

ESTABLISHING AN AGENCY FOR THE REGULATION OF CERTAIN PUBLIC UTILITIES.

We, Paul KAGAME,

President of the Republic,

THE TRANSITIONAL NATIONAL ASSEMBLY, HAS ADOPTED AND WE SANCTION, PROMULGATE THE LAW, AS DECLARED BY THE SUPREME COURT, SECTION OF THE CONSTITUTIONAL COURT TO BE IN HARMONY WITH THE FUNDAMENTAL LAW IN THE RULING N° 039/11.02/01, PASSED ON 5/09/2001 AND ORDER IT TO BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA.

The Transitional National Assembly, meeting in its session of July 24, 2001;

Given the Fundamental Law of the Republic of Rwanda, as modified and complemented to date, in particular the Constitution of June 10, 1991, in its articles 69 and 97, and the Arusha Peace Agreement in its part relating to power sharing, in its articles 6-d, 16-3° , 40, 72 and 73;

Given the Law n° 06/88 of 12/02/1988 establishing the organization of commercial organizations;

Given the Law n° 35/91 of 5/08/1991 relating to the organization of commercial activity in the country as modified to date;

Given the Law n° 2/96 of 11/03/1996 relating to Privatization and Public Investment;

Given the Law n° 9/97 of 26/6/1997 on a code for fiscal procedures as modified and complemented to date;

ADOPTS:

CHAPTER 1: DEFINITIONS TO TERMS AS USED IN THIS LAW

Article One:

In this Law, the following words have these definitions:

1. **“Minister”** means the Minister responsible for each utility sector.
2. **“Public utilities”** means natural persons, enterprises or organizations (for example: companies) which provide the following services:
 - a) telecommunications networks and/or telecommunications services;
 - b) electricity;
 - c) water;
 - d) the removal of waste products from residential or business premises;
 - e) the extraction and distribution of gas;
 - f) persons and goods transport.
3. **“ Utility Law”** means the law governing each utility.

CHAPTER 2. THE ESTABLISHMENT, STRUCTURE, RESPONSABILITIES AND COMPETENCES OF THE REGULATORY AGENCY.

Section 1: Establishment and structure

Article 2:

There is hereby established a body to be called "The Rwanda Utilities Regulatory Agency" hereinafter referred to as the “Regulatory Agency” .

Article 3:

The National Institution, herein referred to as “Regulatory Agency” has a legal personality and autonomy in the management of its finances, assets and employees and has its own official seal.

Article 4:

The Regulatory Agency is located in Kigali City, the Capital of Rwanda. It has the right to establish branch offices in any Province of the Country .

Section 2: Responsibilities

Article 5:

The Regulatory Agency has the responsibility to:

- 1° ensure that certain utilities provide goods and services throughout the country to meet in transparency all reasonable demands and needs of all natural persons and organizations;
- 2° ensure that all utility suppliers have adequate means to finance their activities;
- 3° continually promote the interest of users and potential users of the goods and services provided by utilities so that there is effective competition when competition is introduced in each utility sector and protection of users from abuses of monopoly positions is ensured due to the fact that certain Public utility sectors have a monopoly over the market.
- 4° facilitate and encourage private sector participation in investments in public utilities;
- 5° ensure compliance by public utilities with the laws governing their activities;

Section 3: Competences

Article 6:

The Regulatory Agency has the power to:

- 1° acquire, hold or dispose of property whether movable or immovable;
- 2° enter into any contract with an individual person or an organization;
- 3° impose sanctions in case of violation of the regulations governing public utilities mentioned in this

law.

CHAPTER 3. ORGANS OF THE REGULATORY AGENCY

Article 7:

Organs of the Regulatory Agency are the following:

- 1° The Board of Directors called "Regulatory Board" in this law;
- 2° Senior Managing office;
- 3° The Supervisory Board.

SECTION 1: REGULATORY BOARD

Article 8:

The Regulatory Board is the overall national regulating organ of the Regulatory Agency.

Article 9:

The Regulatory Board consists of seven Persons of Rwandese Nationality and good moral standing who are resident in the Republic of Rwanda.

The Regulatory Board members should collectively have knowledge, qualifications or experience in fields relevant to public utilities or to the regulation of public utilities' activities functioning.

No individual member of the Regulatory Board should have worked as a member of the management staff of any public utility in the three years before his or her appointment to the Regulatory Board.

In conformity with provisions of the second paragraph of this article, the Minister determined by the President of Republic recommends to the Cabinet the names of seven persons who will hold office as members of the Regulatory Board. They are appointed by a decree of the Prime Minister.

