets, as well as the proportion of official development assistance in national budgets.[4] Of relevance to this particular framework, however, is the strong position held and regularly demonstrated by the African postal fraternity in the global postal arena. This growing influence should be harnessed

2 African Union, Second Continental Report on Implementation of Agenda 2063, February 2022
3 African Union, Second Continental Report on Implementation of Agenda 2063, February 2022
4 African Union, Second Continental Report on Implementation of Agenda 2063, February 2022

further to continue promoting continental interests globally, and this should be a stated objective at policy level.

Such a policy objective would also contribute positively to the achievement of SDG 17, "Strengthen the means of implementation and revitalize the global partnership for sustainable development", noting that the postal sector provides a fertile ground for governments to pursue meaningful partnerships between the public sector, private sector and civil society in the mobilization of both existing and additional developmental resources.

Suggested continental policy objective under Aspiration 7:

1. Promotion of continental interests within the international postal arena, including the Universal Postal Union and other relevant platforms.

The policy objectives are summarized in Figure 4 for ease of reference.

Figure 4: **Summary of recommended continental postal sector policy objectives from the AU Agenda 2063 aspirations**

INCLUSIVE GROWTH & SUSTAINABLE DEVELOPMENT

- Promote private sector participation and investment in the postal sector through promotion of fair competition that encourages entrepreneurship;
- Promote development of postal products and services that are responsive to consumer needs and expectations
- Encourage development of innovative postal solutions that leverage the advancement and increased access to digital technologies to support and facilitate economic activity

CONTINENTAL INTEGRATION

- Capacitate the continental postal network to enhance the provision of postal trade facilitation solutions across the length and breadth of the cross-border trade value-chain.
- Continue to recognise, integrate and promote the role of the postal sector in the implementation of AfCFTA.
- A Postal Sector that supports export-oriented MSME participation in intra-continental cross-border trade.

YOUTH AND WOMEN EMPOWERMENT

- A postal sector that supports and facilitates socio-economic development, job-creation and poverty reduction;
- Utilise the postal sector to promote the socio-economic empowerment of women and youth.

PROMOTION OF CONTINENTAL INTERESTS

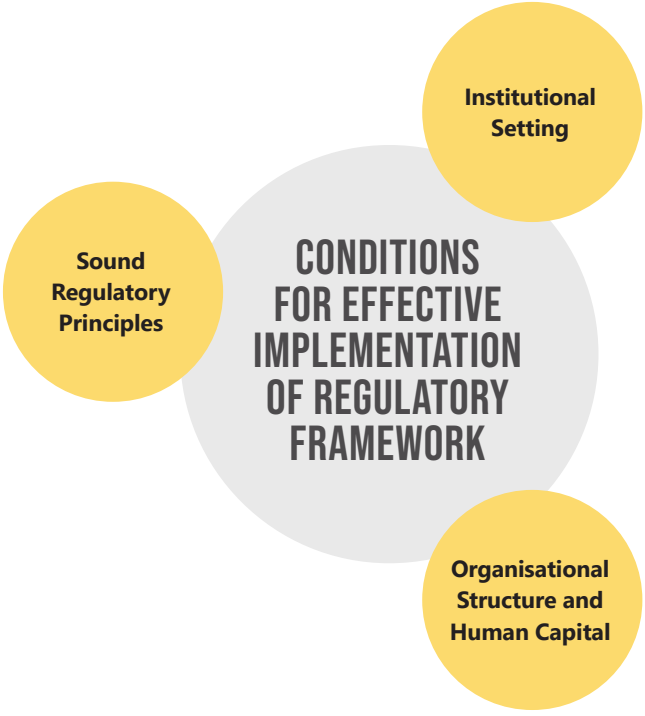
- Promotion of continental interests within the international postal arena, including the Universal Postal Union and other relevant platforms.

CONDITIONS FOR EFFECTIVE IMPLEMENTATION OF THE FRAMEWORK

It should be noted from the outset that, while the regulatory framework set forth in this document is expected to contribute significantly towards the regulatory harmonization objectives for which this work was commissioned, the realization of tangible desirable outcomes from the implementation of the said framework requires certain enabling conditions to be in place at individual member state level. The conditions below are by no means exhaustive, but are expected to provide a useful checklist which relevant stakeholders in each jurisdiction are advised to consider.

These conditions have been categorized as follows, for ease of reference and application:

Figure 5: **Conditions for effective implementation of regulatory framework**



Institutional setting

The institutional setting is one of the key issues affecting the implementation of the regulatory framework. The responsibilities of different stakeholder institutions must be clear and devoid of unwarranted overlaps, giving each institution specific tools to enforce its respective decisions. Some of the relevant institutions in the context of the postal sector are as illustrated below and further elaborated thereafter.[5]

Supranational organizations:

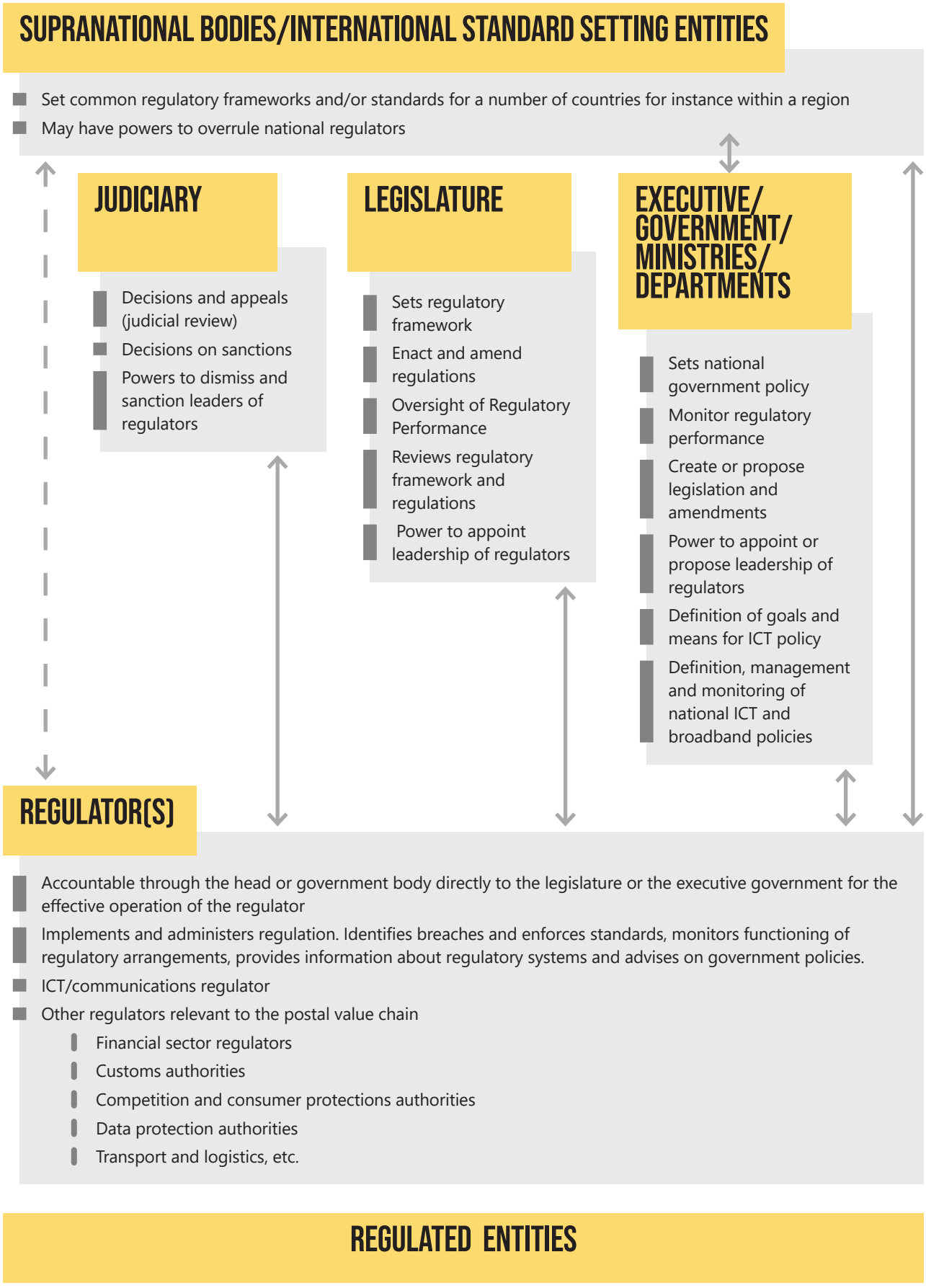
Supranational organizations such as the UPU, PAPU and sub-regional organizations have a direct impact on the adoption and implementation of certain aspects of the regulatory framework. In general, participation in these supranational bodies is coordinated by the ministries responsible for the postal sector with full participation by the regulatory authorities and designated postal operators.

Legislative body:

The postal and other relevant laws of the jurisdiction are typically enacted by a legislative body (parliament is the common example), based on proposals made by the executive branch of government (responsible ministry). Through the use of appropriate checks and balances, as established in each country, it is not uncommon for the legislative body to also have some measure of general oversight regarding the performance of the regulatory framework. Such checks and balances often require the ministry and the regulator to report regularly to a parliamentary committee, to ensure monitoring by the legislature as well as making informed decisions on the evolution of the regulatory framework.

5 OECD, Broadband Policies for Latin America and the Caribbean, 2016

Figure 6: **Institutional setting affecting the postal sector (based on: OECD, Broadband Policies for Latin America and the Caribbean, 2016)**



Executive body (responsible ministry):

In general terms, the executive branch of government should oversee policy making, define sectoral priorities and goals, and propose new legislation. In other words, the design and execution of national postal sector policies and strategies should be within the scope of the executive body. These responsibilities should be organized around a specific ministry or department focused on ICT, communications and/or transport and logistics policy.[6]

Judicial authority:

The judiciary is responsible for ensuring that stakeholders' rights are protected, and that regulatory decisions are aligned with laws. The legal system must be so designed as to prevent the use of the judicial system by stakeholders to evade or delay the application of the law through excessive unjustified litigation. Good practice in this context is to allow regulatory decisions that are challenged in the courts to remain in force until the court reaches a decision. As noted in the next section, transparency in the regulatory process, which includes deliberate planned stakeholder consultations, can help to reduce legal challenges.[7]

Regulatory authorities:

Typically, the functions of the regulatory bodies are distributed among several agencies addressing different issues: telecommunications (communications authorities); media/broadcasting services (audio-visual authorities); and antitrust and general aspects of competition (competition authorities).[8] As further elaborated below, the recommended approach is to have a converged ICT/communications regulatory authority that has a mandate to regulate the postal sector as well. It should also be emphasized that there are several other economic sectors that affect the postal sector, and regulatory collaboration is generally encouraged in this regard. These other regulators include:

- Central banks/financial sector regulators (collaboration in the regulation of postal financial services);
- Customs authorities (collaboration in postal security and quality of service regulation);
- Civil aviation authorities (collaboration in postal security and quality of service regulation);
- Trade facilitation and commerce (collaboration in the regulation of postal e-commerce and trade facilitation);
- Data protection authorities (collaboration in personal data protection related to the postal environment);
- Cybersecurity authorities (collaboration in cybersecurity regulation as it relates to the postal value chain);
- Consumer protection and competition authorities (collaboration in consumer protection and competition regulation).

