



Bringing affordable telecommunications services to Uganda

A policy narrative and analysis¹

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¹This report was written as a part of APC's Communication for influence in Central, East and West Africa (CICEWA) project, which is meant to promote advocacy for the affordable access to ICTs for all. CICEWA seeks to identify the political obstacles to extending affordable access to ICT infrastructure in Africa and to advocate for their removal in order to create a sound platform for sub-regional connectivity in East, West and Central Africa. This was possible thanks to Canada's International Development Research Centre (IDRC).

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Preface

The landing of undersea telecommunications cables on the east coast of Africa in 2009 – starting with Seacom and The East African Marine System (TEAMS) and to be followed in 2010 by the Eastern Africa Submarine Cable System (EASSy) – creates an important opportunity for the countries of East Africa to develop affordable broadband access to the internet for all.² A 2009 World Bank report has analysed the impact of broadband on growth in 120 countries from 1980 to 2006, showing that each 10 percentage points of broadband penetration results in a 1.21% increase in per capita GDP growth in developed countries, and a 1.38% increase in developing countries. Investing in broadband is an investment in economic growth and development.³

However, this opportunity takes place against a backdrop of the implementation of telecommunications reform policy over the last fifteen years that has shaped the environment into which the new bandwidth will arrive. It is important to understand this history and some of the problems that occurred in the implementation of telecom reform policy so as not to repeat them in the era of broadband internet access. This is the approach of the CICEWA project, with its emphasis on “communications for influence”, linking advocacy, dissemination and research by building information and communications technology for development (ICTD) networks in Central, East and West Africa.

The project’s overall objectives are:

- To conduct research that will identify obstacles to universal affordable access to broadband ICT infrastructure in a number of countries and sub-regions in East, Central and West Africa.
- To develop two sub-regional ICT policy advocacy networks that will disseminate research and undertake advocacy on ICTD and access to infrastructure at the sub-regional level.

CICEWA coordinated research in Kenya, Rwanda and Uganda. In each case the research sought to investigate the history of communications policy and pointed to a number of problems arising in the way in which policy had developed, been implemented and was currently impacting on the goal of universal affordable broadband at the level of content and infrastructure. The researchers emphasised different dimensions of the policy outcomes, and took different approaches to their research task, given their fields of expertise and interest. As a result, the reports are different in structure and methodology – however, they all provoke the question central to the CICEWA project: What learning lessons does the policy narrative of a country hold for today?

With the arrival of high-speed cables, East Africa is moving towards a single market in communications. This will require greater policy and regulatory harmonisation at the national and regional level and a willingness to create forums to debate the best way of doing this. We hope that the research will contribute to this process by highlighting some of the problems that have arisen that will impact on the new converged broadband environment in a single East African community.

² www.seacom.mu/intro.html, [en.wikipedia.org/wiki/TEAMS_\(cable_system\)](http://en.wikipedia.org/wiki/TEAMS_(cable_system)), www.eassy.org

³ The World Bank Information and Communications for Development 2009: Extending Reach and Increasing Impact (Washington D.C.: The World Bank, 2009) go.worldbank.org/NATLOH7HV0

1. Introduction

The liberalisation of Uganda's telecoms sector came with a string of policy, regulatory and political failures, particularly related to the privatisation of the incumbent Uganda Posts and Telecommunications Corporation (UPTC), which led to the formation of Uganda Telecom (UTL). Delays in privatising UPTC (from now on referred to in most instances as UTL), the failure to attract the desired numbers and profile of bidders for the operator at divestiture, and the institution of a duopoly on national telecoms provisioning all subtracted from the success of the liberalisation programme. In spite of these failures, with strong demand for services, and well-managed new telecoms operators, from around 2002 the fate of ICT developments in the country began to improve markedly by some measures.⁴

This report analyses the challenges faced by the Uganda telecommunications sector in creating a healthy market structure, encouraging efficient and affordable services, and delivering services to the poor. It is divided into three parts. Part 1 offers a historical review of the UTL privatisation process. It suggests that the process faced several challenges that can serve as learning experiences, including false starts in the process, frequent changes in shareholding at the operator, and its poor management, all of which fed into a drain on the operator's profitability.

Part 2 of the report considers current telecommunications problems and threats to profitability and affordability, while Part 3 offers recommendations for stimulating quality affordable access in Uganda, based on the reflections in the first two sections.

⁴ For instance, telecommunication services, which only used to be available in Kampala and major towns, spread to cover a larger part of Uganda; monthly cellular access fees were scrapped; tariffs fell significantly; the number of operators grew (five were operational in the mobile segment by early 2009); and teledensity increased.

2.The privatisation of UTL: A historical review

2.1. International Monetary Fund-driven policy changes

Uganda is a land-locked country in East Africa, with a population of 31 million people. More than 80% of the population lives in rural areas. The per capita income is low at USD 340, and a third of the people live below the poverty line. The country is heavily reliant on agriculture, with growth in the manufacturing industry constrained by power shortages. Only 6% of Ugandans are connected to the national electricity grid, and power cuts are frequent.

In 1987, a year after President Yoweri Museveni's National Resistance Movement came to power, Uganda embarked on a programme of macroeconomic adjustment and structural reform, with support from the International Monetary Fund (IMF) and the World Bank. The liberalisation of the telecoms sector was part of the broader structural adjustment, and the privatisation programme was championed by the IMF and the World Bank.

According to the country's Public Enterprises Reform and Divestiture Statute of 1992, UTL falls under "class III" enterprises. These are the entities from which the government was supposed to divest 100%. With funding from the World Bank's International Development Association, Uganda began implementing the Privatisation and Utility Sector Reform Project, under which UTL was privatised in 1998.

The privatisation programme was anything but smooth, particularly during the earlier times and – more crucially – in the period just before the completion of the privatisation of UTL in mid-2000. There were widespread accusations of corruption, with critics charging that enterprises were undervalued and sold to cronies of government officials, or companies that they fronted. This forced two halts to the programme, both in 1998. A parliamentary inquiry led to the censure of Matthew Rukikaire, the minister for privatisation, and Sam Kutesa, a minister and close confidant of President Museveni, whose firm had irregularly acquired the shares of state-owned Uganda Airlines. In addition, Caleb Akandwanaho, a brother to President Museveni, who was also a former army commander, resigned his parliamentary post after fraudulently acquiring the country's biggest commercial bank, Uganda Commercial Bank.

At the time, the World Bank noted these and other serious flaws in the privatisation programme. It said a number of privatisation transactions had been unsuccessful and "the program has been widely criticised for non-transparency, insider dealing, conflict of interest and corruption."⁵ Besides this, the Privatisation Unit, the agency responsible for carrying out privatisation, was unable to collect many outstanding payments for firms which were sold on a deferred payment basis, and questions had been raised about the use of the funds in the divestiture account. Once parliament concluded a review of the programme, it made public its report which was debated in parliament. Subsequently, a new divestiture procedure manual, which sought to improve transparency in the reform process, was launched in May 1999 and amended in 2000.

⁵ The World Bank Recommendations for Strengthening the Government of Uganda's Anti-corruption Program (1998) www.u4.no/themes/uganda/donordocs.cfm

2.2. The Communications Act of 1997

The liberalisation of the telecoms sector in Uganda came via the Communications Act of 1997. The Act broadly aimed to improve the spread and affordability of modern telecommunications services by:

- Enhancing national coverage of communications services and products.
- Expanding the variety of communications services available in Uganda.
- Reducing the direct role of the government as an operator in the sector.
- Encouraging the participation of private investors in the development of the sector.
- Introducing, encouraging and enabling competition in the sector through regulation, such as licensing competitive operators to achieve rapid network expansion, standardisation, as well as competitively priced, quality services.
- Minimising all direct and indirect subsidies paid by the government to the communications sector.
- Establishing and administering a fund for rural communications development.