Members of the Regulatory Board are appointed in conformity with paragraph 4 of this article and perform their duties for a period of three years. This term of office is renewable only once.

The provisions of paragraphs 4 and 5 of this article are followed yet again in the appointment of members who replace any member of the Regulatory Board.

A member appointed to replace one deceased member, one who has resigned or was dismissed continues with the duties of the one he/she has replaced until the term of the latter's expires.

Article 10:

The members to the regulatory Board in their first meeting which is presided over by the Minister determined by the President of the Republic elect from amongst themselves a Chairperson and Vice-Chairperson.

The term of office of the Chairperson and Vice Chairperson is three years. This term may be renewed only once.

Article 11:

An individual member of the Regulatory Board ceases to be a member of the Board when:

- 1° he/she resigns his or her position by a written letter to his/her appointing authority;
- 2° it becomes clear that physical or mental incapacity prevents him/her from carrying out his or her duties as ascertained by an authorized doctor;
- 3° he or she takes up another office adversely affects the interest of the Regulatory Agency;
- 4° The verdict has been passed that he/she is guilty of having committed be it inside or outside the country of serious crime punishable with imprisonment, corruption offences, dishonesty;
- 5° he or she ceases to be resident in the Republic of Rwanda;
- 6° he or she is declared bankrupt by a court of law;
- 7° he or she is absent from three consecutive meetings of the Regulatory Board without reasonable explanation;

8° he or she by any spoken or written word or action brings the name of the Regulatory Agency into disrepute;

9° he/she dies.

Article 12:

An individual member of the Regulatory Board is relieved of his/her duties by his/her appointing authority upon a request by the Regulatory Board if:

1° he/she is incapable of carrying out his/her duties;

2° he/she refuses to tender in his/her resignation when proved guilty of wrongdoing mentioned in article 11 of this law;

3° failed before appointment, to disclose any past criminal conviction which resulted in a term of imprisonment for a period of six months or more any other material fact, which if it had been known at the time, would have disqualified the Board member from holding office under this law.

Article 13:

The Regulatory Board is required to:

1° promote the interests of users and potential users who require goods and services provided by certain public utilities, whether by natural persons or organizations, in respect of the price and quality, and where appropriate, the variety, of those goods and services;

2° have due regard to the security of the Republic of Rwanda and national defense when making decisions concerning certain public utilities;

3° carry out the general and specific regulatory duties laid down by the relevant legislation enacted in respect of each public utility and any administrative work associated with these duties;

4° have due regard to the preservation and protection of the environment, the conservation of natural resources and the health and safety of users;

5° provide advisory services to public utility providers with the aim of ensuring progressive continuity in the service.

The Regulatory Board shall at all times act in an independent, open,

transparent and objective manner, and shall not show any form of discrimination when carrying out its activities.

Article 14:

The Regulatory Board is responsible for:

- 1° monitoring the management of the Regulatory Agency;
- 2° monitoring the adherence to all legislation affecting the activities and operations of the
Regulatory Agency;
- 3° determining the responsibilities of employees of the Regulatory Agency and setting their terms
and conditions of employment, appointments and dismissal ;
- 4° approving the budget for the operation of the Regulatory Agency and monitoring its
implementation;
- 5° monitoring the appropriation and disposal of assets necessary for the fulfillment of its
responsibilities.

Article 15:

A decree of the Prime Minister determines the entitlement benefits of the members of the Regulatory Board.

Article 16:

The Regulatory Board meets once a month and any other time it is necessary for it to fulfill its responsibilities. Meetings are convened by the Chairperson or Vice-Chairperson on their own initiative, or, on a request of the Minister determined by the President of the Republic and 3 members of the Board or, by the Managing Director of the Regulatory Agency.

A meeting is convened through a notification written at least 7 days before the date of the meeting except when all members of the Board agree to a shorter notice. That notification must state the time, date, location and agenda of the meeting.

Article 17:

In the absence of the Chairperson and Vice-Chairperson, the remaining members may elect from among themselves a Chairman for that meeting by a simply majority vote.

Article 18:

No decision binding on the Regulatory Board can be taken unless at least five members of the Regulatory Board are present at a meeting. Decisions are made by a majority of votes of members present. In the event of equality of votes, the chairman shall have the deciding vote.

Members of the Regulatory Board normally attend meetings in person. In cases of unavoidable absence, members may give an opinion and/or vote by electronic and telecommunication means as the Board shall approve. A member shall not vote by such electronic and telecommunications means for two consecutive times.