Organizational structure and human capital considerations

Organizational structure

One of the preliminary questions to be addressed by countries in exercising regulatory oversight in the postal sector is whether to have a standalone, sector-specific regulatory authority or a converged regulator with a mandate to regulate the wider communications sector. As proven in the majority of jurisdictions in Africa and other continents, the advantages of embedding the postal regulatory mandate in a converged regulator significantly outweigh the disadvantages. It is on this basis that the converged regulator approach is recommended in this document. In cases where the postal regulatory mandate is relatively new, the preferred course of action, rather than setting up a completely new independent institution, is to legally expand the mandate of the communications and/or ICT regulator to include regulatory oversight for the postal sector as well.

6 OECD, Broadband Policies for Latin America and the Caribbean, 2016
7 OECD, Broadband Policies for Latin America and the Caribbean, 2016
8 OECD, Broadband Policies for Latin America and the Caribbean, 2016

The advantages of this approach, as alluded to above, are numerous and include the following:

a) Economies of scale in use of one set of high-calibre regulatory professionals (e.g., economists, lawyers, financial analysts): Such economies are significant when considered in the context of postal sector regulation being a relatively new field with a limited pool of skilled and experienced regulatory staff in most jurisdictions;

b) Reducing the risk of regulatory capture: The creation of a regulator with responsibility for more than one sector can help avoid the rule-making process being captured by strong industry-specific groups;

c) Economies of scale in administrative and support services (e.g., computers, office space, support staff): This is particularly important where the costs of regulation can have a real impact on the affordability of basic services;

d) Economies of scale in the development and implementation of the regulatory authority: For example, uniform rules on licence award or dispute settlement procedures can extend to more than one sector and, therefore, avoid the need to reinvent the wheel for each sector;

e) Effective means of dealing with converging sectors and services: A good example is the exercise of regulatory oversight in the case of e-commerce, which requires regulatory resources and expertise from different sections of the ICT regulator, including issues of data protection, cyber security and competition. This kind of collaboration is considerably easier to achieve within a single institution than among several sector-specific institutions.

f) Creating more precedents, and therefore less uncertainty, for investors: Where a decision in relation to one sector on a regulatory issue common to other sectors (e.g., application of price cap regulation or cost accounting principles) will set a precedent that is valuable to potential investors in those other sectors.[9]

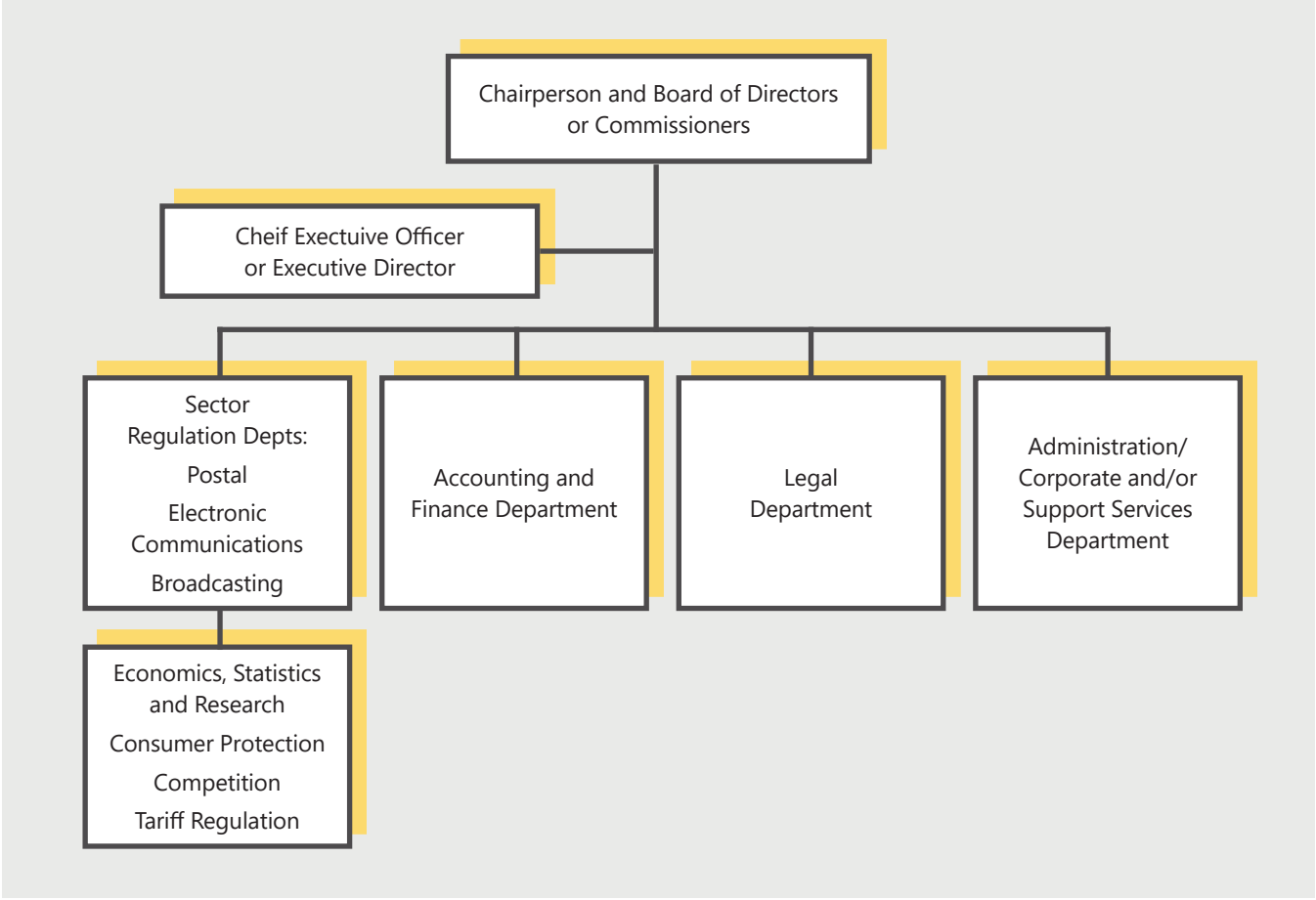
When it comes to the actual organizational structure of the regulatory authority, this generally requires an assessment of various factors, including the country's needs and objectives; political environment; legal requirements; and available expertise in the labour market. The above notwithstanding, it is the functions of the regulator, as outlined in the law, that largely determine the design of the regulatory body's organizational structure. It goes without saying that the demonstration of sound corporate governance principles, efficiency and prudent use of resources are primary considerations as well, with regulators often being required to lead industries they regulate by example in terms of these tenets.

9 Schwartz, T. and Satola; Telecommunications legislation in transitional and developing economies. World Bank Technical Paper No. 489. Washington, DC, 2000

Accordingly, the preferred structure among the majority of countries (as many as 75% according to the ITU Data – Telecommunications Regulation Handbook 2011), and recommended in this document, is the collegial body model, which essentially involves a board or commission made up of individuals with different areas of expertise. The collegial body is supported by a structure comprising executive management, technical and administrative staff who collectively implement the regulatory functions on a day-to-day basis.

A typical organizational chart model of such a structure is illustrated below:

Figure 7: **Sample converged regulator organizational structure**[10]



The key advantage of the collegial body approach rests on the notion that having a board or commission that is made up of different individuals from different backgrounds and perspectives increases the independence of the regulator, as the likelihood of all the members being simultaneously influenced by the same actors is very slim. This advantage does, however, need to be weighed against the possibility of regulatory decisions taking longer to be reached while being more subject to internal struggle.[11]

10 S.V. Berg, A.N. Memon, R. Skelton, Public Research Utility Centre, University of Florida; Designing an Independent Regulatory Commission, 2000.

11 ITU, Telecommunications Regulation Handbook, 10th Anniversary Edition, 2011

Application of best practice regulatory principles

In addition to an appropriate institutional setting, an organizational structure that is fit for purpose, and highly competent, motivated regulatory professionals, the successful implementation of the regulatory framework requires the existence and application of a number of best practice regulation principles in the day-to-day execution of regulatory mandates. Yet again, the list of principles below is not exhaustive, but it does highlight those that are most pertinent in the context of postal sector regulation:

Figure 8: **Tabulation of best practice regulatory principles (Adapted from OECD, Broadband Policies for Latin America and the Caribbean, 2016)**

BEST PRACTICE REGULATORY PRINCIPLES	EXPLANATION
OUTCOME-FOCUSED	→ Regulatory actions should not be seen as ends in themselves. → They should promote desirable outcomes for sector stakeholders and advance the objective of the sector policy and principal law. → All activities of the postal regulator should therefore: ▪ be clearly focused on the underlying regulatory objectives; ▪ represent the course of action(s) that is likely to achieve these objectives in the most effective and efficient manner; ▪ be integrated and aligned; ▪ be flexible and innovative – seeking to achieve the best regulatory outcome in the particular circumstances of each case.
EVIDENCE-BASED	→ The regulator should, to the furthest extent possible, be guided by evidence and the objectives of the sector policy and principal law to regularly review the effectiveness of regulatory interventions. → This principle extends to the institutionalization of regulatory best practices such as regulatory impact assessments and research as the basis for regulatory decision-making.
PROPORTIONALITY AND EFFICIENCY	→ The regulator must ensure that the design and application of a regulatory intervention is proportionate to the problem or issue it is seeking to address. → Proportionality involves ensuring that regulatory measures do not "overreach" or extend beyond achieving an identified objective or addressing a specific problem. → The scope and nature of regulatory measures should match the benefits that may be achieved, and as such, regulatory effort should always be focused where it will generate the greatest benefits from the resources employed. → This also means that the regulator should prioritize its effort and resources to areas where, based on the available evidence, the potential benefits and risks are most significant.
RESPONSIVENESS AND FLEXIBILITY	→ The postal regulator should strive to be responsive and flexible by: ▪ considering the full range of options available ▪ tailoring the approach to account for the circumstances of each individual case; ▪ focusing on consistency of outcomes; and ▪ regularly reviewing its practice and operational policy to ensure it is evidence-based, remains relevant and appropriate to changes in the postal sector. → The regulator should also be responsive to the particular circumstances of each region, location, and even the service provider in question. In so doing, the regulator is more likely to facilitate and encourage, rather than impede and discourage innovation in the sector.