The Act saw the licensing of two national operators: MTN Uganda (MTN) – a subsidiary of MTN South Africa – as the second national operator (SNO), and UTL, both of which were licensed to offer mobile and fixed services. Prior to liberalisation, Uganda had licensed Celtel, which started offering mobile services in 1995, well ahead of the offer of mobile services by even the incumbent, whose mobile service was launched in January 2001. MTN commenced its mobile service in October 1998.

Under the old ICT regime, UPTC was the monopoly provider in the fixed-line segment. It was characterised by gross inefficiencies: it took several months for applicants to get connected and subscribers were often wrongly billed. As a result, by the end of 1996, Uganda had 45,145 phone lines, which translated into a teledensity of 0.21 per 100 people. This consisted of 42,605 fixed lines, of which 36,472 were in the cosmopolitan area of the capital Kampala. By that time there were also 3,500 mobile lines owned by Celtel, whose reach was Kampala and a few nearby major towns such as Jinja and Entebbe. By July 2008, teledensity had risen to 22%.

Uganda was one of the first countries in Africa to develop a policy on universal access to modern communications. The Rural Communications Development Fund (RCDF), which was launched in 2001, is one of the tools that has enabled the government to motivate and mobilise private sector investment into rural areas by offering subsidies and grants that act as investment incentives. The fund is the result of a 1% levy on operators' revenues. Through the provision of subsidies, the RCDF has supported the establishment of internet points of presence in 20 districts,⁶ set up 54 district information portals, internet cafés in 55 districts, ICT training centres in 30 districts, 316 public pay phones, two internet connectivity institutions, and five telecentres.

However, there has been some criticism of the performance of the RCDF. For instance, it does not fund broadband access, unlike the universal service funds of countries such as Peru, Chile and

⁶ Uganda has a decentralized system of administration under which the country is divided into 66 districts, each of which has its own local administration.

India.⁷ It has also largely offered subsidies for the establishment of services at district headquarters – which are mainly urban or semi-urban – and in doing so ignored the needs of the rural and unserved, who are its primary constituency. The RCDF's failure to help devise sustainability plans for its grantees, its offer of huge subsidies to national telecom operators, as well as its failure to align some of its programmes to the government's poverty reduction programmes in rural areas, have also come up for criticism.

2.3. Bungling UTL's privatisation

A number of policy and political blunders were committed in UTL's privatisation, which undermined its profitability for years, and also contributed to keeping telecoms services out of reach for the majority of Ugandans. These blunders related to (i) false starts in the privatisation process, (ii) the frequent changes in shareholding at the operator, (iii) poor management, (iv) political alliances, and (v) the exclusivity period, all of which fed into a drain on UTL's profitability.

2.3.1. False starts

UTL is currently owned 31% by the government and 69% by UCom, which is owned by the Libyan company LAP Greencom, part of the Libyan government-owned investment vehicle Libyan African Investment Portfolio (LAP). However, since its licensing, the story of UTL has been largely a catalogue of changes in ownership, puzzling failure to operate profitably, playing catch-up to MTN and Celtel, and frequent shifts in government and investor plans for the operator. As a result, the operator has failed to live up to many of the fundamental objectives of its privatisation.

The privatisation of UTL came at a time when the government was eager to speed up the privatisation programme, and to be seen to be attracting foreign investors to buy into the divested parastatals. The privatisation of UTL itself had two false starts, and it was on the third attempt that the operator was finally privatised.

Whereas the Communications Act required UTL to be privatised before licensing the SNO, MTN was licensed in early 1998, with UTL's privatisation only concluded in mid-2000. Soon after the Act was passed, the government, through its Privatisation Unit, made the strategic decision to bring in the SNO before privatising UTL, hoping the emergence of the new operator would serve to drive forward the privatisation process.⁸ It had also hoped that providing a competitor to UTL would help improve its competitiveness and therefore its attractiveness to investors. The Act was then amended to allow for the licensing of the SNO before the incumbent's privatisation.

Initial attempts to privatise UTL, in February 1998, saw the pre-qualification of four firms – Telkom South Africa, Portugal Telecom/Aga Khan Fund, WorldTel/Detecon, and Telekom Malaysia – but only the Malaysian firm submitted a bid. Even then, negotiations with this firm were unsuccessful, partly as a result of the Asian financial crisis.

During the second part of 1998, another go was given at privatising UTL, in a process which has been described as giving little adherence to international standards and best practice, as investors

⁷ See www.fitel.gob.pe (Peru); www.dot.gov.in/uso/usoidex.htm (India); and www.subtel.cl (Chile).

⁸ Econ One Research Uganda Telecommunications: A Case Study in the Private Provision of Rural Infrastructure (2002)

were not even provided the opportunity to conduct due diligence before submitting bids.⁹ Five groups were pre-qualified, but only WorldTel/Detecon put in a bid (for USD 23 million, plus some future deferred payments). This consortium fell apart shortly afterwards, forcing a third attempt at privatising UTL in 1999, in which the UCom consortium was one of two interested parties, the other being Mahanagar Telecom, which offered USD 21.15 million.

The UCom consortium, registered in the British Virgin Islands, won the bid for a 51% stake in the parastatal for USD 33.52 million. Telecel International, also registered in the British Virgin Islands, was the majority shareholder in UCom, with a 59.2% stake, the other partners being Detecon GmbH of Germany (20%) and Orascom of Egypt (20.8%).

At the time of bidding, the UCom consortium consisted of Detecon (20%), Telecel (40%) and South Africa's Ikwezi Telecom (40%). However, Ikwezi pulled out of the consortium, claiming that it wanted to concentrate on investments in Lesotho, thereby relinquishing its shares in Telecel.

After the bid had been submitted, Orascom acquired an 80% stake in Telecel, thereby joining the UCom partnership. The general rules of tender issued by privatisation authorities allowed the government the right to permit changes in the consortium's membership and shareholding. Once Orascom clinched the 80% shareholding, it became the majority shareholder in UTL.

But just after UTL's privatisation, the ombudsman was petitioned about the suitability of the winning consortium. Some legislators and members of the Mahanagar Telecom consortium, which had failed to win the UTL bid, pointed to the fact that Orascom had no telecom operator experience and did not take part in the bidding process. These criticisms were at the time rebuffed by then director of the Privatisation Unit, Michael Opagi, who said the Divestiture Reform and Implementation Committee (DRIC) had done "a clean sale".¹⁰

At the time, the International Finance Corporation (IFC), which acted as the financial advisor to the restructuring and privatisation process, praised the outcome as good for Africa, "especially at a time when African countries are competing for a limited pool of international investors."¹¹ Equally telling was the verdict by state media, which declared that the "successful sale" of the 51% shares in UTL "shows that there is more to the privatisation process than just controversy."¹²

But the haste in executing the UTL transaction might have forced Privatisation Unit officials to enter into a deal that right from the start showed signs of short-changing the Ugandan taxpayer. This could partly be seen by looking back at how poorly UTL has performed several years down the road, as far as fulfilling the stated key thrust of its divestiture, namely "to seek a strategic partner to invest capital resources into the company and to provide technical and managerial expertise to the Company towards eventual floatation and listing on the Uganda Securities Exchange."¹³

⁹ Ibid.

¹⁰ The EastAfrican "Call Off Uganda Telecom Sale, Say MPs" 5 June 2000

¹¹ IFC media release "IFC helps Uganda finalise telecom privatisation" 1 December 1998

¹² The New Vision "Privatisation process has defied its critics" 2005

¹³ Databank/MBEA Consortium An inception report for the restructuring of Uganda Telecom Limited prepared for Uganda's Privatisation Unit Databank Financial Services Limited (Ghana), Africa Analysis (South Africa), and MBEA Brokerage Services Limited (Uganda) (2008)

2.3.2. UTL's ever-shifting shareholding

Since its privatisation, the shareholding in UTL has changed many times amidst accusations by critics that each investor was milking the firm and not caring about initiating comprehensive business reforms and market expansion drives that would make it sustainably profitable. In 2000, Orascom announced it was selling 20% of its stake in UTL, which it had acquired from Ikwezi, to Telecel. Once Orascom acquired 80% of Telecel earlier that year, it decided to disengage from the telecommunications business in sub-Saharan Africa and concentrate instead on consolidating its North African and Middle Eastern markets. Newton Investment Management Ltd., a firm also registered in the British Virgin Islands, bought Telecel's operations in Zambia, Burundi, Central African Republic and Uganda – where the purchase included some of Orascom's share in UCom.