Article 19:

All proceedings of the Regulatory Board are recorded in report summary form and verified and adopted at the next meeting of the Regulatory Board. The Chairperson signs the minutes of the meeting.

Article 20:

The Regulatory Board may:

1° co-opt such persons as it requires to attend meetings to advise it, these persons are chosen in accordance with the competences. Co-opted persons have no right to vote on any question discussed;

2° form committees to consider any issue in depth and to report the results of such deliberations to the Regulatory Board.

Article 21:

Except as otherwise specified in this law, the Regulatory Board determine its own procedure and the procedure for any committees of the Board and for the attendance of co-opted persons at its meetings.

Article 22:

The Regulatory Board may of its own volition, or upon request of any Minister, provide advice and explanations to the Minister on any matter concerning the relevant utility.

The Board also has the right to make proposals to a Minister for a new legislation for any public utility sector and the Minister shall considers such proposals.

The Minister consults with the Regulatory Board concerning the formulation of policy for the public utility sector for which he or she has responsibility. The Regulatory Board gives due regard, to and has a right of opinion on such a policy.

Article 23:

Ministers must, in all cases, respect the independence of the Regulatory Agency and the Regulatory Board except as provided in paragraphs 1 and 2 of article 24 of this law.

Article 24:

The Regulatory Board will not do anything and will not be required to do anything which is prejudicial to the security of Rwanda or adversely affects relations with foreign countries.

The Minister determined by the President of the Republic has the power to

rescind any decision of the Regulatory Board if it appears to him/her that the security of Rwanda or relations with any foreign country may be adversely affected. Prior to exercising this power, the Minister must provide explanations in a meeting he/she has convened in writing with the Regulatory Board. If the decision is insisted upon, he/she then proceeds to nullify it. The Regulatory Agency Board has the right to have recourse to the relevant courts as far as the nullified decision is concerned.

Article 25:

Members of the Regulatory Board may not, during their term of office:

1° hold any other office that would adversely affect the interests of the Regulatory Agency;

2° be a member of the executive committee, a director or an officer of, or a partner in any private organization connected in any way with the public utilities regulated under this law;

3° either himself/herself or any member of his family, directly or indirectly, holds any shares in or derive any dividends or profits from the business of any public utility.

Article 26:

By decree, the Minister appointed by the President of the Republic determines the content of the report on the activities and financial management prepared by the Regulatory Board according to each public utility sector.

That report is handed in by the Regulatory Board once a year, no later than six months after the close of the Regulatory Agency's financial year. The Regulatory Board hands the written report to the Minister appointed by the President of the Republic in accordance with the law with a copy to the Minister having Finance in his attributions and to the Minister responsible for the public utilities.

Section 2. The Managing Director's Office Article 27:

The Managing Director of the Regulatory Agency is appointed by a decree of the Prime Minister. He /she holds office on a full time basis. He/she is appointed for a three year term that may be renewed once.

He /she attends the Regulatory Board's meeting as a Secretary but has no voting rights.

Article 28: A decree of the Prime Minister determines the attributions and entitlement benefits of the Managing Director. Article 29:

The Managing Director is relieved of his duties by his/her appointing authority. The person appointed to replace him/her is appointed by a decree of the Prime Minister and performs his duties for three complete years.

Article 30:

If the Managing Director believes that the activity of any public utility provider or any user might be prejudicial to the security of the country, he immediately informs the Minister and the Chairperson of the Regulatory Board.

Section 3. The Supervisory Board Article 31:

The Supervision of the activities of the Regulatory Agency is done by a Supervisory Board comprising of a chairperson and two other persons. They are appointed by a decree of the President of the Republic and they are selected in terms of their skills and competences. They are appointed to their duties for a term of three years that is renewable once.

Article 32:

The Supervisory Board supervises in general, all activities of the Regulatory Agency. It has the right to scrutinize without removing from their location, contents of the treasury, ledger books and documents of the Regulatory Agency. The Supervisory exercises are done once every three months and at any other time it is necessary on the request of the Minister determined by the President of the Republic.

Article 33:

After every supervisory and verification exercise, the Supervisory Board makes a report to the Minister having Finances in his attributions, with a copy to the Minister determined by the President of the Republic and another to the Regulatory Board informing them of its achievements and advising them on what it considers should be done.

Article 34:

The entitlement benefits and remuneration of the members of the supervisory Board are determined by a decree of the Minister determined by the President

of the Republic and provided by the Regulatory Agency.