BEST PRACTICE REGULATORY PRINCIPLES	EXPLANATION
TRANSPARENCY AND ACCOUNTABILITY	→ Regulatory actions should be open and transparent to encourage public confidence and provide certainty and assurance for regulated entities. → Legislation should be fairly and consistently administered and enforced and, where relevant, the regulator should explain the reasons for its decisions. → The regulator should also be accountable for its actions and welcome public and sector scrutiny, including the regular reporting of performance information. → The design and administration of regulations should provide for transparent and robust mechanisms for appealing against decisions by the regulator. → Ideally, the entire regulatory process must be fair and impartial and open to extensive and meaningful opportunity for stakeholder participation. → Additionally, strict rules covering the behaviour of decision makers should be in place so as to preclude improprieties or any conduct appearing to be improper.
INDEPENDENCE	→ It goes without saying that the regulator should always ensure the integrity and objectivity of its regulatory actions. → Regulators should, by law, be free to make decisions within the scope of their authority without having to obtain prior approval from other officials or agencies of government. They need to be adequately insulated from short-term political pressure. → Furthermore, whenever the regulator exercises its powers or makes decisions, this should be done in the absence of actual or perceived conflicts of interest or other relationships, measures or influences that may impinge, or be seen to impinge, upon their objectivity. → Abiding by this principle should, nevertheless, not jeopardize constructive working relationships between the regulator and the ministry and between the regulator and the regulated entities. → Some specific best practices in the area of regulatory independence have been identified by the OECD as including: **1. Providing the regulator with a distinct legal mandate, free of ministerial control.** Decisions taken by the regulator should not be subject to ministerial approval. In general, the ability to overrule the regulator's decisions by other actors should be limited to a minimum. **2. Regulatory powers must include all aspects of regulatory oversight and must be clearly defined,** to allow all regulatory issues of interest to be addressed. This should include the power to enforce regulatory decisions independently. **3. Regulators should have their own source of funding that is not controlled by the government.** If the budget of the regulatory body depends on an appropriation from the government's budget, a government may use this discretionary power to control a regulator. A good practice applied in many countries is to impose a levy on the regulated industry, based on a small percentage of its turnover, which is then used to finance the regulatory agency. 4. Appointments of members of the board and the head of the regulatory bodies should be conducted through open and transparent procedures. 5. Issues such as rules for dismissal, conflicts of interest and provisions regarding joining the regulated sector after the termination of a mandate should be addressed in the law, to ensure independence and increase the credibility of the regulatory body.

BEST PRACTICE REGULATORY PRINCIPLES	EXPLANATION
COMMUNICATION AND ENGAGEMENT	→ The postal regulator operates in a dynamic context made up of a broad range of stakeholders including government, other sector regulators, consumers and licensees. → Engaging appropriately with each stakeholder group makes regulatory activities more efficient and effective. → In the case of licensees, for instance, appropriate relationships tend to facilitate more effective educative and advisory regulatory approaches, as well as enabling the regulator to obtain valuable feedback and information that improves its own performance. → Ultimately, the regulatory system should provide reasonable certainty as to the principles and rules that will be followed within the overall regulatory framework.
CROSS-BORDER COOPERATION AND CONSISTENCY	→ Especially in a sector such as the Post, which is significantly characterized by cross-border transactions, cooperation and coordination between regulators from different jurisdictions is critical to ensure efficiency, consistency and predictability of regulatory systems. → Central to achieving cooperation across regulatory authorities is agreement on the sharing of data and information to the greatest extent possible within the limits of the law. → Regulatory authorities should also share evidence, experimentation, experience and policy initiatives to facilitate the adoption of best practice across jurisdictions. → Where applicable, the execution of joint regulatory interventions, especially at sub-regional level, should also be explored in this regard.
AWARENESS OF THE BROADER REGULATORY ENVIRONMENT	→ Postal regulators should be aware of the existence of other relevant and overlapping regulatory regimes. → Deliberate efforts must be made to minimize the duplication of regulatory obligations, enforcement mechanisms and sanctions where appropriate.

DETAILED PROPOSED REGULATORY FRAMEWORK

A strong regulatory framework can support policies that promote postal sector development. As with other larger-scale networked industries, regulatory frameworks are necessary to ensure the sustainability of the postal sector and to protect consumer interests. A framework that allows regulatory certainty helps create confidence among investors. In many cases, the long-term viability of service providers' business models actually depends on the extent to which regulations are clear, transparent, consistent, cost-reflective and enforceable.

Using traditional, utility-oriented regulatory frameworks for the postal environment may lead to failure of the regulatory process and deter sector development. The key to effective regulation is a flexible approach that is sensitive to the specific operational structure of the postal sector, embraces the potential evolving nature of the postal market, and deliberately promotes defined developmental objectives and strategies. This approach recognizes that complicated and costly requirements may deter innovative service models and the entry of new players in the market, to the detriment of effective competition and consumer welfare.

Regulatory scope

In terms of the scope of regulatory oversight, it is recommended that this be focused on two specific areas of intervention: market entry/access; and service provision/operations.

Market access/entry

The regulation of market access primarily seeks to ensure that only qualified, capable operators are allowed to be active in the industry. This extends to the management of competition (determined by the number of operators), encouragement of sector growth and diversity (through the nature and scope of access granted) and the participation of foreign interests in the domestic market.

In particular, market access regulations may focus on:

Establishment:

Requirements on establishment aim to exclude non-qualified operators from the industry and to accept only qualified operators that have demonstrated financial and operational capacity to provide the intended services sustainably.

Scope of activities:

Market access may also be managed through the scope of activities that market players are permitted to engage in. As discussed in later sections, this is typically achieved through licensing which essentially defines the scope of activities that operators are authorized to offer. This means that licensed operators then have to manage their businesses within the scope that their licence permits.

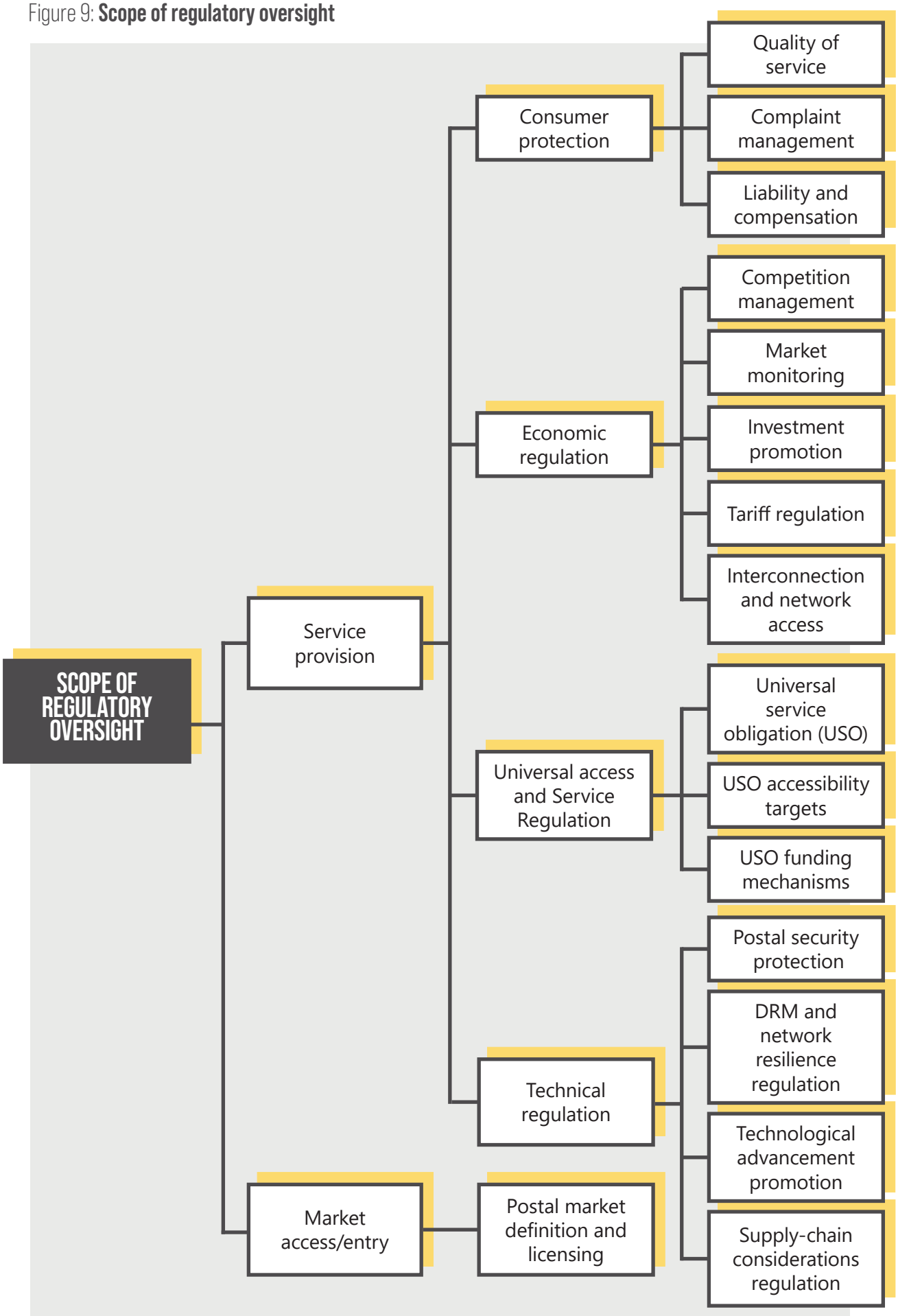
Service provision/operations

Regulation of operations or service provision is more focused on promoting the quality of services, protecting the interest of consumers and encouraging fair competition. This category of regulatory oversight generally has a broader scope than that of market entry/access regulation and compliance; some of the regulatory interventions may sometimes lead to increased costs on the part of operators, but they are justified on the basis of the policy and regulatory objectives that underpin them. The scope of regulatory oversight is further elaborated in Figure 8 below, which provides more details regarding the following regulatory focus areas:

Market access regulation: market definition and licensing

Consumer protection: quality of service, liability and compensation, complaint management

Figure 9: **Scope of regulatory oversight**



Economic regulation: competition, market monitoring, interconnection, tariffs, investment promotion

Universal access and service regulation: USO definition, accessibility targets, USO financing

Technical regulation: security, DRM and resilience, supply chain, technological advancement

Legal framework

As alluded to above, the legal framework essentially establishes and sets out the legal mandate and system for postal sector regulation in the jurisdiction. While such a framework is often a combination of supranational legal instruments such as treaties and similar legal commitments made by the country in international law, the constitution, primary legislation, secondary legislation, regulatory decisions and determinations and case law or jurisprudence, the main focus of the proposed regulatory framework for the Africa region, as outlined below, is primary and secondary legislation.