In May of 2003, Orascom announced that it was pulling out of the UCom consortium altogether with the sale of its remaining stake to Gloria Trust, a previous minority shareholder in Telecel, "as part of a complex deal along with GSM [mobile] operators Telecel Burundi, Telecel Central African Republic, and Telecel Zambia, as well as Telecel Pty, a management company based in South Africa."¹⁴ At this point, UTL was jointly owned by Detecon, Gloria Trust, and the Ugandan government. In 2006, Detecon was bought out of UCom by the other partners.

Insiders told this researcher that the sale of Orascom shares in UCom followed "several disagreements at board level," including concerning the strategy for making UTL profitable.

Detecon	
Jurisdiction of organisation	Germany
Date of registration	7 July 1977
Place of business	Germany
Capitalisation	DEM 38,000,000
Ownership interest in UCom	20%
Telecel	
Jurisdiction	British Virgin Islands
Date of registration	25 June 1993
Place of business	Ivory Coast, Zimbabwe, Zambia, Togo, Burundi, Central African Republic
Capitalisation	USD 81,021,300
Ownership interest in UCom	59.2%
Orascom	
Jurisdiction of organisation	Egypt
Date of registration	29 July 1997
Place of business	Egypt
Capitalisation	EGP 90 million
Ownership interest in UCom	20.8%

Table 1: Capitalisation of UCom consortium participants as at June 2000

Since privatisation, the Ugandan government has downgraded its shareholding to 31% through a contested deal that made LAP Greencom the majority shareholder. Board chairman Patrick Kabonero told the company's staff in June 2006 that the board and shareholders had approved a USD 80 million new investment in the company, and that UCom, the major shareholder, had invited Telecom SA to participate in the consortium.

Kabonero said: "This new addition to the consortium will provide the Company with new competitive advantages that are much needed

to remain competitive within an industry that is quickly consolidating.” This announcement came at the same time as the announcement that Aimable Mpore, who had been managing director of UTL since its privatisation, would be leaving the company.¹⁵

It is worth noting at this stage that as late as August 2006 the management of UTL said that the acquisition of a stake in UTL by prospective new investors would not change the operator’s shareholding. A memo from Mpore to staff dated 7 August 2006 announced that Telkom SA had carried out a due diligence with intent to acquire some shares in the UCom consortium. “If Telkom SA acquires shares in UCom, there will be no change in UTL’s shareholding structure which will remain as follows: Government of Uganda (49%), UCom (51%).”¹⁶ As it was, Telkom conducted a due diligence on UTL which returned a negative picture, and pulled out of the negotiations. Instead, in February 2007, Telkom announced that it had acquired the pan-African internet service provider (ISP) Africa Online from the African Lakes Corporation as part of its push into continental Africa.

When Telkom SA withdrew interest in acquiring a stake in UTL, VTEL from the United Arab Emirates became a major contender, while LAP Greencom also emerged as a seriously interested party. VTEL was part of a consortium that had been offered a SNO licence in Kenya, but had minimal experience in telecoms. The consortium lost the Kenyan SNO licence after failing to pay up the USD 169.7 million licence fees asked by the Kenyan government. This subsequently saw the sale of the shares in UTL to LAP Greencom in March 2007.

However, it came as a surprise when the buy-in by LAP Greencom came with a dilution of the government shareholding in the company. One of the records for reference that are available on the acquisition of the shareholding is a letter UTL corporation secretary Donald Nyakairu wrote to staff:

As a result of the capital call made in July 2006 by the shareholders of Uganda Telecom, Government of Uganda opted to offer its shares to UCom Limited at a premium which resulted in UCom contributing USD 27.375 million towards the equity of the Company. The Company received these funds two weeks ago. This had a resultant effect of changing the shareholding of Uganda Telecom to the following: UCom Limited 69%, Government of Uganda 31%.¹⁷

How LAP Greencom acquired its stake

This researcher has also seen explanations for the change in shareholding written by Chris Kassami, secretary to the Treasury and permanent secretary in the Ministry of Finance and Economic Planning. He explains that in August 2006, UTL identified the need to invest USD 86 million over the next two years to cope with rising competition. “These funds could not be raised from internal sources as the company was making losses (a loss of US\$ 3 billion [USD 1.7 million] for the year ended December 2005, and a loss of US\$ 7 billion [USD 3.9 million] in the year ended December 2006),” Kassami says in the July 2008 explanation of the transaction.¹⁸

¹⁵ Patrick Kabonero, UTL board chairman memo to staff “Moving on – MD”, 22 June 2006

¹⁶ Aimable Mpore, UTL managing director memo to staff, 7 August 2006

¹⁷ Donald Nyakairu, UTL company secretary memo to staff, 10 April 2007

¹⁸ Chris Kassami, secretary to the Treasury and permanent secretary, Ministry of Finance and Economic Planning, in letter titled “51 percent shareholding in UTL” to Nathan Mafabi, chairman of parliament’s public

The board then negotiated a concessionary loan from Exim Bank of China of USD 50 million, but because of the already high level of debt in the company, UTL could not raise additional debt finance without an equity injection to maintain the agreed debt equity ratio of 2:1. As a result, the shareholders and the DRIC approved the raising of an additional USD 26.4 million from equity in equal proportion to the shareholding (UCom to raise USD 13.5 million and the Ugandan government USD 12.9 million). The balance of USD 10 million was to be supplier credit.

In September 2006, the shareholders signed a resolution which made a capital call for each shareholder to contribute the additional equity within 60 days and also provided for dilution of the shareholding for any shareholder who would not contribute their portion within that period. Kassami explains that at this point, the government had two options: either to inject the USD 12.9 million required to avoid the consequence of the dilution, or give UCom the option of paying for the government's shares "in accordance with pre-emptive rights provided in the UTL shareholders' agreement."

On 9 January 2008, the DRIC approved the use of the divestiture account to pay for the required additional equity of USD 12.9 million. But the finance ministry rejected this suggestion, reasoning that due to the need to invest in the energy sector, the funds previously earmarked for investment in UTL were no longer available. This in turn forced the DRIC to authorise, on 14 March 2008, the offer of the government's portion of the new shares to be issued as per the capital call to UCom at a price of USh 121,800 (USD 67.6) per share based on a valuation that had been carried out by the Data Bank-MBEA consortium.

This explanation by the secretary to the Treasury has been queried by the chairman of the Parliamentary Public Account Committee (PAC). He accuses the government of flouting prescribed laws and regulations for disposing of public assets. According to him, it was wrong to sell the shares through any medium other than the stock exchange, and the sale should have been transparent by inviting investors through advertising, since otherwise it resulted in failure to attract the best possible value for the shareholding lost. Besides, he contended, the evaluation should have been done by at least three competent professional firms, not one firm (Data Bank/ MBEA), which he labelled "just a brokerage firm, not a valuer."¹⁹

Similar questions have been raised elsewhere about the valuation of the shares. For example, Miriam Kawuma, corporate strategy and business analyst at UTL, has been quoted as saying the evaluation process might not have been as thorough as was desirable and that there were some concerns that there may have been an overestimation of the UTL brand strength and an underestimation of future investment requirements in order to revamp the business.²⁰

The argument by the Treasury that funds to pay for the government's additional shares in UTL could not be drawn from the divestiture account because the earlier earmarked finances had been channelled into energy projects has also been questioned. This is because – according to PAC

accounts committee, 15 July 2008

¹⁹ Nathan Nandala Mafabi, chairman, parliament's public accounts committee, in letter to secretary to the treasury/permanent secretary, ministry of finance and economic development, 22 October 2008

²⁰ Jonathan L. Muwonge and Emanuel Gomes "Analysis of the Acquisition Process of Uganda Telecom by LAP Greencom" *Management of International Business & Economic Systems* 1, 1 (2007)

chairman Nandala Mafabi – the Energy Fund had already had its budget appropriated by parliament, and the USD 12.9 million would not have depleted resources in the privatisation account.

