East Africa data infrastructure ripe and ready to move to the next level

By John Syekei

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Technology is said to be changing so fast that regulators cannot keep up. However, in East Africa at least, the gap is narrowing as policy-makers and regulators see the economic benefits of keeping regulation up to speed with technology advancements.

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Kenya, Tanzania and Uganda have each reached some key milestones in their efforts to put always on, high-speed data communications within reach of citizens and businesses.

Mobile services

Kenya was the first in East Africa to test and activate 5G services, which went live in four counties, including Nairobi, at the end of March 2021.

Tanzania, the second-largest telecommunications market in the region, behind Kenya, broke through the 80%-mark for mobile penetration in January 2021. Almost 83% of Tanzania's 60.61 million people now have access to mobile services.

As for Uganda, total internet subscriptions exceeded 20 million for the first time in September 2020, equating to one internet connection for every two people. This is attributed mainly to the shifting work culture caused by the Covid-19 pandemic, which prompted many businesses to adopt remote working methods.

These are important successes (especially for countries that have only started ramping up their data infrastructure rollouts in the past decade). Credit for this must be shared among three main categories of players: governments for taking the lead in developing their countries' data infrastructures; regulators for creating a largely enabling environment; and network operators and service providers for introducing new technologies and services such as 5G, 4G LTE and e-commerce.

This is merely the beginning, though. Much remains to be done before Kenya, Tanzania or Uganda can be said to have achieved their data infrastructure goals, and there are challenges to be navigated if they are to attract the investment needed to fill in the connectivity gaps.

Clarity on ownership needed in Kenya

A sore point for many communications sector players in Kenya is the local equity participation requirements. According to the National ICT Policy issued in November 2019, 30% of the ownership of any prospective ICT services licencee must be held by Kenyans or a company majority owned by Kenyans within three years.

Provision has been made for extensions but it is not yet clear whether multiple extensions may be sought to comply with the 30% shareholding requirement, nor how long entities compliant with the previous (2006) policy have to comply. A formal clarification from the Ministry or the Communications Authority of Kenya on this issue would be helpful in providing clarity to investors on their structuring options.

Another issue to watch in Kenya is how the Communications Authority will exercise its discretionary powers. Kenyan legislation gives wide discretion to the regulator in a variety of matters without any set standards or principles to guide it. This could create a disconnect between reasonable expectations and practice.

In the realm of interconnection agreements, for instance, the authority has wide discretion to intervene and compel a party to provide interconnection services on the basis of public interest. However, the law does not define what amounts to public interest or the circumstances when the regulator may compel a party to provide interconnection services. Again, some clarification would be welcomed.

Local listing requirements and taxes worry investors in Uganda

The Uganda communications sector is experiencing various challenges that could impede the growth of its ICT sector. The new licensing regime, introduced in 2019, requires national telecommunication operators (NTOs) to undertake local listings – a change that has sent shockwaves through the sector.

As at May 2020, all existing licence holders were required to apply for new licences and given two years from the date of issue of the new licence to list at least 20% of their shares on the Uganda Stock exchange.

The sector has also been struggling with the implications of Uganda's taxes on social media and over the top services (OTTs), which have impacted negatively on mobile operator revenues.

Users, however, have been finding ways to circumvent the taxes through virtual private networks. In response, Government plans to repeal the payment of OTT taxes and instead introduce 12% excise duty on internet data. This will make internet costs more expensive, which is problematic given the already high cost of internet access and data in Uganda.

Another challenge is heavy-handed intervention by the authorities, such as the Government's order to all ISPs to shut down the internet for five days during the 2021 general elections.

Then, there was also the Uganda Communication Commission's unilateral decision to increase licensing fees from $10,000 a year to $30,000 a year, which the UCC agreed to reduce after being taken to court.

New policy focus needed in Tanzania

Over in Tanzania, which has one of the most liberalised data infrastructure markets in Sub-Saharan Africa, arguably the main challenge now is how to move forward with policy and regulation in ways that will increase the contribution of the ICT sector to the economy.

Currently, the share of the ICT sector to GDP is only 1.9% and broadband penetration remains low – and access costs high – in rural and urban underserved areas.

In particular, a change of policy focus is called for to address the high cost of infrastructure investment and the lack of data centres, right-of-way infrastructure and e-readiness infrastructure in Tanzania.

There is a clear need to look at various ICT laws and regulations, as well as intellectual property rights regulations, to make data infrastructure investment more attractive.

Taking the next steps

Despite the challenges they face in the domain of data infrastructure expansion, all three countries have much going for them. Kenya now has fibre installed in all 47 counties and has completed metropolitan fibre civil works in 35 counties. Tanzania has achieved cost reductions of about 99% in backhaul transport bandwidth compared to 2009. Uganda, meanwhile, is reviewing spectrum band plans in preparation for 5G.

The basics are in place in all three countries, and with room to grow and strong demand for digital services among consumers and businesses alike, the region continues to be a ripe market for investment in data infrastructure.

As for filling in the regulatory gaps that remain, or pointing out pitfalls on the path ahead, ICT companies and investors can help the situation along by using every opportunity available to them to contribute to the development of policy and regulation.

Such opportunities include putting forward their views when the regulators ask for comments or submissions on changes in policy and regulation, and proactively engaging with regulators on issues relevant to investment in data infrastructure. These opportunities can be effectively leveraged when companies work with advisers well versed in the issues and protocols at hand.

While ICT companies and investors might not always see eye to eye with the regulatory authorities, any gaps between their positions are more likely to be narrowed through engagement. Regulators in the region have, generally speaking, shown that they are open to receiving different perspectives, particularly when it comes to expanding access to affordable, ubiquitous, high-quality data communications. Investors should not shy away from providing such perspectives.

ABOUT THE AUTHOR

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