CHAPTER 4: ASSETS, BUDGET AND ACCOUNTS

Article 35:

The expenses of running the Regulatory Agency are derived from:

- 1° fees levied for the application for and grant of licenses, approvals, permits, contracts, concessions and allocations to each utility operator;
- 2° grants, donations and legacies;
- 3° fees for services rendered to each utility by the Regulatory Agency;
- 4° loans;
- 5° annual fees based on a percentage of turnover from the activities of each public utility; that percentage is determined by a decree of the Minister determined by the President of the Republic;
- 6° all fines imposed by the Regulatory Board.

All receipts of the Regulatory Agency may be paid in total sums at once or in installments.

The Regulatory Board ensures that the Regulatory Agency has different activities that render it self financing but not profit-making.

Article 36:

The budget is prepared by the Managing Director's office of the Agency who then forwards it to the Regulatory Board.

The Regulatory Board examines, approves and monitors the management of the annual budget of the Regulatory Agency.

Article 37:

The Regulatory Board may request loan funds from the state budget for its use. Those funds are repaid over such a period and at such a rate of interest

according to the agreement the Agency has had with the Minister having Finances in his/her attributions.

The rate of interest paid cannot exceed the maximum rate of interest established by the Central Bank of Rwanda at the time the loan was made.

Article 38:

Any balances from the annual budget of the Agency is surrendered to the state treasury, after putting aside the initial amounts to be utilized in the annual budget for the coming year.

Article 39:

The Regulatory Board is answerable for the use and management of the yearly budget of the Agency.

The annual accounts are published in the Official Gazette of the Republic of Rwanda.

CHAPTER 5: COMPETITION

Article 40:

While the fulfillment of its objectives as provided for in paragraph three of article 5 of this law, the Regulatory Board concentrates on the following:

- 1° promoting effective competition within each public utility sector in the interest of those wishing to use the goods and services of each utility;
- 2° investigating and terminating anti-competitive conduct;
- 3° impose sanctions in respect of anti-competitive conduct;
- 4° informing in a written form and with sound proof the Minister determined by the President of the Republic of any anti-competitive conduct;

5° notifying the Minister determined by the President of the Republic of the measures taken and sanctions which have been applied.

Article 41:

Anti-competitive practices refer to any agreements by providers of public utilities or decisions by associations of utility providers, or concerted practices which have as their object or effect, the prevention, restriction of competition in a given public utility sector based within the country.

This article applies in particular to any agreements, decisions or practices which:

1° directly or indirectly fix tariffs, purchasing or selling prices or any other direct or indirect trading agreement;

2° limit or control markets or technical development;

3° control the selling of shares or markets or sources of supply;

4° apply dissimilar conditions to equivalent transactions with other providers of public utilities, hence placing those providers at a competitive disadvantage;

5° include in any agreement subject to acceptance by other parties additional obligations which have no connection with the subject matter of such agreements.

Any agreement or decision set out in paragraph one of this article is considered void and any concerted practice is deemed to be contrary to the law and is terminated.

Article 42:

Any conduct by one or more dominant organizations in a public utility sector in the country is prohibited if it amounts to an abuse of the dominant position.

The first paragraph of this article applies in particular to conduct which:

1° directly or indirectly imposes unfair purchasing or selling prices or other unfair trading conditions;

2° limits markets or technical development and adversely affect users;

3° applies dissimilar conditions to similar trade agreements with other trading parties thereby placing them at a competitive disadvantage;

4° terminates an established business practice or agreement without justifiable reasons.

Any conduct provided for in the first paragraph of this article is considered void and is deemed to be contrary to this law and must be terminated.

Article 43:

Upon a request by the Regulatory Board, the Minister appointed by the President of the Republic by a decree specifies any additional or more specific types of agreements, decisions, practices or courses of conduct which are considered to be anti-competitive or an abuse of a dominant position in accordance with what is provided for in this chapter.

Article 44:

Any natural person or organization may submit a complaint or make any representation to the Regulatory Board that any public or utilities are acting in an anti-competitive manner.

If it appears to the Regulatory Board that an infringement of articles 41 or 42 of this law, may have taken place, the Regulatory Board investigates the complaint in accordance with the provisions of the following articles.

Article 45:

The Regulatory Board gives a written notice to the provider of utilities as provided for in paragraph one of article 48 of this law asking him/her to forward to it information relating to the complaint, or exercises its rights as provided for in paragraph four of article 48 of this law.

If a written notice is given, the Regulatory Board states in the notice:

1° that it received a complaint of alleged anti-competitive conduct which it intends to investigate;

2° the nature of the complaint;

- 3° the reasons for suspicion of anti-competitive conduct;
- 4° the information required from the provider in order to investigate the complaint ;
- 5° that if it is necessary to do so appropriate steps, must be taken in order to remedy the anti-competitive behaviour.