Notwithstanding the differences in terminologies, hierarchy, style and source of legal instruments from country to country, and from among different sub-regions, it has been observed that all jurisdictions rely on a legal system that has higher-order laws or statutes that are promulgated by a national legislative body which, in the context of this document, will be referred to as primary legislation. In addition to these higher-order laws, all jurisdictions also have a variety of subordinate legislation that sets out the practical, operational and consequential details necessary for the primary legislation to be operationalized. For the purposes of this framework, all such legal instruments will be collectively referred to as secondary legislation, as further explained below.

Primary legislation

Primary legislation consists of acts of parliament or statute. As a matter of principle, primary legislation contains legal provisions that are stable in nature and are not likely to change for the foreseeable future. Primary legislation sets out broad legal principles and rules, and also delegates specific authority to an executive branch to make more specific laws under the aegis of the principal act, called secondary or delegated legislation. Given the lengthy process involved in enacting primary legislation, it has the inherent risk of not being able to respond to sudden changes in the environment. Care must therefore be taken to ensure that primary legislation is not only forward-looking, but also grants sufficient delegated authority to allow implementing agencies (regulators in this case) to respond to emerging market conditions through the aforementioned secondary legislation.

Another important consideration when it comes to primary legislation is the existence and relevance of other laws that have a direct or indirect impact on the postal sector. It is incumbent on all sector regulators to be aware of such statutes and, where appropriate, to formally engage and collaborate with other regulatory entities responsible for the implementation of such legislation. Examples include national laws pertaining to:

E-commerce;

Transport and logistics;

Commerce and trade;

Customs;

Anti-narcotics;

Anti-terrorism;

Cybersecurity;

Data protection;

Consumer protection;

Competition;

Information and communication technology;

Payment systems.

Accordingly, the recommended provisions for the primary legislation in the proposed legal framework include the following:

RECOMMENDED CONTENT OF PRIMARY LEGISLATION	BRIEF CONTENT DESCRIPTION
ACTIVITIES THAT ARE SUBJECT TO REGULATION (REGULATORY COVERAGE)	→ The postal law should draw a legal distinction between regulated and non-regulated activities. → The law should also make it a legal requirement to obtain a licence or authorization to offer a regulated service.
ESTABLISHMENT AND FUNCTIONS OF THE REGULATOR	→ The principal law should also make provision for the establishment of the postal sector regulator and outline its functions, which typically include: a. Defining the scope of universal postal services; b. Establishing universal postal service standards and targets; c. Monitoring and measuring quality of service; d. Approving or fixing rates for applicable postal products and services; e. Conducting surveys, tests and evaluations as regards the standards of services delivered by licensees; f. Collecting, analyzing and reporting information on licensees; g. Examining and settling disputes among licensees and between licensees and customers; h. Promoting, developing and enforcing fair competition and equality of treatment among licensees; i. Monitoring, controlling, inspecting and regulating postal, courier and ancillary services and ensuring that these services are provided and operated in accordance with the law; and j. Performing such other postal regulatory functions as may be specified or approved by the minister.
REGULATORY AUTONOMY AND INDEPENDENCE	→ There is a general supposition that the more independent the regulator is, the more effective it is going to be. → Some key issues to consider are: a. Are the respective functions of minister and regulator clearly established? b. Are the day-to-day regulatory functions to be left with the regulator, with key strategic decisions being taken by the government? c. Can the decisions of the regulator be overridden by government? d. Are there circumstances where government can dictate how postal services are used, such as at times of war or state emergency? e. How is the regulator appointed? ▪ Is this an individual or a board? ▪ Can the regulator be hired and fired by the government? f. How is the regulator funded? ▪ Does the funding come from general taxation or from revenues from the regulated services (i.e. out of operator revenues)? g. Does the regulator have the operational capacity to be effective? ▪ How is the regulator staffed? ▪ Can the regulator recruit from outside the civil service and pay salaries outside the civil service pay scales?

RECOMMENDED CONTENT OF PRIMARY LEGISLATION	BRIEF CONTENT DESCRIPTION
REGULATORY POWERS	→ The regulator will need to be empowered to do the following: a. Gather information and data; b. Establish rules and change rules; c. Monitor implementation of rules; d. Enforce the rules: this includes imposing fines and sanctions for breach of rules, or collaborating with a different agency to have certain decisions enforced; → The law may also seek to put limits on some regulatory powers, or impose general obligations of fairness and proportionality on the regulator.
LEVEL OF REGULATORY DISCRETION	→ The level of discretion to be granted to the regulatory body also depends on the level of resource that the regulator is to be granted.
COLLABORATIVE REGULATION	→ The postal law should make provision for collaboration between the postal regulator and other sector regulators that have a role in regulating specific aspects of postal service provision. → Such collaboration may, for instance, refer to the following regulatory focus areas: ▪ Cybersecurity; ▪ E-commerce; ▪ Personal data protection; ▪ Postal financial services; ▪ State security; ▪ Anti-narcotics enforcement; ▪ Trade facilitation; ▪ General competition and consumer protection. → This also ensures that overlaps in responsibilities are kept to a minimum, and that regulated entities do not receive conflicting instructions or suffer multiple sanctions.
SCOPE OF REGULATION	→ Market access regulation. → Consumer protection. → Economic regulation. → Universal access and service regulation. → Technical regulation.
NATURE AND FORMS OF RECOURSE AGAINST REGULATORY DECISIONS	→ There needs to be a method of regulating the regulator while being able to amend its powers from time to time.
OFFENCES AND PENALTIES	→ Primary legislation should also specify the offences and penalties that are applicable.

Secondary legislation

Secondary (also called subordinate) legislation is all other forms of legislation that are not acts of parliament. The legislative branch of government often delegates power to allow ministers to make secondary legislation. Secondary legislation can therefore take the form of:

- Regulations;
- Guidelines;
- Determinations and decisions of regulatory authorities;
- Rules;
- Procedures; and
- Codes.

The two types of secondary legislation are delegated legislation and prerogative legislation:

Delegated legislation: allows other branches of a government to make changes to a law as they become necessary. There is no need to start a new bill in a parliament;

Prerogative legislation: powers given to certain officials to create laws, rules or regulations.

Secondary legislation is principally made in the form of statutory instruments/regulations, the main purpose of which is to supplement, administer, support and enforce primary legislation. The secondary legislation-making process is not as complicated as for primary legislation, and passing it is not so time-consuming. Generally, it is made by being signed by a delegated person, usually from the field of expertise of the bill. This is why secondary legislation is generally used to define regulatory provisions that are more likely to evolve over time and therefore require more flexibility on the part of the legislating authority.

Market access regulation

The justification for regulating market access in the postal context stems from the understanding that the postal sector has a significant socio-economic impact that warrants regulatory oversight of some kind. It is assumed that, in the absence of such oversight, undesirable market players that compromise the quality and sustainability of the sector would have free rein to operate, contrary to the sectoral policy objectives that have been defined.

Postal market definition

POLICY OBJECTIVES	→ Support and facilitation of socio-economic development, job creation and poverty reduction. → Encouragement of private sector participation and investment. → Export-oriented MSME participation with linkages to the regional and global economy. → Promotion of fair competition through a level playing field that encourages entrepreneurship and innovation. → Leveraging of technological advancement to enhance the availability and diversity of products and services.
PRIMARY LEGISLATION	At primary legislation level, the recommended approach is to establish, through the appropriate legal text, the legal mandate of the postal regulator to define the postal market from time to time, considering the specificities of the jurisdiction.

SECONDARY LEGISLATION

→ At secondary legislation level, the key considerations, process and requirements for defining the postal market should preferably be outlined through a statutory instrument based on the legal mandate established in the principal act.

→ This statutory instrument/regulations should make provision for the following:

Mailable items:

→ In defining the postal market in the Africa region, the primary consideration should be the actual mailable items whose collection, sorting, conveyance and delivery are the purpose for which the relevant service providers are in operation.

→ The characteristics of the said items and those of the service providers that are partially or fully involved in the processes mentioned above should provide additional parameters for the said market definition as follows:

- Mailable items should be classified as either documents or goods in line with the UPU's Integrated Product Plan (IPP) definition;
- While the overwhelming majority of countries define the postal market to include mailable items that do not exceed the maximum weight threshold of 30 kg, it is recommended that individual jurisdictions be at liberty to define country-specific thresholds that suit their respective market conditions;
- Due consideration should, however, be given to ensuring cross-border interoperability, which is the basis for having an internationally accepted threshold, particularly within the framework of the UPU.

Service providers:

The characteristics of the service providers and their operations should provide additional parameters for defining the postal market, as follows;

a. All entities involved in the collection, sorting, conveyance and/or delivery of mailable items as described above;

b. Entities performing the functions in (A.) occasionally and not as a sustained scheduled service should be excluded from the scope of regulation;

c. Conversely, all entities offering a sustained, scheduled service to the public involving the collection, sorting, conveyance and/or delivery of mailable items should be considered to be part of the postal market and subject to applicable regulation;

d. Entities falling within the scope of the postal market must be proven to accept, convey and deliver mailable items from individual or corporate customers either as single items or in bulk (in which case the combined weight of the items will not be restricted to the 30 kg threshold);

   - This implies that entities that do not accept single-piece or bulk mailable items from individual or corporate customers but consolidate and transport (from point to point) multiple shipments on behalf of other entities offering such services should be considered to be outside the scope of postal regulation and deemed to be providing a logistics service;

e. The entities referred to in B. and C. above should therefore include, without limitation:

   - National or designated public postal operators;
   - Courier service providers;
   - Messenger service providers;
   - Express companies.
   - If they meet the criteria set out above and offer, as part of their business, a service involving accepting, sorting, conveying and/or delivering single-piece or bulk mailable items from individual or corporate customers, the following entities may also be subject to postal regulation under specific circumstances:
     - Integrators;
     - Freight forwarders;
     - E-merchants and/or e-commerce providers that establish their own delivery channels for fulfilment of e-commerce purchases;
     - Public passenger bus companies (provided they also provide parcel delivery services meeting the conditions specified above); and
     - Other transport systems (e.g. Uber and shuttle services, provided that they also provide parcel delivery services meeting the conditions specified above).

Licensing and authorization

POLICY CONSIDERATIONS AND OBJECTIVES

→ Licensing is one of the core elements of the proposed regulatory framework, and it is integrally tied to the structure of such a market.

→ Licensing also determines the degree of competition between operators, revenues earned by governments from fees, and the conditions under which market participants can operate and supply services in the market.

→ An effective, forward-looking licensing framework is essential for the successful deployment of value-maximizing technologies, the promotion of effective competition between operators, and the facilitation of investment in the sector.

→ It also defines what is regulated, who is regulated, and how they are regulated. This is actually the theoretical basis and overarching purpose of licensing.

→ In the light of the above, the following general principles of licensing should be articulated at policy level:

a. Simplicity: In order to ensure that growth of the sector is not held back, the licensing regime must ensure that the process of obtaining the prescribed licence is not complex and does not require the operator to acquire multiple licences for the provision of services in different market segments;

b. Flexibility: The licensing framework must allow operators to be responsive to possible changes that may arise in a dynamic postal sector;

c. Certainty: When a licence is issued to the operator, the regulator is required to issue conditions which should be precise and dependable;

d. Non-discriminatory: The licensing regime should create a level playing field and ensure that all operators are treated equally, fairly and transparently.

