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Stanley, Shanapinda

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ASSESSING STAKEHOLDER PERCEPTIONS OF EFFECTIVENESS OF NAMIBIA'S COMMUNICATIONS REGULATORY FRAMEWORK

STANLEY SHANAPINDA

STUDENT NO. 402009

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Johannesburg, October 2013

ABSTRACT

Communications regulatory frameworks are established to achieve affordable pricing, consumer welfare, innovation and competition. A regulatory framework is therefore endowed with regulatory governance measures and regulatory incentives to enable it to achieve these purposes. In applying these measures and incentives, the framework becomes effective, or ineffective, if the framework fails. The purpose of this qualitative exploratory study was to assess the perceptions of the stakeholders on the effectiveness of the types of governance measures and incentives implemented in Namibia because stakeholders are involved in the success or failure. The study of perceptions are important because they offer insight of informed stakeholders of how policies, laws and regulations are implemented for whom those policies, laws and regulations are designed, implemented and meant to impact. Such insights can inform the design of recommendations on how these measures and incentives can be improved to make the regulatory framework more effective, as it has done in this study. One of the main findings of the research was the perceived conflict of interests between the ICT policy role of the Ministry of ICT and its shareholder role over Telecom Namibia, negatively impacting on competition and putting privately owned licensees at a market disadvantage. The conclusion was that this regulatory governance design measure conflicts with the regulatory framework and requires legislative amendment and a re-design of the framework to achieve the regulatory purpose of competition and improve Namibia's regional and global competitiveness.

DECLARATION

I declare that this report is my own unaided work. It is submitted in partial fulfilment of the requirements of the degree of Master of Management (in the field of Public and Development Management) in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other University.

_____

Stanley Shanapinda

4 October 2013

DEDICATION

To my BFF and anchor during my studies Simon Mutawonga Yiga,

to the greatest love I have known thus far - F.I.R.,

to my future greatest love and offspring,

with love and thanks.

ACKNOWLEDGEMENTS

I am grateful to my supervisor, Ms. L. Abrahams and others that offered their assistance and advise, for their guidance throughout the research process and all the stakeholder interviewees that participated in this study.

Without your assistance and co-operation, this research would not have been possible.

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LIST OF ACRONYMS

CCL – Cabinet Committee on Legislation

CRAN – Communications Regulatory Authority of Namibia

CEO's – Chief Executive Officers

CoW – City of Windhoek

CTO's - Chief Technical Officers

DEL – Direct Exchange Lines

DoC – Department of Communications

DG – Director General

DTT – Digital Terrestrial Television migration from analogue to digital broadcasting

EBITDA – Earnings Before Interest Tax Depreciation and Amortisation

ECS – Electronic Communications Services

ECNS – Electronic Communications Network Services

ECTA – European Competitive Telecommunications Association

FTR's – Fixed Termination Rates

GCI – Global Competitiveness Index

GNI – Gross National Income

ICT – Information and Communications Technology

IDI – ICT Development Index

IPB – ICT Price Basket

IP – Internet Protocol

ITU – International Telecommunications Union

LTE – Long-Term Evolution

MD's – Managing Directors

MIB – Ministry of Information and Broadcasting

MICT – Ministry of Information and Communications Technology

MTC – Mobile Telecommunications Limited

MTR's – Mobile Termination Rates

NAD – Namibia Dollar

NaCC – Namibian Competition Commission

NBC – Namibian Broadcasting Corporation

N/A – Not Applicable

NCC – Namibian Communications Commission

NCT – Namibia Consumer Trust

NDP4 – National Development Plan

NGN – Next Generation Network

NP – Namibia Post Limited

NPC – National Planning Commission

NPTH – Namibia Post and Telecom Holdings Limited

OSISA – Open Society Initiative for Southern Africa

SOE – State-Owned Enterprises

SOEGC – State-Owned Enterprise Governance Council

RIA – Research ICT Africa

TN – Telecom Namibia Limited

TRE – Telecom Regulatory Environment

TRGI – Telecommunications Regulatory Governance Index

UAS – Universal Access and Service

USD – United States Dollar

USF – Universal Service Fund

WACS – West Africa Cable System

WEF – World Economic Forum

WTN – Wireless Technologies Namibia

ZAR – South African Rand

3G – Third Generation of Mobile Phone Telecommunications Standards

4G – Fourth Generation of Mobile Phone Telecommunications Standard

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CHAPTER ONE: EVOLUTION OF NAMIBIA'S COMMUNICATIONS REGULATORY FRAMEWORK

This report captures the results of the study conducted to assess stakeholder perceptions of effectiveness of the communications regulatory framework of Namibia.