Article 46:

Every natural person or organization provides the information required in accordance with the first paragraph of article 45 within seven working days of the receipt of the request by the Regulatory Board about the complaint.

Any natural person or organization may upon notice by the Regulatory Board, voluntarily terminate any anti-competitive practice or abuse of a dominant position without further intervention by the Regulatory Board, by the modification of any agreement or decision or by cessation of any course of conduct or dominant practice.

If the Regulatory Board investigates the complaint and finds it genuine, the Regulatory Board may:

- 1° issue a prohibition notice requiring any organization to cease any activity which is contrary to the provisions of this article;
- 2° impose fines against any organization in respect of activity in accordance with Article 50 of this law;
- 3° declare any anti-competitive agreements or decisions null and void.

Article 47:

Any natural person or organization which is aggrieved by the decision of the Regulatory Board may appeal to the Court.

An investigation by the Regulatory Board under this law does not preclude any other natural person or organization from taking legal action against the person or organization, which has acted in an anti-competitive way in respect of any harm done to its business.

Article 48:

The Regulatory Board may require any public utility sector to provide information to the Regulatory Board about its activities. The information:

1° may include the disclosure to the Regulatory Board of financial, technical, scientific, marketing, commercial, legal cases and product information irrespective of its importance;

2° must include information which is in the possession of any public utility sector, can easily be accessible by that public utility sector, or can easily be obtained by it.

Every sector provides that information within the time limit specified by the Regulatory Board. Failure to provide the information on time is punishable by a fine in accordance with article 51 of this law.

If any natural person or organization declines to give information without reasonable excuse, the Regulatory Board issues an enforcement notice. If information is not provided by the date in the enforcement notice, the person or organization is subject to a daily fine as provided for by article 51 of this law.

The Regulatory Board has the right to have access to any business premises of any natural person or organization at any time, in accordance with the laws either with or without notice, to inspect and obtain any type of necessary information.

The Regulatory Board cannot disclose any confidential information to third parties, it must ensure that the staff of the Regulatory Board comply with the secret nature of confidential information.

The powers set out in paragraph four of this article are only exercised by the Regulatory Board or by employees of the Regulatory Agency where the Regulatory Board reasonably believes that any natural person or organization is acting in contravention of the Law relating to that utility or this law.

Article 49:

The Regulatory Board may designate any public utility organization as a dominant organization. Dominant organizations are subject to the controls set out in the law relating to that sector of public utility.

Such designations made under the provisions of this article take into account the natural person or organization's ability to influence market conditions, its turnover relative to the size of its market, its control of users access to the relevant utility, its access to financial resources and its experience in providing the relevant utility.

The Regulatory Board notifies in writing any natural person or organization which it considers to be a dominant organization together with details of the relevant market in which, and the reasons why, it is believed to hold a dominant position and to make an abuse of such position.

CHAPTER 6: PENALTIES.

Article 50:

Any legally recognized natural person or organization that fails to provide information requested by the Regulatory Board within the time limit specified by this law:

1° violating the second paragraph of article 46 of this law are subject to a daily fine ranging from two hundred thousand Rwanda Francs (200,000 Rwf) to two million Rwandan Francs (2,000,000 Rwf);

2° violating the third paragraph of article 46 of this law are subject to a daily fine ranging from five hundred thousand Rwanda Francs (500,000 Rwf) to five million Rwanda Francs (5,000,000 Rwf).

Article 51:

Any natural person or organization that is in contravention of articles 41 and 42 of this law is subject to fines determined by the Regulatory Board but which fine will not exceed ten per cent of each natural person or organization's turnover at each premise of operation of that person or organization for the period of time in which the infringement took place.

CHAPTER 7: FINAL PROVISIONS

Article 52:

All previous legal provisions contrary to this law are hereby abrogated.

Article 53:

This law comes into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 13/09/2001

The President of the Republic

Paul KAGAME

(s é)

The Prime Minister

Bernard MAKUZA

(s é)

The Minister for Finance and Economic Planning

Donald KABERUKA

(s é)

The Minister of Public Works, Transport and Communications

Silas KANAMUGIRE

(s é)

The Minister for Energy, Water and Natural Resources

BAHUNDE MIVUMBI Marcel

(s é)

The Minister of Commerce, Industry and Tourism

Dr. Alexandre LYAMBABAJE

(s é)

Seen and sealed with the Seal of the Republic:

The Minister of Justice and Institutional Relations



Jean de Dieu MUCYO
(s é)