Mafabi contested the validity of the transaction, saying:

Because they take the public for granted they thought they would get away with giving away public shares, but this deal is null and void and should be called off. The deal was defective because no valuation was done for the shares. The sale itself was uncalled for because there was a possibility to borrow from commercial banks.²¹

Although the intention was for the government to float UTL shares on the local exchange as far back as 2003 to enable Ugandans to claim a shareholding in the operator, the earliest this could happen is 2009. Then the government will be offloading a 31% shareholding, not 49%. This has been described as representing “a radical departure from the Government’s own policy to encourage local people to invest in privatised companies.”²²

According to the director of the Privatisation Unit, David Sebabi, the company could not be listed on the Uganda Securities Exchange because it had not posted profits for three consecutive years following its privatisation. The company reportedly made profits in 2007-2008, raising prospects for its initial public offer in 2009.

2.3.3. Management woes and UTL’s failure to make profits

After a profit of US\$ 2 billion (USD 1.1 million) for the last seven months of 2000, UTL posted a net loss of USD 3.9 million in 2001. It registered a net profit of USD 2.8 million in 2002. After that the net earnings started deteriorating, reaching a net loss of USD 4.3 million during 2006. According to company figures, shareholder funds, which stood at US\$ 68.9 billion (USD 38 million) in 2000, dwindled to US\$ 54 billion (USD 30 million) at the end of 2006.²³ This poor financial performance came despite the fact that at the time of privatisation, UTL had undergone a comprehensive financial restructuring programme, which included the government taking on its long-term debt and other liabilities, a waiver of past corporation tax liabilities, a revaluation of fixed assets, and a write-off of uncollectible receivables.

Moses Talemwa, a journalist from the Weekly Observer, says that while UCom reneged on a promise to provide expertise to manage UTL, there was also state interference in the company’s internal operations – one of the reasons why a “frustrated” Detecon had to sell its stake in UCom.²⁴

However, the issue of whether Detecon would indeed be involved in UTL’s management and in sourcing investment capital was raised way back in 2000. On the investment side, Jean Francois Guillaume, Orascom’s chief liaison officer, said then the consortium had formed UCom, through

²¹ Interview, 20 November 2008

²² Weekly Observer “Quiet Libyan deal eats UTL shares for listing” 8 October 2008

²³ Databank/MBEA Consortium An inception report

²⁴ Interview, 18 November 2008

which funding to UTL would be channelled. He did not say, however, how much money each entity would provide. He said the consortium would look for co-investors and financiers.²⁵

Detecon's failure to provide management expertise has also been raised by an insider in UTL, who has done a study²⁶ in which he interviewed some officials who were key in UTL's operations since its privatisation. At privatisation, the government signed a management contract in which it gave up its rights to management and kept only board of director positions. This was done in order to pave the way for the new majority shareholder to grow and develop the business.

"This Management Contract with Detecon provided expatriates to operate and transfer skills for five years in order to build the business. [But] poor supervision caused the agency problems where the expatriates jointly and severally on many occasions took decisions in their own interests, often emphasising activities and rolling out technology that would allow them marketability for their next job," the study quotes Kawuma as saying. Another official, Jackie Ochola, the UTL network operations manager, asserts that this led to decisions not necessarily supported by sound financial business cases, which caused a lot of strain on the company especially considering the high cost of finance.

While quoting senior UTL officials, the study points out that too little equity was invested by the shareholders, "leaving the company to rely on high cost finance for its capital investments, which is not sustainable in the long term as return on investment on some of these is well over five years." This was mainly due to the fact that the Ugandan government was reluctant to inject equity, but did not want to liquidate its holding (49%) because of the political impact it would have. "Also within the consortium, Orascom sold out two years down the road to concentrate on its North Africa investments and swapped shareholding in companies with Telecel... [which] left Detecon and Telecel the challenge of managing and growing the business with insufficient investment, which caused it to slide back to a loss-making venture."

According to Talemwa, "with the virtual collapse of the UCom consortium, the company needed more capital and immediately started courting new buyers in 2007. This was primarily because the millions of dollars that the consortium had promised to invest in the company never came."²⁷

In an indictment of the privatisation exercise, Donald Nyakairu, UTL's company secretary who has acted as its chief executive in the past, points out that Detecon sold its stake in UTL having failed on its management contract obligations, adding "[i]t was also important for them to sell because they had no long-term strategic interest in keeping the shareholding."²⁸ This in effect confirms the serious doubts which were raised at the time of the privatisation about the viability and interests of the UCom consortium, which Opagi, the head of the Privatisation Unit, dismissed.

State interference has been cited as well, although UTL managers dismiss this. Independent observers say that through its appointment of directors, the state has had an influence – largely negative – in UTL's running. One of the government appointees is Don Nyakairu, who has been

²⁵ The EastAfrican "Call Off Uganda Telecom Sale, Say MPs" 5 June 2000

²⁶ Jonathan L. Muwonge and Emanuel Gomes "Analysis of the Acquisition Process"

²⁷ Interview, 18 November 2008

²⁸ Ibid.

company secretary since 2002, and is related to First Lady Janet Museveni. Nyakairu says he was appointed on merit, and maintains that government directors are independent and are not involved in the internal operations of the company.

LAP Greencom's lack of previous experience in the telecommunications industry has also raised some concerns. "Management at the acquired company seem to indicate that, perhaps, a horizontal or lateral acquisition would have been preferred. This is because telecommunications is a very specialised industry and the extent of success of a partnership like this can be determined by the sort of experience an organisation has in managing this peculiar type of business," said researchers Jonathan Muwonge and Emanuel Gomes.²⁹ They held that this could particularly be the case given that LAP Greencom was a large, diversified group which might have priorities other than this new telecoms investment.

It seems, however, that LAP Greencom has actually started investing substantially in UTL. Abdulbaset Elazzabi, the UTL managing director, reports that in 2007 they invested more than USD 150 million in expanding network coverage and improving service quality. These investments helped grow subscriber figures by 26% in the first quarter of 2007, and by January 2008 the company had reached the one-million subscriber mark. It then targeted reaching two million subscribers by the end of 2008.³⁰ In a similar vein, during 2007, UTL moved towards profitability, reporting a USD 3.3 million net profit for the third quarter of 2007. During the same period, shareholder funds had edged up to USD 62 million.

Nonetheless, there is some space for negative synergies because of this potential lack of focus from LAP Greencom. It could, as a result, be asked: To what extent did UTL miss out on the expertise that would have come from an acquisition by Telkom SA? As analysts put it: "The synergies and immediate benefits on how to revamp the company and create operational efficiency would have come swiftly from Telkom SA, which is reputed to be one of the few highly profitable incumbent operators not only in Africa but in the world."³¹

2.3.4. The politics in UTL's privatisation

Uganda was a one-party state at the time of privatisation, and up to now its parliament is heavily dominated by members of the ruling National Resistance Movement who always vote the way Museveni asks them to. In this scenario, voices critical of how some companies were privatised, of corruption among public officials, or of the misuse of public funds, are almost always defeated in parliament.

Analysts observe that the presence of a vigilant legislature and media willing to expose privatisation abuse led to a more honest divestiture process in Uganda, although the failure of anti-corruption agencies to prosecute or punish leaders for their corrupt privatisation behaviour hardly undermined high-level corruption. One study on Uganda's privatisation process during the 1990s indicated that "as in other African countries where few checks exist on government divestiture decisions, where political leaders seek to divest to favoured clients, and where the big offenders

²⁹ Ibid.

³⁰ Abdulbaset Elazzabi, UTL managing director "Word from Managing Director" www.utl.co.ug

³¹ Jonathan L. Muwonge and Emanuel Gomes "Analysis of the Acquisition Process"

are unlikely to be punished for their illegal behaviour ... privatisation activities will be susceptible to corrupt and cronyist practices.”³²

In the case of LAP Greencom’s acquisition of shares from the Ugandan government, the cordial relations between Museveni and Libyan leader Muammar Gaddafi actually played a role. These relations go back to the early 1980s when Libya provided arms to Museveni’s guerillas, who launched a five-year insurgency that culminated in Museveni coming to power in January 1986.