In summary, licensing seeks to achieve the following policy and regulatory objectives:

a. Regulating the provision of an essential public service through some controls to support the public interest;

b. Assisting in expanding network coverage and other universal service objectives;

c. Representing a key element in shaping market structure (e.g. number of players);

d. Establishing a competition framework through fair trading conditions;

e. Generating fees as part of revenue-raising for governments and regulators;

f. Supporting consumer protection efforts through mandated licence conditions; and

g. Defining rights and obligations, thereby underpinning regulatory certainty.

PRIMARY LEGISLATION

→ From the perspective of the principal act (primary legislation), Licensing is seen as the primary tool for effecting regulatory intervention because it creates a binding regulatory relationship between the regulator and regulated entities.

→ It is through licences that the government, through the Regulator, is able to issue specific and general conditions that all licensed entities must adhere to in order to advance the desired policy and regulatory outcomes.

→ The principal act should therefore outline the more stable, legal aspects of the licensing process, which should include the following:

1. The legal requirement to obtain an appropriate licence in order to offer a service in the defined market;
   - Confirming that a licence is an official authorization to provide services or operate networks;
   - Defining the terms and conditions under which the licensee may operate;
   - Licenses also describe the rights and obligations of the service provider.
2. The broad categories of licences that may be issued by the regulator in this regard, with a provision for regulatory discretion to define additional licence types if deemed necessary:
   - As is common practice in the regulation of communications and other network industries, the two broad types of licences that may apply to the postal sector are as follows:

Type of licence	Key features/characteristics
Individual licence	→ Issued to a single, named service provider. → Is a customized authorization document. → Contains detailed conditions, obligations and rights.
General/Class licence	→ Where individual licences are not justified. → Regulatory objectives can be achieved through general/standard conditions. → Sets out basic rights and obligations and regulatory provisions of general application to the class of services being authorized. → Granted without a competitive process.

3. Criteria to be considered by the regulator in considering a licence application;
4. Legal recourse for an applicant that is not satisfied with the regulator's licensing decision;
5. The period/duration of the licence by type, if applicable;
6. The legal mandate of the regulator to prescribe licence conditions that may be general (applicable to all licensees in the licence class) or specific in nature (applicable to only one or more specific licensees);
7. The legal requirement to adhere to licence conditions and the consequences of breaching such conditions – penalties, sanctions etc.
8. Legal procedures for the transfer, suspension or revocation of licences;
9. Other legal aspects of the licensing process that are not operational in nature and are expected to remain stable for the foreseeable future.

SECONDARY LEGISLATION

→ At secondary legislation level, also preferably in the form of regulations (statutory instrument), the more detailed, operational aspects of the licensing process and licence requirements should be outlined.

→ These should include the following:

Licence application process:

→ The secondary legislation should outline the prescribed manner and form of a licence application.

→ Secondary legislation should also specify the applicable fees, preferably in a schedule to the main regulations.

- **Licence fees:** As is the case in the wider communications regulatory landscape, the term "licence fee" may have multiple meanings:
  a. It could be a fee paid as a premium or "rent" to a government or regulatory/licensing authority for the right to operate a network or provide a service;
  b. It could also mean an administrative charge to compensate an NRA for the cost of monitoring and managing the operations of regulated entities, including costs incurred for performing typical regulatory functions such as licensing per se, ensuring compliance, resolving interconnection disputes, and other regulatory work.
- **Guiding principles for licence fees:**
  a. Regulators should, as a matter of good regulatory practice, differentiate between the above-listed types of fees in order to improve transparency and make it easier to determine that administrative charges relate to cost-recovery and are actually cost-based;
  b. Furthermore, regulators should, to the furthest extent possible, ensure that administrative fees do not impose unnecessary costs on the postal sector. One possible method of achieving this is to base the licence fees on the projected or actual costs of regulation. Such costs can then be allocated among the licensees and/or other market participants;
  c. Such allocations can then be based on specific factors such as the revenues of the operators in question, the geographical coverage, or simply the licence types as outlined above;
  d. Ultimately, the underlying principle for the application of administrative charges is that these should not act as a barrier to market entry;
  a. Such charges should be distributed in proportion to the gross annual turnover of the relevant (licensed) services of the licensee calculated over the accounting year preceding the administrative charge.

→ Issues such as the period of consideration and communication of outcomes by the regulator should also be specified in secondary legislation.

→ Other operational aspects of the licensing process should also be specified in the secondary legislation at the discretion of the regulator

Further determination of licence categories:

→ While the two broad licence types may be defied in the principal act, the secondary legislation may be more specific in applying additional criteria for the determination of appropriate licence categories.

→ The two main criteria recommended in this regard are: a) geographical coverage; and b) scope of services provided:

- **Geographical coverage:**

For obvious reasons, geographical coverage is the most commonly applied licensing criteria in the postal environment. Service providers may, in this regard, be classified according to geographic boundaries, as follows:

a. Intra-city – where service coverage is limited within the same town/city. This is appropriate for promoting entry of small market players with limited capital investment which may elect to offer a niche messenger-type service within their immediate locality;

b. iInter-city – where service coverage is limited to specific city-to-city links within the domestic market. Such authorizations may be appropriate for service providers with established service routes;

SECONDARY LEGISLATION (Continuation)

c. **Domestic** – where service coverage is restricted only by national boundaries. This is appropriate for service providers with the required national reach and capability but without the necessary international infrastructure to offer a sustainable cross-border service;

d. **International** – where service coverage is unlimited beyond national boundaries;

e. **Regional** – African countries may also individually or collectively issue a regional licence which allows service provision within the region while reducing or eliminating the need for such licensees to be licensed in all the affected jurisdictions.

- **Scope of services provided:**

Licences may also be categorized by the scope of permissible services, within the broad categories already established above, as follows:

a. **Individual licence (national postal operator)**

- In the context of postal sector licensing, reservation must be understood, first and foremost, as one of several funding mechanisms for the universal service obligation (USO). As such, reservation is not, strictly speaking, a licence category, even though it may typically be referred to as such.
- It is therefore recommended that, instead of a "reserved services" licence, preference should be given to the issuance of an individual licence to a designated postal operator (i.e. an operator given the specific mandate of meeting the country's obligations towards the UPU in terms of the USO and other treaty obligations).
- Furthermore, it is in spelling out the rights and obligations associated with such a licence that the following conditions should be defined:
  1. The designation as the DPO and its domestic and international obligations;
  2. The specific products and services to be offered in compliance with the UPU Convention:
     a. The handling, conveyance and deliver of letter-post items, which are:
        i. priority items and non-priority items, up to 2 kilogrammes,
        ii. priority and non-priority small packets, up to 2 kilogrammes,
        iii. items for the blind, up to 7 kilogrammes; and
        iv. special bags containing newspapers, periodicals, books and similar printed documentation for the same addressee at the same address called "M bags", up to 30 kilogrammes;
     b. The acceptance, handling, conveyance and delivery of parcel-post items up to 20 kilogrammes;
     c. Any future variations of these products and services in line with the Integrated Product Plan.
  3. Any special rights that may be associated with the designation, such as the reserved area, universal service funding, exclusivity/monopoly over specific products, infrastructure and/or terminology;
  4. Obligations regarding accountability and reporting of the USO;
  5. The scope of permissible products and services, including those in the competitive, unreserved area of the market.

- **Class licence (commercial courier and value-added services)**

→ Following the same rationale outlined above, a licence for unreserved services may not be appropriate as a future-oriented authorization for the evolving postal market.

→ What is encouraged in its place is a class licence which may encompass the above-listed geographic criteria along with product/service restrictions specifically designed to allow for differentiation from the reserved services.

→ Such product restrictions may, for instance, include mandatory service features for items within the weight threshold of the reserved services, such as track and trace, or proof of delivery (designed to distinguish items from ordinary letters).

→ The class licence issued in this context should also not be prescriptive in terms of the variations of product offerings and technology deployed, to ensure room for innovation and competition.

Economic regulation

The modern approach towards economic regulation sees it as being less about correcting for market failures and more about enabling markets to work more effectively. The purpose of regulatory intervention in this regard is to provide a "visible hand" that seeks to guide service providers towards desirable policy and regulatory outcomes, especially in terms of price, competition, service quality and overall economic efficiency.[12] The proposed regulatory framework entails economic regulation focused on the following areas of regulatory intervention:

POLICY CONSIDERATIONS AND OBJECTIVES

- → In an effectively competitive market, it is the dynamic interplay of several service providers that determines market outcomes, not individual competitors.
- → In a market characterized by dominance, however, the dominant service provider will invariably make decisions that are to its commercial benefit, and which do not advance the economic welfare of consumers.
- → Accordingly, the following policy objectives should be pursued through competition management measures:
  - Promotion of fair competition through a level playing field that encourages entrepreneurship and innovation; and
  - Leveraging technological advancement to enhance the availability and diversity of products and services.

PRIMARY LEGISLATION

- → As a matter of principle, it should be noted that regulatory intervention in terms of competition management is not a forgone conclusion.
- → The market's susceptibility to ex-ante regulation has to be confirmed using some kind of test based on predefined criteria. The proposed methodology in this regard is the so-called three criteria test (3CT) or a variant thereof:
  - Whether there are strong and permanent barriers to entry in the postal market;
  - To what extent the postal market would naturally tend, in the short or medium term, to a level of competition sufficient to protect the interests of customers, even without regulatory intervention; and
  - To what extent an ex-post intervention, in the absence of ex-ante remedies in the same postal market, would be sufficient to address the problems arising from a dominant position in that market.[13]
- → These criteria have to be applied together. If barriers to entry are not long-lasting, and if there is recent evidence of increased competition, if competition is likely to increase in the short and medium term, and if there is any reason to believe that ex-post intervention by the NRA can be effective, then there is good reason for the regulator to refrain from intervening and determining ex-ante remedies for dominant operators.
- → Alternatively, the regulator may choose to monitor the market's evolution to see if it develops towards greater competitiveness.
- → At primary legislation level, therefore, the recommended approach is to establish, through the appropriate legal text, the legal mandate of the postal regulator to carry out the necessary market analyses to monitor the level of competition in the postal market and determine the presence and extent of market dominance.
- → Primary legislation should also grant the regulator the necessary powers to intervene in order to remedy anti-competitive behaviours of service providers either independently, or in collaboration with the duly established national competition authorities. The generic types of remedies applicable for anti-competitive behaviours may also be specified at this level.