Namibia's communications regulatory framework experienced major transformation in 2011 with the establishment of the new national regulator and the promulgation of the Communications Act (2009). The study was conducted to assess how the stakeholders perceived the evolution of this regulatory framework prior to 2011 and post 2011, and how it can be improved to make it more effective from a global competitive perspective.

1.1 NAMIBIA'S HISTORY, POPULATION AND ECONOMIC INDICATORS

Located in the south west of Africa, Namibia borders South Africa, Botswana and Angola. It is a sizeable country with a land area of 832,690 square kilometres (Wallace & Kinahan, 2011). Namibia celebrated its independence from South Africa on the 21st of March 1990 (Wallace & Kinahan, 2011). It then became an independent democratic state, comprising the Judiciary, Executive and Legislature with a multi-party democracy system in terms of the Constitution of the Republic of Namibia (1990).

Namibia has an estimated population of 2,104,900. A total of 1,219,400 (58%) persons live in the rural areas, while 885,500 (42%) live in urban areas (NPC, 2012). Namibia's gross domestic product (GDP) stands at USD 11.9 billion and the GDP per capita is USD 5,652.9. The main economic sectors are agriculture, industry and services, each contributing 7.7%, 20.5% and 71.7% to the GDP respectively (WEF, 2011). The Namibian information and communications technology (ICT) market is estimated at N$4 billion (Kaapanda, 2011). ICT contributed 2,9% to Namibia's GDP in 2008 (RIA,

2010b). Namibia is ranked 83rd with a score of 4.00, by the World Economic Forum's (WEF) Global Competitive Index (GCI) for the year 2011-2012, out of 142 countries. Namibia fell nine places from the 2010-2011 GCI ranking of 74. Regarding its technology readiness Namibia is ranked 99th, with a score of 3.25. With regards to innovation Namibia is ranked 92nd out of 144 countries (WEF, 2011).

1.2 GOVERNMENT SHAREHOLDING IN THE COMMUNICATIONS SECTOR

Telecommunications services were commercialised in 1992, with the establishment of Telecom Namibia Limited (TN) as the 100% state-owned company, under the shareholding of Namibia Post and Telecom Holdings Limited (NPTH). TN was then a self-regulatory fixed line operator (Namibia Prime Minister, 1992).

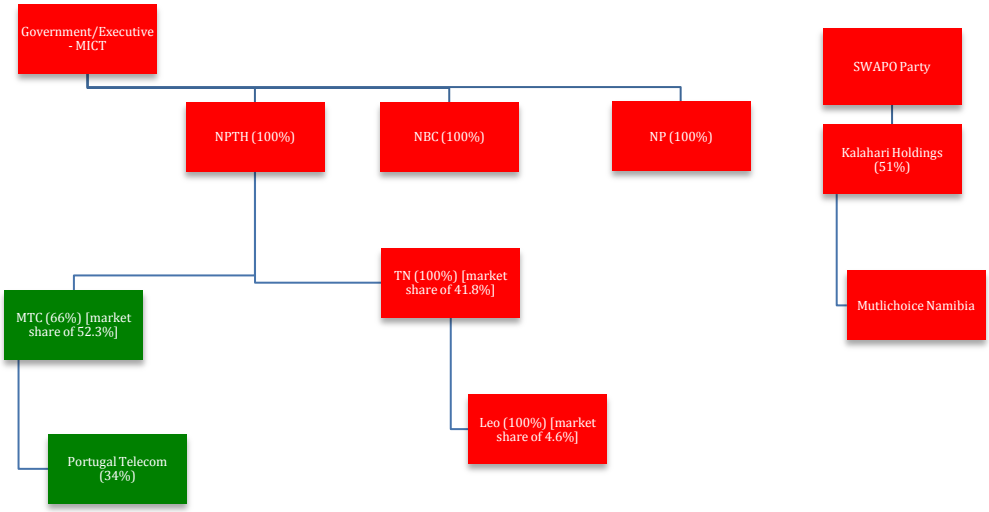
The initial communications regulatory framework was established when the Namibia Communications Commission (NCC) was created in 1992, as a non-independent secretariat in the Ministry of Information and Broadcasting (MIB), initially regulating only broadcasting and spectrum (MIB, 2007). As from 1995, the NCC started regulating mobile cellular telecommunications services when the first mobile operator, Mobile Telecommunications Limited (MTC) was licensed, being 66% state-owned via NPTH (MTC, 2011). In 2006 the second mobile operator, PowerCom (Pty) Ltd, trading as Cell One then, but trading as Leo (Leo) now, was licensed (NCC, 2006). The Namibian Broadcasting Corporation (NBC), as a pubic broadcaster, is fully government owned (Namibia Prime Minister, 1991). Namibia Post Limited (NP) is also fully government owned (Namibia Prime Minister, 1992). The ruling political party SWAPO owns Kalahari Holdings Limited, which in turn owns 51% of the shares in Multichoice Namibia Limited (CRAN, 2011h and OSISA, 2011).