LAP Greencom’s acquisitions in Uganda have come largely as a result of the Ugandan government’s failure to pay controversial loans it owed the Libyan government, some contracted more than three decades ago. LAP’s other interests in Uganda, such as a controlling shareholding in the National Housing and Construction Corporation (NHCC) and Tristar Apparels, resulted from the debt saga, with NHCC’s acquisition having been a total debt swap. In June 2005, the Ugandan government offered the Libyan government a 49% stake in NHCC in a deal that allowed Uganda to use the shareholding to offset part of the USD 80 million debt owed to Libya.

Early in 2002, a Libyan state agency had threatened to sue Uganda over a USD 155 million debt. Uganda was reluctant to pay the money, claiming that it had been forgiven under the Highly Indebted Poor Countries (HIPC) initiative. Although Libya was part of HIPC, it declined to write off the debt, saying it fell outside the scope of the initiative. Libya claimed that the Central Bank of Libya gave some USD 8 million to Uganda during Idi Amin’s regime in the 1970s, and a further USD 70 million just after Museveni came to power in 1986. The debt grew to USD 155 million due to accumulated interest. Some of the debt arose from the 1979 war in which Libya provided material, financial and personnel support to the Amin regime.³³ Some members of parliament and media commentators have opposed the Libyan deals, but treasury officials said they enabled Uganda to only pay a fraction of what Libya was owed.³⁴

In Uganda, LAP also owns Victoria Windsor Hotels (formerly owned by the government), and the Tropical Africa Bank. It has a controlling stake in Rwandan telecommunications giant Rwandacel, and also recently acquired a telecom licence in the Democratic Republic of Congo. The group owns Mobil Kenya, as well as Tamoil East Africa, which has a contract to build an oil pipeline between Kenya and Uganda. It also has a 60% stake in Rwanda’s Novotel Hotel. Its holding company Oil-Invest of the Netherlands is a major player in the European oil industry with operations in Switzerland, Germany, Spain, the Netherlands, Italy and France.

2.3.5. Exclusivity period

Following the 1997 enactment of the Communications Act, Celtel was granted a five-year licence for mobile operations only, while MTN and UTL were handed an exclusivity period of five years for “Protected Telephony Service” until 24 July 2005.

³² Roger Tangri and Andrew Mwenda “Corruption and cronyism in Uganda’s privatisation in the 1990s” African Affairs (2001)

³³ See Ministry of Finance and Economic Development Macroeconomic performance report July 2004 – June 2005 (2005); The EastAfrican “Libya, Burundi Drop Debt Suit Threats At IMF’s Coaxing” 31 December 2002; The EastAfrican “India writes off \$42 Ugandan debt” 7 December 2005; The EastAfrican “War Debt: Gaddafi Gets Tough With Uganda” 7 June 2004

³⁴ Daily Monitor “Uganda: Cash Bonanza At Finance Ministry As Parliament Turns Impotent” 28 July 2007; Daily Monitor “Govt fights tycoon over Libya’s 333bn” 18 October 2003

The five-year exclusivity period took effect in July 2000, when UTL's licence came into force. By this time, MTN had been offering services for a year and nine months. However, the exclusivity period was not properly enforced by the government and continued for more than a year and a half after the five years were up, before Communications Minister John Nasasira issued policy guidelines to herald the end of the so-called "limited competition".

In the period between the end of the exclusivity period in 2005 and the promulgation by the government that new players would be licensed (in 2006), MTN, UTL and Celtel joined hands in a campaign to block further liberalisation of the sector. They reasoned that the Ugandan market was too small to accommodate more than three profitable operators, and that licensing more would not result in an increase in subscribers, or lower tariffs, but would instead see operators jostling for the few existing subscribers.

In retrospect, the regulator contends that that the exclusivity period was not a very good idea after all. It says while limited competition was a key strategic pillar in attracting private sector investment "at a time when the market size was incorrectly estimated to be unattractively small ... the market has expanded far beyond the expectations of [g]overnment and the private sector."³⁵

In an indication of how wrong the reading of the market was, by June 2003, MTN had raked up 363,000 subscribers with a total investment of USD 175 million – more than the USD 85 million it was required to invest over five years.³⁶ Owing to this under-estimation of the potential market, MTN was required to roll out 89,000 new lines over a five-year period.

The ministerial guidelines of 11 May 2006 and 13 October 2006 on ending the exclusivity period required that a new licensing regime should take into account the availability of spectrum in the licensing of wireless-based infrastructure; ensure that operations of existing and new entrants conform with the principles of fair competition; recognise the right of private individuals or entities to provide their own infrastructure if they so wish; and follow the principle of technology neutrality in granting the licences.

Accordingly, a new licensing regime came into play, opening up service provision to competition from 14 August 2006, and to provision of infrastructure from 2 January 2007. Under the new regime, the types of licences are: public service provider (for either voice and data or capacity resale); public infrastructure provider; general licence; and private networks. As of May 2009, there were five operational telecom operators: Celtel, MTN, UTL, Warid Telecom and Orange.

2.4. The net result of the privatisation bungling

It is apparent then that while Celtel and MTN were raking in billions of shillings in profits, UTL consistently reported losses for years after its privatisation, in spite of the substantial comparative advantages it enjoyed as the incumbent, such as having in place infrastructure, human resources, long-standing experience in the market, and a distribution network.

Both MTN and Celtel operated profitably through the last several years as UTL wallowed in losses. For instance, for the six months ended 30 September 2002, MTN's profit after tax was ZAR 50.5

³⁵ Ministry of ICT Draft Telecommunications Sector Policy Review (August 2008)

³⁶ See MTN International Annual Report (2003)

million, up 40% on the previous year's ZAR 36.2million. Profit after tax for 2004 was ZAR 104 million, compared to ZAR 116 million for 2003, while for the year ended March 2005, profits were ZAR 119 million. The profitability continued to 2008.³⁷

Taxes paid by the operators also give an indication of how they stand in the market. In 2007, a year in which UTL posted the best returns ever, the Uganda Revenue Authority collected from MTN US\$ 174 billion (USD 96.7 million), Uganda Telecom USD 17.8 million and Zain (formerly Celtel) USD 11.9 million.

It is also worth noting that in July 2006, MTN International increased its stake in MTN from 52.01% to 97.34% through the acquisition of the 12.89% stake held in the operator by Rwanda Tri-Star Investments, and the 32.44% stake held by Overseas Telecom AB. MTN paid USD 55 million, according to an announcement made at the Johannesburg Stock Exchange, to acquire the stake held by Tri-Star. This acquisition came only weeks after MTN International bought the stake in MTN held by Overseas Telecom AB for about USD 167 million.³⁸ This consolidation of MTN International shareholding in MTN was partly indicative of the profitability of the Ugandan operation.

Equally, Celtel has through the years reported increased profitability, although in a way it was in a disadvantaged position compared to UTL, which was a national operator and together with MTN enjoyed exclusivity over certain services. From Uganda, where it started its operations, Celtel spread out to more than sixteen African countries before it was acquired by the Zain conglomerate.

2.5. A revised policy direction

The key components of the current telecoms policy and regulatory environment, which stemmed from the Act, include the creation of an independent regulator (Uganda Communications Commission, or UCC), the implementation of a limited competition period (specifically in basic telephony services, cellular telecommunications services and satellite services), and the unbundling of UPTC. A review of the sector policy performance has noted that while some of its objectives such as raising teledensity and attracting a multiplicity of players and services were achieved, affordability remained a key challenge.³⁹

Accordingly, the country is revising the telecoms policy to make it more responsive to some of the challenges identified. The draft telecoms policy finalised in July 2008 points out that more strategies are required to make telecom services affordable to more Ugandans, and makes the case for the continued nurturing and funding of programmes that aim to enable universal access and affordability of telecom services.