12 Essential Services Commission, Victoria, Australia, What is Economic Regulation (accessed 12 April 2023)

13 ITU–World Bank, Digital Regulation Platform, ICT Market Analysis and Determination of Dominance Guidelines, 2022

SECONDARY LEGISLATION	→ It is through the secondary legislation that the regulator's powers to exercise ex-ante measures that seek to address market failures and the sources of potential damage should be operationalized. → In so doing, care must be taken to uphold the following key principles: ▪ Suitability and proportionality: essentially establishes that the means used to achieve a particular purpose must not exceed what is strictly necessary to achieve that purpose; ▪ Effectiveness: obligations must be designed to solve the identified problem efficiently and target specific issues, to avoid unnecessary regulatory burdens for operators. → The recommended secondary legislation (competition regulations for example), must allow the regulator to impose one or more of a number of available remedies to control the possible abuse of that dominance. → The same instrument must also allow the regulator to act to ensure that entry by smaller or new entrants is possible. → The regulations must also allow the remedies to be applied separately or in combination, as the circumstances of the postal market and of the nature and source of dominance requires. → It should therefore be noted that there is no static recipe for any given situation, and no unique linking of competition problems and obligations in order to solve market failures: the appropriate obligation/ remedy will at all times be dictated by the specific problems identified in the postal market.
LICENCE CONDITIONS	→ Regulatory oversight in terms of competition may also be exercised in the form of licence obligations, which may include: ▪ **Transparency obligations:** requiring publication of specified information (accounting information, technical specification, network characteristics, prices etc.); ▪ **Non-discrimination obligations:** to apply equivalent conditions in equivalent circumstances, and not to discriminate in favour of the regulated firm's own subsidiaries or partners; ▪ **Access obligations:** consists of obligations to meet reasonable requests for access or interconnection or use specific network elements. These may cover a range of obligations, including an obligation to negotiate in good faith over terms and conditions of providing access; and/or ▪ **Cost-accounting obligations:** which can require operators to set cost-oriented pricing as a matter of principle.[14] → Within each of these options, there are numerous combinations of how remedies can be imposed. In addition, regulators may impose other licence conditions outside the above list.

Market monitoring and reporting

POLICY OBJECTIVES	→ Support and facilitation of socio-economic development, job creation and poverty reduction.
PRIMARY LEGISLATION	→ At primary legislation level, the recommended approach is to establish, through the appropriate legal text, the legal mandate of the postal regulator to collect and analyze and publish (where appropriate) certain market and performance-related information from licensees, in order have an informed basis for policy and regulatory intervention. → The legal obligation of licensees to provide such information, as well as the consequences for not supplying the same, should also be provided for in the main postal law.
SECONDARY LEGISLATION AND LICENCE CONDITIONS	→ The main mechanism for imposing the reporting obligation on licensees is through a licence condition which is itself supported by secondary legislation.

14 International Telecommunication Union (ITU)-World Bank, Digital Regulation Platform, ICT Market Analysis and Determination of Dominance Guidelines, 2022

Investment promotion

POLICY OBJECTIVES

- Even before the private sector makes an investment decision to commit capital, the policy and regulatory environment is a key tool to create stability, reduce risk and lower implementation costs for both supply-side projects related to infrastructure rollout and demand-side programmes that stimulate adoption and use.
- Policymakers and regulators are also responsible for putting in place incentives to encourage private investment through sound policy and institutional frameworks.
- Although domestic firms are by far the largest investors in developing and transition economies, foreign investors are also sought after for their technology, skills and expertise, and for their access to international markets.
- Given that the postal sector potentially has a significant socio-economic impact, it is a legitimate government objective to actively promote private sector investment (both foreign and local) in the sector.
- While investment promotion predominantly takes place under the auspices of investment agencies that are mandated to provide a number of inducements to both domestic and foreign investors across the economy, the benefits of sector-specific regulators intentionally and formally collaborating with such agencies to promote investment in those sectors cannot be overlooked.
- The broad policy objectives of such interventions in the postal sector context include, but are not limited to:
  - **Reducing uncertainty:** Investment may be temporarily withheld when there is uncertainty about the size and scope of new regulatory initiatives. This is particularly true for investments that cannot be easily reversed;
  - **Enhancing overall competitiveness:** Regulations also can affect jobs by forcing new investment to move to other jurisdictions where the investment is subject to less onerous regulations;
  - **Managing market entry barriers:** Regulations that impose large start-up costs on businesses, such as excessive licence fees, may prevent new firms from entering an existing industry, which can reduce competition in that industry;
  - **Incentivizing re-capitalization:** It is generally an undesirable state of affairs when firms must reallocate resources, including new recruitments, in order to comply with regulatory requirements. This is because resources used to comply with regulations will not be utilized for investment.
- In line with the broad policy objectives that have been identified for this framework, therefore, investment promotion falls squarely under the support and facilitation of socio-economic development, job creation and poverty reduction.

PRIMARY LEGISLATION

- At primary legislation level, the recommended approach is to ensure that the following legal guarantees are adequately provided for existing and potential licensees either in the principal postal law or in conjunction with other relevant pieces of legislation that affect all business establishments, regardless of the sector:
  - protection of property;
  - protection of contractual rights;
  - effective enforcement mechanisms;
  - access to efficient dispute settlement mechanisms.
- When procedures for establishing investments, operating businesses and enforcing contracts are perceived as cumbersome and lacking predictability, this tends to deter investment, and it is these negative perceptions that must be addressed through the inclusion of appropriate legal safeguards at the statute level.[15]

15 OECD, Towards Modernized Legislative Frameworks for Investment, 2024

SECONDARY LEGISLATION AND LICENCE CONDITIONS

- At secondary legislation level, it is uncommon to have any specific provisions that directly relate to investment promotion. It is, rather, the combination of provisions from other areas of regulatory oversight – licensing, market monitoring, price and tariff regulation, etc. which will collectively contribute towards the overall investment climate in the postal sector.
- At the end of the day, what matters most is the coherence of the wider legal environment, the application of the rule of law, and the clarity of the wide range of legal instruments that apply in a given jurisdiction. [16]

Investment promotion

POLICY CONSIDERATIONS AND OBJECTIVES

- There is generally strong justification for the regulator to intervene in the regulation of tariffs if the market is arranged around a designated postal operator's universal service obligation. Such intervention would primarily seek to advance affordability and uniformity in accordance with the USO criteria.
- Even in the competitive area of the market, where competition would normally be expected to "take care" of tariffs, it is the level of development of the market that determines the effectiveness of market forces in ensuring fair pricing.
- In the light of the above, the ideal policy environment for effective regulation of postal tariffs is, therefore, one which recognizes the role and objectives of sector-specific regulation, that of general competition regulation, and how the effective interplay between these two legal frameworks can bring about the desired effects in the pricing of both universal services and services in the competitive area of the market.
- In so doing, the policy framework must establish some broad or specific policy objectives that will provide guidance in terms of the regulatory measures to be considered and the pricing decisions to be made by regulated entities. These policy objectives may include the following:
  - Affordability of universal services;
  - Uniform pricing of applicable (USO) products or services;
  - Promoting the competitiveness and financial viability of the DPO; and
  - Promoting cost-orientation of prices in the sector.
- Accordingly, the main policy objectives pursued under price/tariff regulation lean towards:
  - Support and facilitation of socio-economic development, job creation and poverty reduction; and
  - Promotion of fair competition through a level playing field that encourages entrepreneurship and innovation.

PRIMARY LEGISLATION

At primary legislation level, the recommended approach is to establish, through the appropriate legal text, the legal mandate of the postal regulator to regulate the pricing of universal services as well as the appropriate level of regulatory oversight in terms of pricing of non-universal services.

- The following approaches for such intervention may be provided for under the primary legislation:
  - **Ex-ante approval:** allows the regulator to establish and approve a cost accounting system and allocation regime that would give assurance that all the operator's costs relating to regulated services are clearly identifiable and consistent with the approved cost accounting system;
  - **Ex-post price control:** allows the regulator to investigate whether prices match the relevant costs or other standards;
  - **Accounting control:** allows the regulator to progressively compel the DPO to organize its internal accounting systems in a manner which separates accounts for USO and non-USO products and services;
  - **Compulsory provision of information:** as alluded to above, such primary legislation may also allow the regulator to take full advantage of regulatory provisions that require regulated entities to provide cost and pricing information for market-monitoring purposes.

16 OECD, Towards Modernized Legislative Frameworks for Investment, 2024

SECONDARY LEGISLATION AND LICENCE CONDITIONS	→ The purpose of secondary legislation and licence conditions in this case should be to operationalize the general approaches that have been provided for under the principal law. → This should include the actual procedures for notifying the regulator about tariff proposals as well as the associated timelines for consideration and approval where applicable.

Investment promotion

POLICY CONSIDERATIONS AND OBJECTIVES	→ In a multi-operator postal market, governments need to consider the extent to which regulation should foster cooperation and interoperability among postal operators. → This entails putting in place regulatory measures to facilitate mutually beneficial access to, and interconnection of, postal/courier service networks under transparent, proportional and non-discriminatory conditions. → Accordingly, the main policy objectives should include: ▪ Promotion of fair competition through a level playing field that encourages entrepreneurship and innovation; ▪ Encouragement of private sector participation and investment; ▪ Export-oriented MSME participation with linkages to the regional and global economy; and ▪ Leveraging of technological advancement to enhance the availability and diversity of products and services.
PRIMARY LEGISLATION	→ At primary legislation level, the recommended approach is to establish, through the appropriate legal text, the legal mandate of the postal regulator to have an appropriate level of regulatory oversight in terms of interconnection and network access. → The law should accordingly allow the regulator to define the following: ▪ What constitutes interconnection and access in the postal sector context; ▪ The guiding principles for such interconnection; ▪ Conditions for access to the DPO's network; ▪ The rules applicable to negotiated commercial agreements; ▪ The rules applicable to interconnection and access pricing ▪ Procedures for dispute resolution; and ▪ Regulation of extraterritorial offices of exchange.
SECONDARY LEGISLATION AND LICENCE CONDITIONS	→ The purpose of secondary legislation and licence conditions in this case should be to operationalize the general approaches that have been provided for under the principal law.

Consumer protection

As alluded to above, consumer protection is a primary focus area for postal sector regulation, and the proposed regulatory framework accordingly addresses this issue under three sub-headings: quality of service; liability and compensation; and complaint management and redress. This section also identifies and addresses some additional roles and responsibilities of the postal sector regulator in exercising its consumer protection mandates.

Quality of service regulation

POLICY OBJECTIVES	→ Responsiveness of postal products and services to consumer needs and expectations. → Promotion of fair competition through a level playing field that encourages entrepreneurship and innovation. → Leveraging technological advancement to enhance the availability and diversity of products and services.
PRIMARY LEGISLATION	→ In order for quality of service standards and targets to be enforceable, legal provisions are required to firstly empower the regulator to monitor and measure QoS through appropriate means, set the standards and targets, and oblige service providers to adhere to them. → Ideally, this mandate should emanate from the principal act and thereafter be operationalized using the applicable secondary legislation and licence conditions. → The applicable penalties for breaching the set standards must also be clearly articulated in accordance with the instruments used.
SECONDARY LEGISLATION AND LICENCE CONDITIONS	→ The purpose of secondary legislation and licence conditions in this case should be to operationalize the general approaches that have been provided for under the principal law. → Accordingly, the secondary legislation should specify: ▪ the minimum applicable quality of service standards and targets for domestic and international services; ▪ requirements for service providers to publish or clearly communicate applicable standards to consumers. → Through licence conditions, the service providers should be compelled to adhere to the set standards and targets and to establish means for resolving shortcomings that adversely affect consumers.