The Figure 1.1 below indicates the shareholding structure of the entities that have preliminarily been deemed as dominant by CRAN, subject to further

public consultations. In the telecommunications sector these are MTC, TN and Leo. In the broadcasting sector these are NBC and Multichoice Namibia (CRAN, 2012a and CRAN, 2012c).

The red colour indicates either the Namibian government's or the ruling political SWAPO party's sole or majority ownership in particular firms. The green indicates a public private partnership shareholding structure between NPTH, which is wholly government owned and Portugal Telecom, with regards to MTC. The amber colour refers to government's sole shareholding. The blue colour simply represents government. The use of the colour codes for the purpose of this Figure 1.1 is simply to differentiate between government and private shareholding.

Figure 1.1: Shareholding Structure of Entities Preliminary Determined as Dominant by CRAN as at March 2012



The above shareholding structure raises the contentious issue of sole or majority government ownership, or ownership that is linked to government and political affiliation, in determining if a regulatory framework is effective. It demonstrates concentration of power in the sector in the hands of government and reduced competition (CRAN, 2011h; OSISA, 2011; Namibia

Prime Minister, 1992).

The above structure raises the regulatory governance issue of how majority government ownership or rather dominance by state monopolies impacts competition and market entry in the sector and the role of the regulator to restrain the abuse of dominance whilst at the same time both reporting to the same line Minister of ICT in what is supposed to be a liberalised telecommunications market.

1.3 REFORM OF THE REGULATORY FRAMEWORK

Reform of the regulatory framework started since the year 2000 but the Communications Act (2009) was eventually promulgated in November 2009 but only put into operation on the 18th of May 2011 (MICT, 2011a). In comparison with SADC jurisdictions, similar major legislative provisions to reform the communications sector were brought about at least six years earlier in countries such as South Africa, who promulgated the ICASA Amendment Act (2006) and the Electronic Communications Act (2005) in 2006 (DoC, 2006a and DoC, 2006b). This demonstrates how delayed the reform of the communications regulatory framework was and under what circumstances licensees had to conduct their businesses with a sector regulated by the NCC, a direct government agency administered by the MICT (NCC, 2009). This raises issues of independence of the regulator, clarity of roles between the regulator and the Executive, predictability and transparency, which are issues assessed by this research report.

The Communications Act (2009) ushered in a new regulatory framework, replaced the NCC and established the Communications Regulatory Authority of Namibia (CRAN) reporting the Minister of ICT and classified as a State-owned Enterprise (SOE) (MICT, 2009d). This new framework liberalises the sector and provides for competition, regulates TN, allows for the possible regulation of the NBC and NP, sets out rule-making procedures, licence

application processes, rules for interconnection, universal service, spectrum management, sharing of infrastructure, accountability, rights of way, pricing regulation and the resolution of disputes (MICT, 2009d). These are the concepts and dimensions in terms of which Namibia's communications regulatory frameworks effectiveness will be assessed by this study. The structural position of CRAN as an SOE raises the issue of how independent CRAN is.

CRAN made regulations in terms of the above concepts within a period of a few months to a year since its establishment. The regulations provide for transparent licence application and awarding processes, public comments, hearings, complaint procedures and reasons to be given for decisions and licence conditions. Further regulations published relate to setting the service and technology neutral licensing regime for individual and class Electronic Communications Services (ECS) and Electronic Communications Network Services (ECNS); and commercial, community and public broadcasting service licences amongst others (CRAN, 2011a). The making of these regulations underscores the importance of predictability CRAN exercising such powers as an independent regulator, and transparency in the rule-making processes of the regulator.

1.4 FIXED VOICE SERVICES COVERAGE AND ACCESS

Regarding the performance of the Information and Communications Technology (ICT) sector, Direct Exchange Lines (DELs) totalled 159,059 in 2010, and the DEL penetration remained static at 7.3% since 2010 (TN, 2011). However, in 2011, the fixed line penetration has decreased with 11.5%, as revealed by the Namibian household survey conducted in 2011, in partnership between Research ICT Africa (RIA) and CRAN (Stork, 2011).

Stork (2011) in his universal service baseline study identified a gap of 149,353 households without fixed-line phones that would be interested in

obtaining such a service. From this, a total of 96,000 households are in the urban areas, with the remaining households in the rural areas.