The draft telecoms policy states that "in recognition of the crucial role that easy access to relevant information and efficient communications play in supporting human development, it is government policy to ensure equitable access to telecommunications services for all the citizens of Uganda

³⁷ See www.mtn.com/InvestorRelations/Webcasts.aspx for MTN Group Annual Results for the years 2001 to 2007.

³⁸ Global Insight "LAP Green Com Acquires 51% Stake in UTL" www.globalinsight.com/SDA/SDADetail8574.htm

³⁹ Uganda Communications Commission Uganda Telecommunications Sector Policy Review Policy review report (May 2005)

through an enabled and competitive private sector.” It also notes that the “[g]overnment recognises that a purely commercial approach would marginalise the majority of the citizens, and has therefore made universal access, supported by appropriate public-private partnerships, a key objective.”

The draft policy further notes quite rightly that there is a need for increased consumer empowerment to enable consumers to exercise their right of choice and their right to redress, which would lead to “a regulation by the market”. Equally important, the policy recommends that obligations and sector-specific competition regulations applicable to all telecoms networks and services should be enforced in a fully liberalised market. It claims that a close, coherent link between the sector-specific competition regulations and general competition law should be established.

Access to the international internet backbone via optical fibre and the establishment of a national data backbone are key national strategic priorities which the policy seeks to achieve by 2010. The Ugandan government and telecom companies have been part of initiatives that are intent on developing fibre on the eastern coast of Africa. UTL and MTN are part of the Eastern Africa Submarine Cable System (EASSy), as well as the East African Backhaul System, the terrestrial fibre network being developed to link Kenya, Uganda, Tanzania, Rwanda and Burundi. The government has been an active supporter of private initiatives, as well as those championed by the New Partnership for Africa’s Development (NEPAD), to bring affordable fibre to the region. It has also expressed support for open access, and says national fibre backbone being built by the government will be accessible to whoever needs to use it at cost price.

3. Current telecommunications problems and threats to profitability and affordability

There are myriad telecommunications problems in Uganda, some of which can be traced back to the process of privatising UTL. Others can be laid at the feet of the regulator, whose execution of its oversight role has often been criticised as weak and not informed by the need to promote the interests of consumers. Other problems could be said to lie beyond the ambit of the regulator. Rather, they are rooted in the structural nature of the Ugandan economy, which makes it difficult for operators or the regulator to reasonably address them. In this regard we are referring to issues such as the high taxation rate – 30% on mobile phone usage, comprised of 18% value added tax (VAT) and 12% excise duty – as well as the acute shortage of electricity in the country, which drives up telecom operators’ costs as they often have to run expensive diesel-fuelled generators. The draft telecoms policy mentions some of the prevalent problems in the sector that need to be addressed. It points out that despite the “notable” performance by the sector, challenges remain. These challenges include the need to enact a competitions law, setting up a Uganda Communications Tribunal, enhancing competition and ensuring fair play by implementing a tight regulatory regime in a fully liberalised market.

In the following sections, this report looks at some of the prevalent problems in the sector and then suggests ways to improve on the telecommunications environment in Uganda, particularly with regard to affordability, greater consumer rights awareness, and improved execution of the regulator’s oversight role.

3.1. Problem 1: Low affordability and accessibility

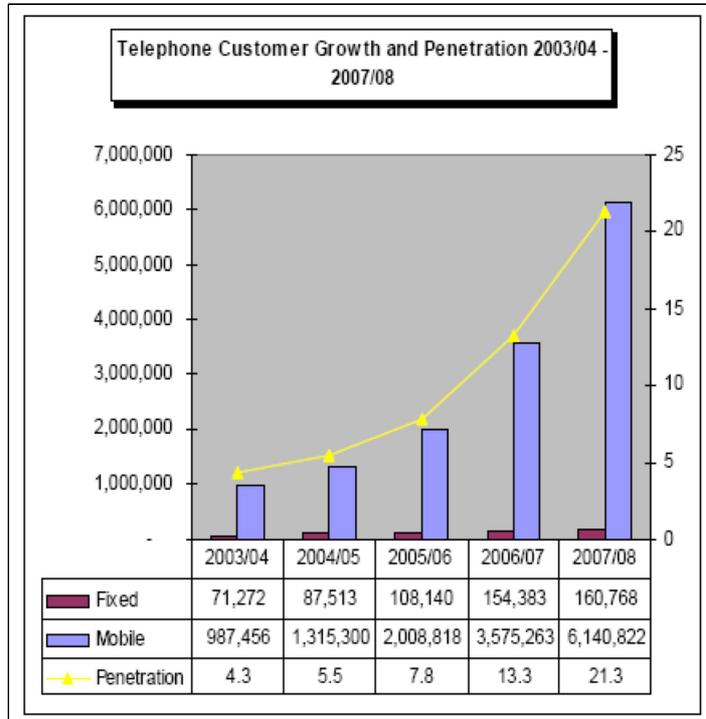
Uganda has registered swift growth in subscriber numbers over the last two years. The end of the exclusivity period of UTL and MTN, and subsequent licensing of new operators, saw the existing telecom operators investing in expanding their network reach and improving customer service. It also resulted in stiffer competition in pricing, which enabled more people to get connected as prices became more affordable. It is indeed telling that Uganda’s teledensity rose from 0.28% in 1998, to 4.2% in 2004, 12% in 2006, 20% in early 2008, and 22% by July 2008.⁴⁰ By December 2008, the number of mobile subscribers had grown to 8.5 million, and the overall national teledensity was 29%. Uganda has a universal service target of 40% of the projected population for voice access by 2012.

At the same time, public pay phone penetration surpassed the one pay phone per 1,000 target, although there still are concerns about the rate of pay phone roll-out. The policy target is to have a pay phone for every 1,200 inhabitants. According to the regulator, by June 2008, the number of pay phones countrywide had reached a total of 37,595, compared to 21,475 pay phones at the end of 2006/2007. This resulted in a penetration of 1.27 pay phones per 100 inhabitants, up from 0.75 pay phones per 100 at the end of the previous financial year.

⁴⁰ Uganda Communications Commission The Post & Telecommunications Performance June 07-June 08 Annual Review (October 2008)

As is illustrated in Figure 1, there has been steady and impressive growth in telephone service penetration over the last two to three years, but as will be shown below, affordability has remained a key challenge.

Figure 1: Growth of telephone customers and penetration



Drawing 1: Source: Uganda Communications Commission, 2008°

Positive as the penetration figures might look, they hide the fact that many parts of the country remain unserved, with telephony services still out of reach for the great majority of Ugandans. Many Ugandans have multiple phone cards, for instance. According to a study by Research ICT Africa (RIA), multiple SIM ownership is rampant in Uganda.

A large number of rural mobile phone owners report using their phones for receiving calls and “beeping” as they cannot afford to make calls.⁴¹ In a bid to lock customers and traffic onto their networks, but sometimes also as a reflection of the often cumbersome interconnection rates, operators tend to have low intra-traffic tariffs. As a

result, when a subscriber wants to make calls to Network A they use a line for Network A. But they would ideally also have a SIM card – or SIM cards – for calling other networks at lower rates. In April 2009, the regulator announced that it planned to start requiring operators to charge a uniform interconnection fee, and that it was also considering allowing mobile number portability.⁴²

A government report acknowledges that studies undertaken after the expiry of the exclusivity period have shown that the “penetration of services will remain relatively low to provide the necessary efficiency in service delivery as well as social and economic transactions compatible with sustainable human development.”⁴³ The report also observes that the 1996 policy objectives focused only on the provision of infrastructure and were not driven by a holistic consideration of the infrastructure requirements necessary to support the many programmes that address poverty alleviation and human development in Uganda.

The arrival of new operators appears to be helping to drive growth in subscriber numbers, and exerting downward pressure on tariffs. For example, in the year to June 2008, some 2.5 million

⁴¹ According to the RIA survey conducted during 2008, most mobile phone owners in rural areas, and a considerable number in urban areas, used their phones for beeping or flashing and receiving calls only, because they could not afford the cost of making calls.

