

Attracting Investment in African Regulated Businesses

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NARUC

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Currently:



- **Vice President, General Counsel and Secretary for American Water, Central Region**
- **Non-Executive Director of Vodacom - Congo**

Formerly:

Senior Counsel with SBC Seconded to Telkom South Africa where I was:

- Group Executive Vice President – Corporate Development, responsible for Telkom’s Merger and Acquisitions and Subsidiaries Groups, as well as Telkom’s IPO.
- Director of Vodacom Group and Chairman of Vodacom’s Corporate Development Board subcommittee.
- Chairman of Telkom Directory Services.

- Telkom SA is the largest land line telephone company in Subsahara Africa with more than 5 million telephone lines, DSL service and 40,000 employees.





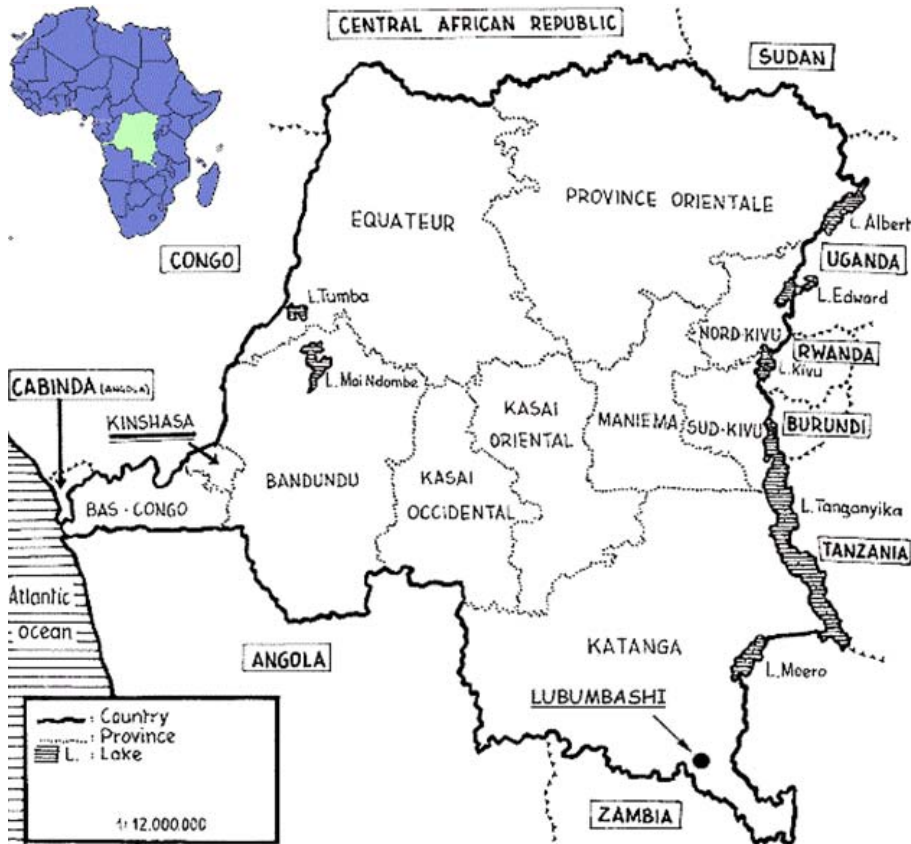
- Vodacom is the largest cellular carrier in Subsahara Africa with more than 15 million customers.



- Telkom Directory Services is the largest yellow/white pages company in Subsahara Africa.



- Vodacom Congo is the largest cellular carrier in the Democratic Republic of Congo with 1.3 million subscribers.



- My focus as an officer / director was and is the management of the core business working within the regulatory framework.
- I am not a regulatory specialist.
- I am able, however, to give you an idea of what regulatory issues foreign investors consider before making an investment in Africa.



First Let's Talk About Regulation

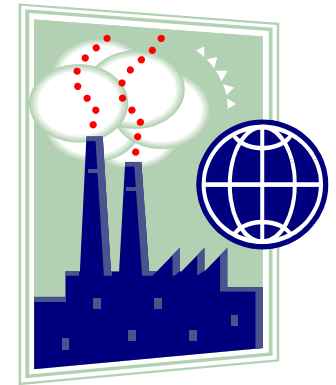


- There are two essential currents in regulation: Social and Economic.
- Examples of social regulation are: 1) Consumer; 2) Job safety and other workplace conditions; 3) Environment and 4) Energy.
- Examples of economic regulation are: 1) Finance and banking; 2) Industry-specific regulation (like Telecoms) and 3) General business.