Liability and compensation

POLICY OBJECTIVES	→ Responsiveness of postal products and services to consumer needs and expectations. → Promotion of fair competition through a level playing field that encourages entrepreneurship and innovation. → Leveraging technological advancement to enhance the availability and diversity of products and services.
PRIMARY LEGISLATION	→ The allocation of risk and liability must be commensurate with the level of responsibility assumed by the parties (sender, service provider and receiver), and allow for fair compensation in case of poor performance of the service in question. → Primary legislation should therefore empower the regulator to compel all licensees to establish and conspicuously publish the terms and conditions of services as well as the liability and compensation rules and processes. → Where a service provider do not have such schemes in place, the law must allow the regulator to establish and enforce minimum mandatory requirements.

SECONDARY LEGISLATION AND LICENCE CONDITIONS	→ In order to operationalize the regulatory authority provided for under the principal act, secondary legislation should be used to specify the following requirements: ▪ Obligations of the sender, service provider, receiver and any third parties involved in the acceptance, process, conveyance and/or delivery of the postal items in question; ▪ Rules for the determination of liability; ▪ Rules for the determination of compensation where the actual value of the goods is totally unknown; ▪ Default rules on delay, in the event that a contractual stipulation is missing; ▪ Explicit rules on liability in the event of wrongly executed delivery; ▪ Rules for basing compensation on the consumer's price; ▪ A limit to liability both in case of loss or damage, as well as in cases of delay, to enable service providers to easily predict the liability exposure; ▪ Rules obliging postal and courier operators to: - deliver goods in good condition; - deliver them at an agreed place; and - deliver them within the agreed timeframe or period.

Complaint management and redress

POLICY OBJECTIVES	→ Responsiveness of postal products and services to consumer needs and expectations. → Promotion of fair competition through a level playing field that encourages entrepreneurship and innovation.
PRIMARY LEGISLATION	→ Similar to liability and compensation, primary legislation should empower the regulator to compel all licensees to establish and maintain complaint management and redress mechanisms and to conspicuously communicate these to consumers. → An additional requirement may be the filing of such procedures with the regulator. → Once again, where service providers do not have such mechanisms in place, the law must allow the regulator to establish and enforce minimum mandatory requirements.
SECONDARY LEGISLATION AND LICENCE CONDITIONS	→ In order to operationalize the regulatory authority provided for under the principal act, secondary legislation may specify the following requirements: ▪ Standard features of a complaint management and redress system; ▪ Rights and obligations of consumers; and ▪ Consequences of non-compliance.

Best practices in consumer protection

As alluded to above, postal sector regulators have additional roles and responsibilities when it comes to consumer protection. This is in pursuit of the ultimate aim of promoting and protecting the interests of consumers in instances where market forces alone cannot not deliver the best outcome. In this regard, it is recommended that regulators adopt the following best practices:

Figure 10: **ITU-World Bank, Best Practices in Consumer Protection (Adapted from Digital Regulation Platform, Consumer Requirements for Regulators, 2020)**

INCULCATING A CONSUMER PROTECTION-ORIENTED ORGANIZATIONAL CULTURE:

- Having a corporate vision and strategic plan in which consumer interest is embedded;
- Board membership with consumer protection expertise;
- Culture and values that ensure consumer interests run through the behaviour and everyday ways of working.

PROVIDING CLARITY TO ALL STAKEHOLDERS REGARDING DESIRABLE CONSUMER OUTCOMES:

- Access for all, including disabled people and consumers in vulnerable positions;
- Clear, simple, accurate and understandable information about products and services;
- Fair marketing practices, where necessary curbing pressure selling/misleading advertising;
- Effective choice for consumers between providers competing to offer better products and services at a better price, with the ability to switch easily;
- Fair pricing and contracts with no hidden costs;
- Consumer interests considered in infrastructure deployment;
- Quality delivered to agreed or contracted standards and good quality outcomes which are responsive to consumer needs;
- Protection from harm so that products and services that cannot be used safely cannot be sold;
- Resolution of individual complaints quickly and fairly by regulated firms, and access for consumers to an independent mechanism for resolving disputes which is free to the consumer.

MAINTAINING A PROACTIVE CONSUMER PROTECTION POSTURE:

- Identifying risks, scanning the horizon using consumer insight and intervening early to prevent problems emerging and spot when things are going wrong;
- Creating the right incentives for the market to work well for consumers;
- Ensuring that data is published to allow consumers to compare performance of providers, for example on complaints;
- Working closely with other regulators to maximize consistency of approach and share best practices, including on enforcement;
- Ensuring formal engagement with consumer welfare bodies through regular dialogue and research to understand consumer views and behaviour in the development of policy and regulatory interventions;
- Ensuring compliance with licence conditions and other rules through investigations and effective enforcement backed by legal powers, imposing penalties on firms where rules have been breached, and securing redress for consumers who have been adversely affected – including compensation where appropriate.

BEING TRANSPARENT AND ACCOUNTABLE TO CONSUMERS:

- Working openly, consulting and reporting regularly on their performance in achieving consumer outcomes;
- Providing a readily accessible channel for feedback and complaints about the regulator;
- Using language that ordinary people can understand.

Universal access and service regulation

The concept of a single global postal territory and the human right to communication place an obligation on governments to offer basic postal services to all citizens. Article 3 of the Universal Postal Convention obliges all members of the UPU to ensure that all postal consumers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices. With this aim in view, member countries are required to set forth, within the framework of their national postal legislation or by other customary means, the scope of the postal services offered and the requirement for quality and affordable prices, considering both the needs of the population and their national conditions. As signatories to the UPU Acts and the inherent treaty obligations, governments are obliged to place the fulfilment of the universal service obligation at the core of their national postal sector policies and strategies.

What this means in practice is that governments must guarantee that a certain mix of postal products and services are provided to all their citizens, regardless of their geographic location and socio-economic status. It is also recommended that the mix of products and services reflect the evolution of the sector and the changing needs of consumers.

The use of a designated postal operator to fulfil this government obligation has been the preferred model in most jurisdictions, and is recommended for the Africa region as well. By its very nature, however, the USO requires adherence to the principles of uniformity, affordability, accessibility and a defined service quality which it may not always be financially viable to deliver to all segments of the population, especially when the pricing of such services is not appropriately reflective of the costs.

So, African governments need to examine thoroughly how responsibilities can be effectively delegated to their DPOs to ensure that the USO can be provided on a sustainable basis[17]. This means that the whole concept of the USO needs to be adapted to the evolving postal market dynamics of each country while pursuing a harmonized regional approach to the key components such as its definitions and composition, policy and regulatory framework, as well as the costing and funding mechanisms.

It also means that particular attention needs to be given to the actual determination of the USO costs and how these are to be supported through the appropriate financing mechanisms as suggested below. From the regulatory perspective, NRAs may consider measures to encourage and progressively compel DPOs in particular to organize their internal accounting systems in a manner which separates accounts for USO and non-USO products and services.

17 Guaranteeing the sustainability of the USO entails governments making a formal commitment to finance the USO through appropriate mechanisms that reflect the situation in the individual member country.

Universal access and service regulation

POLICY CONSIDERATIONS AND OBJECTIVES

→ When it comes to this area of regulatory oversight, the national policy may draw reference from the UPU Convention, national developmental strategies and the UN Sustainable Development Goals.

→ The policy may also point to the institutional relationships around which the USO will be built, including the concept of a DPO, the socio-economic objectives of the USO, the broad accessibility aspirations, financing of the USO, and the arrangement of the market to cater for both competitive and non-competitive elements.

→ Ultimately, though, it is the government's commitment towards guaranteeing the permanent provision of basic postal services throughout the country at affordable prices that must be enshrined as the cornerstone of the national postal sector policy by defining specific terms and parameters, including:

a. **Underserved** – regions with little or no postal service provision within the accessible area;
b. **Unserved (sub-serviced)** – regions where there is no postal service provided;
c. **USO** – a collection of requirements that ensure all that consumers receive postal services of the required quality at a reasonable price;
d. **Universal postal service fund** – a fund that will help finance the costs of distributing services to populations with low income and regions that do not yield high returns. It is recommended that a common fund for the communications sector (telecommunications, broadcasting and postal) be considered in this regard, as opposed to a sector-specific fund. The fund may finance projects aimed at improving the quality of inbound letter-mail flows, or extending other services (financial, government or even courier services) to underserved areas, thereby making national postal services accessible throughout the jurisdiction;
e. **Universal postal service** – provision of postal services of quality at all points of the national territory by the designated operator, aiming to satisfy the communication needs of the population and public and private entities in the development of economic and social activities;
f. **Target population** – a selected group that is identified as the intended recipient of something;
g. **Value-added services** – enhancements made to postal services; and
h. **Inclusivity** – ensuring that postal services are accessible to all population groups including women, young people, the elderly, displaced persons and people with disabilities.

Drawing from the common policy objectives that are linked to the Agenda 2063 Aspirations, the following are specifically relevant here:

i. Promote postal products and services that are responsive to consumer needs;
ii. Develop a postal sector that supports and facilitates socio-economic development, job creation and poverty reduction;
iii. Utilize the postal sector to promote the socio-economic empowerment of women and young people.

PRIMARY LEGISLATION

→ Following the establishment of broad policy objectives on universal postal service in the national postal policy as described above, member states should ensure that the stable elements of the concept are clearly provided for within the primary postal legislation, including the power of the regulator to:

- Define the scope of the USO;
- Compel the USO provider to introduce, maintain and/or adhere to cost accounting principles and systems;
- Determine the USO financing mechanisms and the obligations of all licensed operators towards the process;
- Set USO targets and monitor adherence thereto;
- Determine and implement the licensing or designation process for the universal postal service provider;
- Determine any access interconnection requirements for the furtherance of the USO; and
- Set sanctions for breaching any of the USO requirements.

SECONDARY LEGISLATION AND LICENCE CONDITIONS

→ While the specific elements of the USO listed above may be sufficiently stable to be included in the postal law, member states should ensure that sufficient flexibility is still provided within the legal framework to accommodate national conditions and the evolution of the USO with both technology and changing consumer needs.

→ These detailed elements should be defined in secondary legislation including regulations, rules, guidelines, and similar instruments through which the detailed description of the USO may be established.