⁴² see The New Vision “Uganda: Firms to Share Phone Numbers – UCC” 14 April 2009 and East African Business Week “Uganda to fix telephone interconnection charges” 18 April 2009

⁴³ Ministry of ICT Draft Telecommunications Sector Policy Review (August 2008)

news subscribers were added, translating into 69% annual growth. Comparatively, between 1996 and 2004, new lines added were an average of 125,000 per year.⁴⁴ The regulator attributed this high growth rate to a significant drop in service prices during the year in both the domestic and international voice segments, the emergence of new services on the third generation (3G) networks, aggressive marketing campaigns by all operators in anticipation of competition from new entrants, discounted/free on-net call promotions, and a Commonwealth Heads of State and Government Summit held in Kampala in November 2007.

It is unquestionable that an increase in competition is helping to drive down tariffs. For example, computations by the regulator show that in the voice market, in the year to July 2008, there was a 23% average drop in prepaid on-net prices, from the 2007 average of Shs 433 (USD 0.24) to Shs 335 (USD 0.19) per minute. There was also a 19% drop in off-net call charges from an average of Shs 488 (USD 0.27) to Shs 395 (USD 0.23) per minute; and a 30% drop in international voice tariffs. The introduction of new players has led to a drop in tariffs since MTN started offering services in October 1998, joining a market then monopolised by Celtel. The launch of MTN services saw telephone rates come down by more than half, while the entry of UTL's mobile phone brand Mango led to further reductions, and the eventual abolition of the monthly fee of Shs 20,000 (USD 10.8).

A segment that has not made much progress is pay phones, although research shows that they are commonly used by Ugandans in both rural and urban areas, including by owners of mobile phones. This is because pay phone tariffs tend to be cheaper. In spite of the great role pay phones play, their roll-out has been at a slow rate. There are many rural and peri-urban areas in Uganda where there are no pay phone services. Between 2000 and 2007, fixed lines rose threefold from 58,300 to 165,788, while mobile phone growth rose more than sixfold. As at July 2008, there were 38 times more mobile phones than land lines.

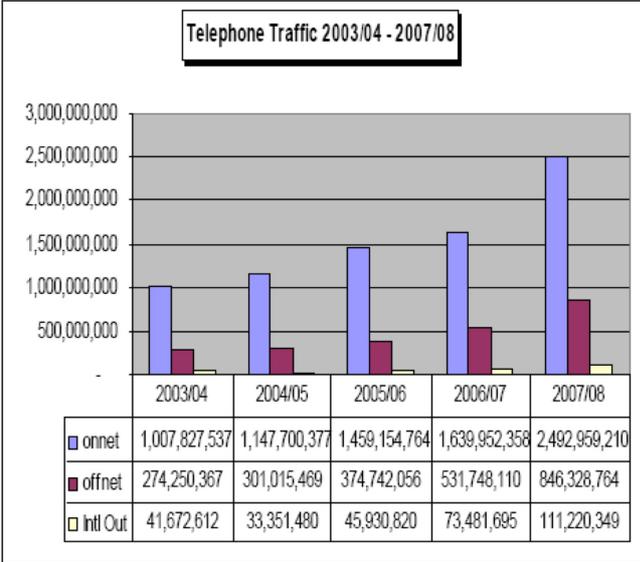
Call rates in Uganda have remained high, although the regulator requires operators to keep rates within a certain limit. According to the UTL licence, for instance, it is stipulated that public telecoms services subject to rate regulation are voice telephony services; installation and connection charges, including monthly line rental; local telephone calls; national long-distance telephone calls; and international telephone calls. The licence adds that the rate-regulated services shall be subject to a rate adjustment mechanism characterised by price caps and price capping formulas.

The agreement requires the operator to file with the regulator applications for adjustment of actual weighted average rates for rate-regulated services. Calculation of the rates has to conform with a methodology and formula annexed to the licence agreement, and the rate adjustment is limited by a price cap – this is also calculated according to a formula annexed to the licence. This provision in the licence gives the regulator the powers to ensure that the rates do not go beyond a certain ceiling, and that they are affordable to a greater number of Ugandans. In interviews with this researcher, an official at the regulator said that the tariff plans, which operators have been submitting to the regulator, have all fallen within the acceptable bracket of the price caps.

⁴⁴ Uganda Communications Commission End of financial year 2006/07 review (August 2007)

But as can be seen in Figure 2, the high interconnection regimes force most Ugandans to make the bulk of calls to the networks they subscribe to, as tariffs for same-network calls are cheaper. In the absence of mobile number portability and a proactive stance by the regulator as far as interconnection is concerned, this state of affairs is likely to continue for the foreseeable future.

Figure 2: Comparative volumes of intra-network and off-network calls in Uganda



Source: Uganda Communications Commission, 2008

3.2. Problem 2: The high tax burden

Uganda's telephone sector is highly taxed. The country has a 12% excise duty on mobile phone services, in addition to the 18% VAT. In June 2006, it introduced a 5% duty on land-line phone services. Currently, fixed-line services attract a 23% usage tax (18% VAT and 5% excise duty). Table 2 shows the taxation on telecom equipment and services in Uganda.

Table 2: Taxation rates on telephone services and equipment in Uganda

Item description	Rate (%)
VAT on mobile and fixed-line airtime	18
Excise duty on mobile phone services	12
Excise duty on fixed-line services	5
Corporation tax	30
Import duty on mobile phone transmission equipment	0
Import duty on land-line transmission equipment	10
Import duty on mobile phone handsets	0
Import duty on fixed-line sets	10

Source: UCC

A study by the GSM Association, a global association of mobile operators, said the ten markets with the highest taxes on mobile telephony worldwide were Turkey, Uganda, Brazil, Syria, Zambia, Tanzania, Argentina, Ecuador, Kenya and Ukraine.⁴⁵ Fixed taxes paid at the time of subscription and tax charges paid after subscription by mobile users, in addition to traditional sales tax, variable taxes levied on mobile use like VAT, and taxes due on the importation and sale of mobile handsets, were found to be high in many African markets. In countries with high taxes – amounting to 25%-30% of costs in Kenya, Uganda, Tanzania and Zambia – the expansion of mobile phone services has been slower than those with lower tariffs, such as Nigeria, Sudan, Egypt and South Africa.

Uganda introduced excise duty on mobiles at the rate of 7% in 2001, and has since increased it, in spite of protests from operators and analysts who have reasoned that the high taxes are stifling growth in penetration and hindering affordability. Makerere University lecturer Eria Hisali says in a research report that Uganda's current mobile service usage charge of 30% makes it the second highest in the world. He says most of the increases in taxes are borne by consumers, and that the tax-induced tariffs are working to slow down sectoral demand and penetration patterns.⁴⁶

Research commissioned by the regulator showed that a reduction in the taxes would see a greater number of Ugandans affording telephone services. Other studies have indicated that if the cost of

⁴⁵ GSM Association Global Mobile Tax Review 2006 www.gsmworld.com

⁴⁶ Eria Hisali Review of sector taxation policies and determining the elasticity of penetration and price of the various telecommunication services in Uganda Makerere University & Uganda Communications Commission (2007)

using a phone in Uganda came down by half, 89% of phone users would increase their phone usage.⁴⁷

3.3. Problem 3: Consumer rights protection and the role of the regulator

There have been frequent customer complaints about the quality of services offered by telecom companies. They relate to dropped calls, network unavailability, and being charged for calls not made. The regulator says the average call completion rate is 87% on fixed lines and 99% on mobile.

The Telecommunications (Licensing) Regulations 2005 outline the importance of quality of service parameters in order to adopt a consumer-oriented approach that focuses on the delivery of quality services at reasonable and affordable prices, and to facilitate the introduction of new, modern services, as well as the expansion of existing services into modern and innovative quality services delivered at reasonable and affordable prices.