- The US Federal Government spends approximately \$20 Billion for regulatory programs.
- The individual US state governments spend tens of billions more in regulatory programs.
- Since the 1960s in America, regulatory spending has increased 150%, more than doubling the resources devoted to regulatory activities.
- From these facts, you would say that the US has a “healthy” appetite for regulation.
- For a private company, the cost of compliance with these regulations is not so healthy; it’s staggering.



- Investors look for regulatory climates outside of the US with a lower regulatory compliance cost.
- The first criteria international investors examine when evaluating a regulated business opportunity in Africa is the suitability of the overall regulatory environment.
- Investors examine the cost of compliance and feed those costs into their business models.
- They examine their ability to comply with the overall regulatory framework and determine what assets they will need to dedicate to ensure compliance.



- Investors next examine the quality of the regulation as it applies to their ability to earn a fair return on their investment.
- The opportunity to earn a fair return is essential to a company's ability to attract capital.
- The opportunity to earn a fair return is fundamental to the traditional regulatory compact.
- That compact, embodied in legislation, case law and constitutional standards, subjects companies to regulation by commissions in exchange for protected service territories and the opportunity to earn a fair return.



- In the early '90s, I examined several cellular telephone opportunities for SBC in the Ivory Coast, Ghana, Nigeria, and South Africa.
- In the West African countries, there were numerous cellular licences available. Just about anybody could obtain a cellular license.
- In South Africa, there were only two.
- In South Africa, the spectrum associated with the licenses was clear.
- In West Africa, the spectrum associated with the licenses was anything but clear.



- Quality regulation attracts quality companies.
- SBC passed on investing in West Africa. It made a series of investments in South Africa.
- In 1995, it invested \$90 million in MTN (one of the two cellular providers) and took operational control.



- In July 1997, SBC and Telkom Malaysia created a joint company called Thintana (Zulu for “to reach out and touch someone”).
- Through a competitive bid process, Thintana bid approximately \$1Billion for a 30% stake in Telkom.
- Over the next 5 years, Thintana seconded over 100 SBC and Telkom Malaysia managers, invested tens of millions of dollars in training Telkom’s workforce, and transferred technology and management best practices.

- Telkom's workforce, including its Board and senior management team, were transformed from an apartied government parastatal to a modern, competitive, performance driven team reflecting the demographics of the new South Africa.
- Two and a half million lines were rolled out to previously disenfranchised people.
- The availability of telecommunications propelled the South African economy with year-on-year sustained GDP growth.

- In March 2003, Telkom SA (“TKG”) opened on the NYSE at \$14.
- The foreign investors continued their transfer of state-of-the-art management practices.
- EBITDA margin improved after the listing from 27.4% to 42.3%.
- ROA from negative to positive 15.9%.
- These improvements drove TKG to \$70 by November 2004.
- In 2004, SBC exited from Telkom and handed over the Company entirely to South African managers.



- So, we've looked at the overall suitability of the regulatory environment and the cost of compliance.
- We've looked at the quality of the regulations themselves and the ability of the investor to earn a fair return.
- I next want to emphasize that consistency of regulatory interpretation is very important to an investor.

- The South African Regulatory Authority (ICASA) had encouraged Telkom to roll out DSL lines to the public to enable the proliferation of internet access to South Africa's citizens.
- In 2000, Telkom explained the DSL cost model to the regulators who, in turn, approved the DSL product tariff.
- The tariff was higher than a traditional phone line due to the cost of technology, equipment and customer service necessary to enable high-speed internet.



- Since 2000, Telkom successfully rolled out tens of thousands of DSL lines.
- Now in 2005, ICASA is seeking to reduce the DSL tariff to the level of the basic telephone tariff.
- This inconsistent regulatory behavior is not comprehensible to investors.
- Telkom relied on the previous tariff to enter into a series of multi million dollar procurement agreements.
- If ICASA is successful, it may lead to an end to DSL service in South Africa and lead to serious financial trouble for Telkom.

- The last bit of regulatory wisdom I wish to impart to you is that investors are keen to see a path towards privatization and liberation in African countries.
- Open markets in which private companies can participate and have direct ownership encourages investment and creates economic growth.
- This growth can be regulated to protect the state's interests.
- I encourage regulators to work with their executive and legislative branch counterparts to develop properly regulated business models and to liberalize and privatize their countries accordingly.

- Countries with open and competitive markets will enjoy the benefit of vital infrastructure development and improvements in the quality of life of their people.
- Quality liberalization, privatization and regulation attracts quality companies to make meaningful investments.
- Companies like Telkom and Vodacom are working to develop new investments in Africa.
- The countries who create the right environment will attract them and other quality investors.