→ The secondary legislation may set out the USO definitions to include the following components:

- **Basic postal services:**
  - All member states should maintain the following minimum standard which ensures compliance with the UPU Convention:
    - » priority items and non-priority items up to 2 kg;
    - » letters, postcards, printed papers, and small packets up to 2 kg;
    - » items for the blind up to 7 kg;
    - » special bags containing newspapers, periodicals, books, and similar printed documentation for the same addressee at the same address called "M bags" up to 30 kg; and
    - » postal parcels up to 20 kg.
- **Additional services – national discretion:**
  - Member states should be at liberty to include additional services based on national needs and conditions to ensure that the USO meets the evolving policy objectives;
  - Additional services, in this regard, may include:
    - » Financial services such as pension payments and money orders;
    - » Specific government services; and
    - » Courier services.
  - Ultimately, member states will be required to determine the best composition of services to fulfil the USO, bearing in mind the scope of the postal services already being offered.
- **Licence conditions:**
  - In order to introduce even further flexibility for the regulation of the USO, member states should consider incorporating the USO elements that are most susceptible to change in the licence regime for the universal service provider.
  - These elements may include:
    - » Quality of service targets;
    - » Accessibility targets;
    - » Delivery obligations;
    - » Cost accounting obligations;
    - » Affordability and price uniformity obligations;
    - » Network expansion targets.

Technical regulation

Technical regulation involves the establishment, application and implementation of compulsory requirements for service providers including processes, procedures, services and personnel; as well as the systematic assessment of compliance with the required. The regulation of Postal Security and Integrity therefore falls within this category as outlined below.

Postal security and integrity

POLICY OBJECTIVES	→ From the common policy objectives that are linked to the Agenda 2063 Aspirations: i. Encourage development of innovative postal solutions that leverage technological advancements. ii. Ensure responsiveness of postal products and services to consumer needs and expectations.
PRIMARY LEGISLATION	→ Enhanced postal security and integrity requires the day-to-day practice of postal security and integrity by all service providers, consistent with sound principles. → The basic building blocks for postal security and integrity at the operational level include management approaches and activities which are consistent with international best practices. → The purpose of primary legislation in this context will be to empower the regulator to determine the requirements for ensuring postal security and integrity from time to time, if necessary in collaboration with other relevant authorities. → This is particularly relevant in the context of cybersecurity, which has become an important parameter of postal security. → The law should further empower the regulator to monitor compliance to the requirements through appropriate means. → The primary legislation should also specify the consequences for breaching such requirements.
SECONDARY LEGISLATION AND LICENCE CONDITIONS	→ The purpose of secondary legislation and licence conditions in this case should be to operationalize the general approaches that have been provided for under the principal law. → Accordingly, the secondary legislation and licence conditions should specify the required operational practices to enhanced postal security including: ▪ Mandatory, periodic risk assessment; ▪ Centralization of mail operations; ▪ Physical layout of mail processing facilities; ▪ Requirement for documented security rules and procedures; ▪ Physical security measures and access controls; ▪ Requirement for dedicated security personnel; ▪ Screening procedures; ▪ Training and capacity-building; ▪ Cybersecurity and data protection measures.

Promotion of innovation and technological advancement

POLICY CONSIDERATIONS AND OBJECTIVES

→ Regulators no longer have the luxury of being reactive to technological advancements in the postal sector. They are expected to be proactive – not only anticipating innovations, but also encouraging them where necessary.

→ Regulators are further expected to protect consumers from the negative effects of technological advancements while helping to catalyze the uptake of technology by the regulated industry in order to enhance service delivery.

→ This dual regulatory role often creates strategic tensions between the consumer protection mandate and the innovation/technological advancement promotion mandate.

→ Such tensions can be greatly mitigated through clear policy guidance that:

- Seeks to clarify the risks associated with new technologies;
- Incentivises technological research and innovation;
- Streamlines the regulatory process for experimental service offerings; and
- Promotes the development and adoption of industry standards.

→ Ultimately, the key policy objective to be pursued in this regard is that of leveraging technological advancement to enhance the availability and diversity of products and services.

PRIMARY LEGISLATION

→ At the level of primary legislation, the recommended approach is to ensure the inclusion of sufficient legal flexibility for the regulator to catalyze technological innovation in the postal sector in the following areas:

- The law should allow the regulator to deploy several regulatory tools and mechanisms such as sandboxes and accelerators to not only protect consumers but also create a conducive environment for new technologies and business models in the postal industry;
- The law must also empower the regulator to deploy agile, flexible regulatory interventions and instruments such as guidelines and technical standards that can rapidly adapt to new business models;
- The law must also deliberately allow the regulator itself to acquire, develop and deploy technology in the exercise of its mandate;
- The law may also allow the regulator to incentivize technological innovation through a combination of direct or indirect interventions.

SECONDARY LEGISLATION AND LICENCE CONDITIONS

Secondary legislation and licence conditions should accordingly be used to give operational effect to the provisions of the principal law in relation to the promotion of technological advancement and innovation in the postal sector, as outlined above.

Supply-chain stakeholder considerations

POLICY CONSIDERATIONS AND OBJECTIVES	→ While the influence of postal sector regulators may be limited insofar as certain supply-chain stakeholders are concerned, they do still have a regulatory duty to pursue collaboration with other regulatory authorities that have direct control over such elements of the supply chain, including: i. Civil aviation authorities (regulators of commercial air transportation); ii. Customs authorities; iii. Trade facilitation agencies; iv. Financial sector regulators; v. Competition and consumer protection authorities; vi. State security agencies. → From the policy perspective, what is required is the formal recognition that other sectors have a direct impact on the functioning of the postal sector and regulatory collaboration has to be provided for at the highest policy-making level in order for it to be expressed in law and regulations. → From the policy objectives suggested pursuant to the Agenda 2063 Aspirations, the following are particularly relevant: i. Capacitate the continental postal network to enhance the provision of postal trade facilitation solutions across the length and breadth of the cross-border trade value chain; ii. Continue to recognize, integrate and promote the role of the sector in the implementation of the AfCFTA.
PRIMARY LEGISLATION	Primary legislations should simply provide for regulatory collaboration and empower the regulator to seek out and establish formal working arrangements with other relevant authorities in order to ensure the proper functioning of the postal sector.
SECONDARY LEGISLATION AND LICENCE CONDITIONS	The purpose of secondary legislation and licence conditions in this context should be to operationalize the general approaches that have been provided for under the principal law, including the obligation of licensees to comply with regulatory interventions that have been collaboratively arrived at and enforced.

Network resilience

POLICY CONSIDERATIONS AND OBJECTIVES	→ The need for regulatory oversight in the area of network resilience is relatively new in the postal sector. It is motivated by the sector's current threat environment in which both natural and manmade disasters have the potential for causing catastrophic losses and disruptions to a sector that is acknowledged to have a significant socio-economic impact. → In this regard, regulatory oversight is meant to enhance the capabilities of postal and courier service providers to anticipate, mitigate and recover from such disasters, thereby increasing the sector's overall resilience and contribution to national development. → More specifically, from the common continental policy objectives above, the development of innovative postal solutions that leverage digital technological advancement is certainly relevant.
PRIMARY LEGISLATION	→ Similar to the provisions relating to postal security and integrity, the primary legislation will seek to empower the regulator to determine the requirements for ensuring that the postal network remains resilient in the face of natural or man-made disasters, if necessary in collaboration with other relevant authorities. → The law should further empower the regulator to monitor compliance to the requirements through appropriate means; and should also specify the consequences for breaching such requirements.
SECONDARY LEGISLATION AND LICENCE CONDITIONS	→ The purpose of secondary legislation and licence conditions in this context should be to operationalize the general approaches that have been provided for under the principal law, including the obligation of licensees to comply with regulatory interventions that have been collaboratively arrived at and enforced. → The combination of secondary legislation and licence conditions may, for instance, compel all licensees to have documented procedures for business continuity. → Where appropriate, requirements may be drawn up for the resilience of critical physical assets such as sorting facilities and data centres.

CONCLUSIONS

In line with the purpose of the mission, the formulation of a comprehensive regulatory framework for postal markets in the Africa region (inclusive of all relevant market players) has been achieved and presented herein. The proposed framework provides a guide for the relevant authorities in the respective jurisdictions to establish the required legal mandate for postal sector regulation and to utilize this legal mandate to establish the necessary systems for effective regulatory intervention. In so doing, the proposed framework not only provides guidance regarding the underlying policy considerations, objectives and priorities for regulatory intervention in the postal sector, but also outlines the purpose, nature and suggested content of key regulatory instruments, including the primary and secondary legislation which collectively make up the legal framework for sector regulation.

The proposed framework also deliberately leaves room for the targeted authorities to exercise their own discretion and adapt the guidance to reflect the specificities of their respective jurisdictions, while maintaining the core principles and best-practice approaches that should be considered in the process.

In terms of further work, the author recommends the development of regional model regulatory instruments including, but not limited to, a model postal law for the Africa region, and model regulations for key regulatory aspects such as market definition and licensing, and economic regulation in general, as there is evidently a strong will to seek regulatory harmonization across the continent. In the absence of such model instruments, it is recommended that the individual African countries utilize this proposed framework to develop the necessary instruments at national level within the shortest possible time.

REFERENCES

African Union, Second Continental Report on Implementation of Agenda 2063, February 2022

Essential Services Commission, Victoria, Australia, What is Economic Regulation (accessed 12 April 2023)

ITU–World Bank, Digital Regulation Platform, ICT Market Analysis and Determination of Dominance Guidelines, 2022

ITU–World Bank, Digital Regulation Platform, Consumer Requirements for Regulators, 2020

OECD, Broadband Policies for Latin America and the Caribbean, 2016

OECD, Towards Modernised Legislative Frameworks for Investment, 2024

Pan African Postal Union (Claude Defoundoux), African Postal Sector Directive, 2019

Report on Mapping of Postal Sector and Regulatory Agencies in Africa (Haruni Lemanya, 2023)

Schwartz, T. and Satola; Telecommunications legislation in transitional and developing economies. World Bank Technical Paper No. 489, 2000

Southern African Development Community (SADC) Postal Sector Regulatory Guidelines for:

- Postal market definition and licensing;
- Postal costs and tariff regulation;
- Postal e-commerce and trade facilitation;
- Universal postal service and access regulation;
- Postal quality of service regulation;
- Postal interconnection and network access;
- Postal security and integrity.

S.V. Berg, A.N. Memon, R. Skelton, Public Research Utility Centre, University of Florida, Designing an Independent Regulatory Commission, 2000

UPU Development and Cooperation Directorate, Proposed postal sector regulatory framework – Arab region, 2023

UPU Regional Development Plan for the Africa region, March 2022

UNIVERSAL POSTAL UNION
Development and Cooperation
Directorate
International Bureau
Weltpoststrasse 4
3015 BERNE
SWITZERLAND

Tel: +41 31 350 31 11
E-mail: dcdev.office@upu.int

Design – UPU

© Universal Postal Union – November 2024