Operators' licences oblige them to improve the quality of services with regard to call completion rates, fault recovery rates, digitalisation of the network, and maximum connection time for subscriber lines. There are also obligations on network expansion. The licences stipulate penalties. But while operators are obliged to extend services to rural areas, unserved areas in the country remain. The regulator claims geographical and population coverage for voice telephony services are 75% and 90% respectively.

Some observers say the regulator does not seem to be implementing the regulations. It has been accused of not undertaking effective awareness-creation campaigns to educate consumers about their rights, and not requiring telecom companies to be more transparent and accountable to their clients.

One of the reasons why consumer awareness and protection are low is that there is no competition law. The Uganda Communications Tribunal provided for in legislation has yet to be formed.

The regulator does not say how many complaints it handles and what they are about. However, officials at the regulator say that while they have been undertaking consumer rights awareness, key challenges remain: "Education is a continuous activity. It requires substantial financial and human resources to implement all the planned strategies," said Fred Otunnu, manager of communications and consumer affairs at the regulator. "Currently, there is a lot of apathy and complacency among users. There is also inadequate consumer protection legislation. The Consumer Protection Bill has been pending in parliament for quite some time. On our part UCC is revising the UCC regulations, which will strengthen consumer protection provisions. Consumer expectations are not static, they are ever changing and dynamic."⁴⁸

The regulator says consumers should first contact the service provider whose services or products they are not satisfied with. If the service provider does not satisfactorily solve the problem, they

⁴⁷ Christoph Stork "Mobile Access & Use in East Africa" (presentation at the Workshop on mobile applications for development in East Africa, Kampala, Uganda, 5-7 October 2008)

⁴⁸ Interview (22 April 2009)

then file a written complaint to the help desk at UCC. The complaint must be in writing, must not exceed two A4 pages, "which must of necessity be readable, clear and to the point(s)."

Issues customers may complain about, according to the regulator, include: wrong bills, arbitrary disconnection of lines, a nonchalant attitude towards genuine complaints, poor services delivery, untruthful and deceptive advertisements, the supply of sub-standard equipment, bare-face exploitation and invasion of privacy, the violation or non-delivery of mail, delays in restoring services, and unreliable service.

According to Otunnu, the regulator carries out consumer rights awareness campaigns through various media such as radio, TV infomercials and print advertorials. "We have also been engaged in holding public consumer dialogues in various locations up country. To improve, UCC intends to intensify the campaign in various ways," he says. Such ways, Otunnu suggests, could include partnership with civil society organisations and consumer protection associations to reach out to the consumers, seminars targeting youth in schools and clubs, breakfast meetings targeting professionals, and road shows.⁴⁹

Regulatory Reporting Guidelines 2008, whose implementation came into effect in the second quarter of 2008, require operators to provide information ranging from their subscriber numbers to customer complaints. Complaints on billing, the period taken to resolve complaints, numbers of non-billing complaints received, call drop rates, and network unavailability statistics, are all supposed to be reported to the regulator. (The regulator declined to share details of telecom companies' quarterly and annual reporting with this researcher.)

The regulator says it is improving the monitoring of movements in tariffs and interconnection rates for all communication services and aims to benchmark with regional and international markets. It also aims to continuously assess and review the impact of interconnection and tariff regulatory regimes on consumers and service providers in line with competition requirements. Legislation obliges operators to interconnect "with the principles of neutrality, non-discrimination and equality of access pursuant to terms and conditions negotiated in good faith between them and at a charge based upon the incremental cost of the interconnection or such other basis as agreed by the parties."

Parties are required to file with the regulator an application for its approval or re-approval of each proposed intercom agreement to be entered into at least 30 days before the effective date of such an agreement. If operators fail to agree on intercom terms and conditions within 30 days from commencement of negotiations, the regulator may set the rates. Either party may appeal to the tribunal against an arbitration award – but no tribunal is in place. For the second time in four years, UTL and MTN are in court over interconnection disagreements.⁵⁰

Way back in 2000, UTL shareholders expressed concern over the interconnection issue. In a meeting between UCC officials, the Privatisation Unit and Detecon, held on 23 March 2000, the

⁴⁹ Ibid.

⁵⁰ The EastAfrican "MTN, UTL in court over interconnection fees" 13 December 2008

need for a model default interconnection arrangement was discussed, and it was agreed that it was necessary in the case of parties who were obliged to interconnect, as a stopgap measure.⁵¹

While mobile telecommunication companies in Uganda are using multiple tariff products to lure subscribers, analysts claim that few subscribers have a good understanding of the variety of products that come in the well-packaged promotions. One observer says although they are cheap, most of the offers lock subscribers into spending a minimum amount of cash daily so that they can benefit from free on-net calls. Consumer rights activist Shaban Serunkuma says subscribers are largely confused in this maze and end up choosing offers that are relatively expensive.⁵²

Most of these promotions have come with an intensification in competition. When Warid Telecom launched with very low prices, MTN offered the MTNZone tariff structure which gave discounts of up to 99% to certain callers, with calls from areas where little traffic originated being the biggest beneficiaries. How it worked was that the more capacity available, the greater the discount at the time of making the call.⁵³

But with two million subscribers signing up to the MTNZone, "the network becomes so busy that unsuspecting callers end up continuing their chatter even when discounts are zero," according to analyst Julius Barigaba. Besides, off-net calls attract a significantly higher tariff, meaning subscribers pay more than they would if they chose a different tariff plan from MTNZone. Similar tariff packages such as Chacha by Celtel and UTL's Bonna Bogere, which works in the same way as MTNZone, have been criticised for not giving anything away for free; instead they "get more people to call who never used to, and in effect make more money."⁵⁴

⁵¹ Privatisation Unit Minutes of consultative meeting between UCC, Privatisation Unit and the U-Com consortium (March 2000). Those who attended included Opagi, UCC Director Patrick Masambu, Aimable Mpore (Telecel), Gerardo Behne (Detecon), Brian Samuel (IFC) and Malcolm Hurley (Stephenson Harwood).

⁵² The EastAfrican "Phone firms swamp Uganda with 'free calls' tariffs" 7 November 2008

⁵³ MTN (2008) www.mtn.co.ug

⁵⁴ The New Vision "Telecom firms trapped in a price war" 21 August 2008

4. Recommendations

Given the above, the following are key action steps that need to be taken to stimulate quality affordable access in Uganda:

- Cut taxes on mobile phone services, equipment and service provision to make them more affordable. The government should also offer tax incentives for wireless radio equipment and internet services particularly for rural and underserved areas.
- Speedily promulgate and implement the competition law, and form the Communications Tribunal.
- The government should float UTL shares as soon as is feasible, and should not undertake any other under-hand dealings in its shareholding in UTL.
- The independence and effectiveness of the regulator in terms of tariff regulation, interconnection, consumer protection and enforcement needs to be strengthened.
- Ugandan consumer rights groups (such as Consent and the Uganda ICT Consumers Protection Association) should play a greater role in educating customers on their rights, and on processes such as how to file complaints. The regulator should also provide up-to-date information to these groups, including letting them know the nature of complaints that it receives and how these are attended to by the operators. The regulator should also educate the public.
- The regulator should involve the public in responding to proposed price adjustments by operators, the same way the Electricity Regulation Authority invites public responses to proposed increases in energy tariffs.
- The regulator should publicise and implement quality of service parameters which operators have to abide by.
- The government and the private sector, in collaboration with regional actors, need to redouble efforts and work more speedily to build fibre, both nationally and at a regional level. They also need to stimulate demand for broadband and ICTs generally through doing things like creating appropriate and affordable content, and applications that have a high utility value for Ugandans.
- The RCDF should be refocused so that it offers greater and more sustainable support to initiatives that aim to increase the accessibility and affordability of services in the most needy rural areas. The RCDF should also start funding broadband access in the way that universal service funds in countries such as Chile, Peru, India and Nigeria do. This should include helping to roll out fibre.
- Efforts must be undertaken to increase power supply and to reduce power tariffs. For programmes that promote access to broadband, particularly in rural and underserved areas, there should be tax cuts on alternative power sources and on carbon-efficient ICTs generally.

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