Furthermore, TN's annual report for the year ended 2010/2011 reveals the following statistics:

Table 1.1 TN's Fixed Line Service Statistics

Total number of public phones	2,824
Total phones per 1000 inhabitants	1.3
Penetration per household	38.5%

Source: TN, 2011

These statistics reveal the access gaps with regards to DELs, indicating a low penetration. The number of public phones continues to decrease (TN, 2011).

1.5 MOBILE VOICE SERVICES COVERAGE AND ACCESS

MTC and Leo are both deploying 3G voice and data communications services (MTC, 2011) and (Stork, 2011). MTC has started deploying 4G services in 2012 (Namibian, 2012, March 6). TN deployed CDMA technology for voice and data (TN, 2011).

Namibia has mobile voice coverage of 98% of the population, thereby outdoing many of its fellow African states (Stork, 2011). Mobile subscribers of MTC are approximated to be 1,854.7 million (MTC, 2011). On the other hand, mobile subscribers for Leo are estimated to be about 20% of the mobile phone users, or about 300,000 subscribers. From the total subscribers, a total of 92% are prepaid customers, with the rest being post-paid customers. Stork

however cautions that subscribers may have multiple sim cards, which distorts the above figures (Stork, 2011).

1.6 BROADCASTING SERVICES COVERAGE AND ACCESS

Radio services decreased from 72.6% coverage nationally in 2007 to 72% in 2011. TV coverage was 37.9% in 2007 and increased to a mere 40.6% in 2011 (RIA, 2012b).

1.7 INTERNET SERVICE COVERAGE AND ACCESS

In 2011 CRAN, along with RIA conducted a baseline survey for universal service. The study revealed that a mere 13.4% of Namibians over the age of 15 or older used the Internet. Internet connections increased to 11.9%. Mobile Internet access is a large part of the said increase. The study reveals that 23% of Namibians with a mobile phone use it to browse the Internet with a staggering 37% of them having used the Internet on the mobile handset for the first time (Stork, 2011). Stork is of the opinion that the voice gap may have been bridged, but that a data access gap still does exist in Namibia.

The study revealed that high costs are prohibiting access to the Internet. A total of 87.4%, totalling 948,412 people, consider it too expensive (Stork, 2011).

1.8 ICT DEVELOPMENT INDEX

The ITU ranks Namibia's ICT Development Index (IDI) at 109 out of 155 countries with a score of 2.51 globally (ITU, 2012). In 2010 Namibia was ranked 7th in the African region, just one ranking above Kenya, with South Africa ranked 3rd and Botswana 5th (ITU, 2011a). In 2011 Namibia received a better ranking at 6, with Kenya dropping to 8th place, and South Africa and Botswana retaining previous rankings (ITU, 2012).

1.9 AFFORDABILITY OF SERVICES

Namibia is ranked 122 with regards to the ICT Price Basket (IPB) (ITU, 2012). The IPB index stood at 13.2, the same level as in 2010. Similar to Ghana, it

represents less than 15% of the Gross National Income (GNI) per capita. Namibia's fixed-telephone sub-basket as a percentage of GNI per capita is 3.8, the mobile cellular sub-basket as percentage of GNI per capita is 4.3, the fix-broadband sub-basket as a percentage of GNI per capita is 31.6 (ITU, 2012).

The RIA released a report in March 2012 that ranks Namibia's prepaid mobile service as the third cheapest in Africa, as indicated by Table 1.2 below. It reports that Namibia leapfrogged South Africa. RIA attributes this to the slashing of Namibia's termination rates by the NCC, close to the cost of providing the service. In turn, the resulting effect was that it spurred demand, allowing for profitability (RIA, 2012a).

Table 1.2 January 2012 OECD Low User Basket costs in USD

Country Name	**Ranking and Cheapest product from Dominant Operator**		**Ranking and Cheapest product in country**		**% cheaper than the dominant**
Namibia	3/46	ZAR2,74	8/46	ZAR 2,74	Dominant is cheapest
South Africa	30/46	ZAR 11,07	32/46	ZAR 9,83	11,2%

Source: ECD, 2012 as cited in RIA, 2012a

The report states:

> The cheapest product available in South Africa is 3.6 times more expensive than the cheapest product available in Namibia (RIA,

2012a, p. 1 - 2).

Namibia experienced a dramatic shift in prepaid service pricing in 2011 (RIA, 2012a). The NCC reduced mobile termination rates from NAD1,06 to NAD0,30 (ZAR 0,30) in less than two years (RIA, 2012a). MTC aggressively reduced prices following the systematic interconnection rate reductions by the regulator. MTC reduced prices in June 2011 by launching the NAD0,38 campaign. This campaign was for calls across all networks. It offered users 100 free SMS' a day. This was however subject to recharging at least NAD5,00 (ZAR 5) (RIA, 2012a).

The ITU noted the dramatic shift and stated:

> A good example is Namibia, an African upper-middle-income country which has mobile-broadband prices, for both prepaid and postpaid, well below the regional average at around 10 per cent of GNI per capita, and a considerably higher number of mobile-broadband than fixed-broadband subscriptions (ITU, 2012, p.115).

The aforementioned statistics are a quantitative account of how the regulatory purpose of affordable pricing is being addressed.

Regarding the objective of universal access and service, Namibia's 98% mobile voice coverage is well above the African average (Stork, 2011).

1.10 LATEST REGULATORY EVENTS AND ISSUES

A few regulatory events unfolded prior to and after the commencement of the Communications Act (2009).

The events below will give an additional factual account of how regulatory issues have been addressed. This gives further insight to the above statistics, setting the context of how the stakeholders that were interviewed for this study perceived the communications regulatory framework. Each event

addresses a principle element regarding the effectiveness of the regulatory framework. The elements form the conceptual framework of this study and will be outlined in Chapter 2.

1.10.1 COMPETITION

In 2008, MWEB Namibia Limited (MWEB), currently known as Wireless (Pty) Limited but trading as Africa Online, requested TN to allow it to resell its Asymmetric Digital Subscriber Line (ADSL) wholesale services and demanded wholesale prices. MWEB asked the court that TN should not offer ADSL services to MWEB at the same rate as it does to the general public. The High and Supreme Courts in 2011 both dismissed MWEB's claims (Shivute, 2011).

The High Court decided that section 2(2) of the Post and Telecommunications Act (1992), requiring MWEB to obtain a licence to provide telecommunications services was not unconstitutional and not a violation of the right to equality, notwithstanding the fact that TN did not require such a licence. The court found that there was a rational connection for such differentiation, as TN has public interest duties that MWEB did not possess, such as universal service (Shivute, 2011).

The Supreme Court further resolved that MWEB's constitutional right to trade was not fundamentally violated by TN's alleged unconstitutional conduct of not offering wholesale rates to MWEB, as MWEB is allowed to trade in other services such as WiMax and does deploy ADSL technology as well. However, the court expressed its sentiment that MWEB's request that it be charged wholesale rates may be justified but decided MWEB is however not prevented from providing a telecommunications service (Shivute, 2011).

The above facts demonstrate a court decision taken prior to the commencement of the Communications Act (2009) and demonstrate the role

played by the court within the regulatory framework.

The above factual context will be used to assess how the stakeholders view the decision of the courts with regards to competition.

1.10.2 PRICE REGULATION: INTERCONNECTION

In August 2009 the NCC resolved to introduce cost based interconnection rates for mobile traffic termination to NAD0.30 by January 2011 based on a complaint lodged by Leo to the NCC dating back to 2008 (NCC, 2009).

The decision was arrived at after benchmarking cost-based termination rates in various jurisdictions, as opposed to conducting long-run incremental cost based model. The Minister of ICT, together with the NCC, on the 13th of October 2008 held a workshop to address the dispute. It is interesting to note that the workshop was not facilitated by the NCC but by the Minister instead, as the line Minister of the NCC.

This also demonstrates how the MICT undertook a process of resolving the termination rates issue by discussions between the parties and reaching a compromise.

As a result of the Ministerial intervention the workshop agreed to a benchmarking study to determine interconnection rates, and a legal dispute was avoided (RIA, 2010a).

It is important to note that the NCC only had a legal mandate over Leo and MTC, and not over TN, as the Communications Commission Act (1992) did not extend such regulatory powers to TN (NCC, 1992). As a result, the only legal basis of the benchmark decision was the licences awarded to MTC and Leo. This decision could not be enforced against TN if it refused to implement it. This matter raises the further issue of discriminatory rules between wholly government owned entities and wholly privately owned or

partly privately owned entities.

In terms of the final decision reached, the Mobile Termination Rates (MTR's) and the Fixed Termination Rates (FTR's) were reduced as follows:

Table 1.3 MTR and FTR Sliding Scale

Date	Rate
Prior to 1st of July 2009	NAD1,06
1st of July 2009	NAD0.60
1st of January 2010	NAD0,50
1st of July 2010	NAD0,40
1st of January 2011	NAD0,30

Source: NCC, 2010

Stork then reports that the decision to reduce termination rates had a positive impact on MTC's balance sheet, contrary to MTC's arguments that its Earnings Before Interest Tax Depreciation and Amortisation (EBITDA) margin will drop to 36% in the event the termination rates were dropped to the cost of an efficient operator. Contrary to MTC's claims, its EBITDA margin rose from 50.9% in 2008 to 53.8% in 2009 (RIA, 2010a). This raises the issue of how regulatory decisions lead to market effectiveness. This decision had a positive economic impact in relation to MTC. The overall impact on the sector as a whole remains an area for future research in assessing the actual effectiveness of the regulatory framework, as it may be too early to conduct such a study at this stage.

1.10.3 PRICE REGULATION: "ON-NET OFF-NET" RULING

In March 2011 the NCC introduced a price cap for "On-Net" and "Off-Net" call prices on the mobile phone networks of MTC and Leo, and for calls to the fixed telecommunications network of TN. The decision was that the same price charged for calls originating and terminating on the customers subscribed telecommunications network should be charged for calls made from the customers subscribed network to a second telecommunications network of another customer. In other words "Off-Net" call prices should be restricted to the level of "On-Net" calls (Smuts, 2012). The NCC did not prescribe the actual price.

An excerpt from the decision reads:

> Off-net prices and prices for calls to fixed-lines may no longer exceed those of on-net calls for each product or service. This applies for voice and text messages. (Smuts, 2012).

The aforementioned decision resulted in a lawsuit by MTC against the NCC, TN and Leo, which case was inherited by CRAN after the 18th of May 2011 (Namibian, 2011). There was no Ministerial intervention nor any round table discussion regarding this dispute.

1.10.4 ACCOUNTABILITY: POOR ADMINISTRATIVE CAPABILITIES AND POOR FUNCTIONALITY

The part "This applies for voice and text messages." from the NCC's decision was inserted after the Board meeting. In rendering the judgment a year after, the judge ruled that these parts are to be excised from the decision because "…the NCC Board had to meet again to make these changes and it was not open to the Chairperson or the secretariat of the NCC to amplify or alter the decision" (Smuts, 2012, p. 28). The judge stated, "The NCC itself had to revisit its decision in order to improve or clarify it and then to pass a resolution to that effect" (Smuts, 2012, p. 28).

The amplification of the decision relates to governance and competent execution of decisions. That amplification was clearly not transparent and the question is whether under these circumstances, this can be deemed as efficient governance.

The Judge went on to criticise the decision-making process of the NCC. The minutes of the NCC did not properly reflect its decision. The Judge critiqued the NCC stating “This is inexplicable from a regulator whose decision-making must be the outcome of a proper process in accordance with its empowering legislation and sound principles of governance” (Smuts, 2012, p. 29).

The Judge commented that the NCC, as a statutory body, has a duty to properly keep minutes and record the decisions it takes. This is especially the case where those decisions are taken as regulator and which impact upon operators regulated by the NCC’s decision-making. There was a governance failure on the part of the NCC to meet this basic standard in conducting meetings. “The NCC failed dismally in this fundamental duty”, the Judge concluded (Smuts, 2012, p. 29 - 30). The judge pointed out that “…MTC justifiably criticised the slovenly manner of decision-making and record keeping by the regulator” (Smuts, 2012, p. 31).

This study will explore the administrative capabilities of the country and of the regulator, as part of its institutional endowment. The above background gives the idea that the administrative process may be lacking somewhat and this study wishes to enquire if stakeholders share the same view or have confidence that the administrative processes are improving as the regulatory framework matures and as the NCC and CRAN are held accountable by the Judiciary by means of judicial review.

1.10.5 ACCOUNTABILITY AND PRICE REGULATION

MTC further challenged the decision of the NCC on the grounds that the decision was not reasonable and rational firstly, and secondly that MTC was not granted a proper hearing. MTC contended that the NCC did not show a rational basis for what they termed as its interference with the tariffs in the industry. In the absence of establishing market failure by way of a market survey or having demonstrated abuse of a dominant position or anti-competitive practices, MTC submitted in the court papers that there was no reason for the NCC to interfere with pricing and no rational basis for its "On-Net" and "Off-Net" price ruling (Smuts, 2012).

The Judge responded that the NCC statute and the licence conditions of the MTC empowered the NCC to order amendments to MTC's tariffs, after having followed a due process of having to act reasonably and allowing MTC to be heard. This the Judge said was an administrative justice right enshrined in the Constitution of the Republic of Namibia (1990), stating that statutory bodies are to act fairly and reasonably and comply with the requirements imposed upon them by common law and their empowering legislation (Smuts, 2012).

Having said the aforementioned, the Judge concluded that the NCC had met the rational connection test, which test dictates that there must be a rational connection between the regulatory decision and the aim it strife's to achieve. The court strengthened the regulatory power to regulate pricing (Smuts, 2012).

This court case also highlights the issue of the right to legal redress as found within Namibia's regulatory framework and the duty of the regulator to be transparent and allow the licensees the right to be heard as an administrative body. The question for this study is whether the regulator executed its power to regulate pricing and its administrative functions with accountability and transparency, and if so, whether that makes the regulatory framework

effective in the eyes of the stakeholders.

1.10.6 APPOINTMENT OF THE REGULATORS BOARD, MANAGEMENT AND REMUNERATION

The Minister of ICT appointed a five member Board of CRAN for a period of three years in 2010 (MICT, 2010). The CEO was appointed in June 2011 and the rest of the management towards the end of 2011 and beginning 2012. Their contracts are for a period of five years, renewable and subject to performance agreements (MICT, 2009d).

1.10.7 LICENSING, PREDICTABILITY AND MARKET ENTRY

Over 18 commercial and community broadcasters were licensed by the 18th of November 2011, subject to draft broadcasting conditions that were under discussion in terms of the rule-making procedures at that time (CRAN, 2012a). The following broadcasters applied for new broadcasting service licences and broadcasting frequencies in July 2011 (CRAN, 2011f):

1. Radio Ecclessia Namibia,
2. Parktown Investments CC (Hitradio Namibia) and
3. Fresh FM (Pty) Ltd.

The above licences were granted by CRAN after it completed the spectrum audit to update its spectrum database (CRAN, 2012i).

On 20 March 2012, CRAN converted the licences issued by the NCC to MTC, Africa Online (Pty) Ltd (now known as MWireless (Pty) Ltd) and WTN (Pty) Ltd, to service and technology neutral licences, i.e. ECS and ECNS licences (CRAN, 2012c). New licence applications could now be considered by CRAN. This opened the market for competition and new market entrants.

In September 2012 CRAN issued new licence conditions. The conditions require broadcasting licensees to share infrastructure where available,

commercially and at the request of a requesting party (CRAN, 2012j).

These licence conditions are issued by CRAN because CRAN is empowered to issue service licences as opposed to the MICT (MICT, 2009d). This study aims to gauge whether CRAN issuing such licences is more effective as opposed to the MICT having the power to issue such licences.

New service and spectrum licences being issued relates to market entry. This study aims to gauge how such new and converted licences being issued are being perceived by the stakeholders and whether the necessary incentives are created for new licensees to enter the market and whether CRAN is effectively regulating such entry, and if not, how it can improve the effectiveness of the regulatory framework in this regard. The views of the stakeholders need to be assessed in this regard as the framework is being implemented, for stakeholder buy-in to the regulatory framework can be assessed in this regard. In the event the stakeholders are opposed to the implementation the implementation can be reviewed with the view to possibly improve the framework.

1.10.8 LICENSING AND REGULATING THE NBC

The NBC's public broadcast services are not regulated by CRAN in terms of the Communications Act (2009), which states that until a date determined by the Minister of ICT, the broadcasting chapter in the Communications Act (2009) does not apply to the NBC. All other broadcasters are regulated by CRAN (MICT, 2009d).

This issue relates to the fact that NBC, as a wholly government-owned, company is not regulated by CRAN and how that impacts on the regulation of other broadcasters.

1.10.9 LICENSING: SPECTRUM MANAGEMENT AND INDEPENDENCE OF THE REGULATOR

MTC applied for spectrum for its 4G telecommunications technology, i.e. Long-Term Evolution (LTE) in June 2011, which application CRAN deferred until the finalisation of the transitional process (CRAN, 2012b). MTC invited the Prime Minister of Namibia to the event launching the trial for 4G on 1 February 2012, at which occasion the Prime Minister urged CRAN to award the frequencies, stating that the decision is leading to a waste of investments and blaming CRAN in public (New Era, 2012b). This certainly created certain perceptions about the functionality of CRAN and about regulatory governance. As soon as the spectrum audit was completed in April 2012, MTC was granted its application in May 2012 to commence its 4G services (CRAN, 2012i).

CRAN published Namibia's first ever draft frequency band plan in November 2011 and conducted a spectrum audit. A hearing is still to be held in this regard to finalise and publish the plan (CRAN, 2011g).

The spectrum management issue relates to the question whether the regulator being empowered to manage spectrum is considered effective judging from the context of the delays in awarding the spectrum and the attempted political intervention. It further relates to the division of roles between the Executive and the regulator, safeguarding its independent decision-making.

1.10.10 RIGHTS OF WAY

MTC encountered opposition from the City of Windhoek (CoW) and the residents in the Bowker Hill area of Windhoek to build a tower, based on radiation concerns. The CoW eventually allowed for the building of the tower after bureaucratic delays and public comments and Environmental Impact Assessments (EIAs). This delayed the expansion plans of MTC (Namibian,

2012a) and (Namibia Economist, 2012).

MTC was further delayed to rollout its own fibre infrastructure due to complaints from TN. TN argued that it is the only authorised licensee to rollout fibre in the city. After much wrangling, demands from the CoW for a joint venture and political intervention from the Prime Minister of Namibia, MTC is yet to be granted the servitude (Namibian, 2 March 2012).

This study will interrogate how rights of way are administered to create the right kind of incentives for licensees and what recommendations may be made to improve it for the purposes of an effective regulatory framework.

1.10.11 ADMINISTERING UNIVERSAL ACCESS AND SERVICE

The MICT drafted the first-ever universal service policy. The policy vision is to "…achieve universal access and service in respect of the full range of information and communications technologies, from telephony and broadcasting to broadband Internet" (MICT, 2012, p.1). The Universal Service Fund (USF) has however not been established because "Part 4" of the Communications Act (2009) has not been put into operation. No rollout targets have been made for licensees (MICT, 2011d).

The Universal Access and Service (UAS) issue relates to the question on whether the regulator is empowered to administer the USF and whether the stakeholders perceive that to be an effective regulatory governance measure. Furthermore, it relates to the non-establishment of the USF for universal access and service rollout to underserved areas. It also relates to the IDI, broadcasting mobile voice and Internet penetration statistics and how the regulatory purpose of universal service is achieved or not.

1.10.12 COMPETITION: PRIVATE INVESTMENT VERSUS GOVERNMENT SHAREHOLDING AND THE ROLE OF THE JUDICIARY

Guinea Fowl Investments Two Ltd (Guinea Fowl), the shareholder of Leo, applied to CRAN and the NaCC to transfer Leo to TN in December 2011. TN approached Cabinet beforehand and obtained its approval for the transfer (New Era, 2012a).

CRAN, on the 7th of June 2012, issued a decision approving the transaction subject to the suspensive condition that TN be privatised with a minimum of 25% and that the establishment Act of TN be amended to enable the privatisation. The applicant lodged a court challenge on the 19th of July 2012 challenging the decision on the grounds that the they were not given a right to be heard prior to the issuing of the conditions, the decision is irrational, *ultra vires* (CRAN acted outside of their powers) and violates the "separation of powers" principle as the decision seeks to order Parliament to amend a piece of its legislation (Ueitele, 2012).

Guinea Fowl alleged that it is transferring control to TN because it was not able to find a suitable private investor after having followed a transparent process. The investors approached by Guinea Fowl apparently claimed that Namibia's telecommunications market size was too small (Ueitele, 2012).

On the 7th of October 2012 the Board resolved that although it did not agree with the decision of the court, it would not appeal the decision (CRAN, 2012k). The Board expressed its disagreement on the decision stating that TN taking control of Leo, does not "encourage private investment" as per the regulatory objective set out in the Communications Act (2009), but public investment, contrary to the regulatory purpose (CRAN, 2012l).

The aforementioned raises a central issue of this study, i.e. how to encourage private investment in the midst of majority government ownership of the

sector to boost confidence in the regulatory framework. Similarly, it raises the issue of how to boost the competitiveness of Namibia as a regional player to encourage private investment.

It raises another central issue of this study, i.e. that of government ownership and how that impacts the effective regulation of the sector as well as the role of the Executive versus the independent decision-making role of the regulator, irrespective of the decision of the Executive as the shareholder of ICT SOEs. It also brings to light the varied interest of the Executive as shareowner of the ICT SOEs with its ICT policy role in relation to the regulator. The impact of this will be assessed by gauging the views of the stakeholders in this study.

The aforementioned application for change of ownership also indicates the main themes to be interrogated by this study. This is the legal redress and review role the court system plays and how the stakeholders view this interaction between these three parties. It raises questions about whether the courts are sufficiently knowledgeable at this stage, about the communications sector, to adjudicate on the subject of competition and how that impacts on the effectiveness of the regulatory framework.

1.10.13 COMPETITION: MARKET DOMINANCE

On the 11th of May 2012, CRAN had its first public hearing on dominance in the telecommunications and broadcasting markets (CRAN, 2012e). On the 20th of March 2012 CRAN issued the discussion document for the aforesaid hearing. The notice proposes various options for market definitions. These are: “Service and technological neutral market”; “Technology neutrality (but not service neutrality)”; “Service and technological neutrality, distinguished by distribution channel”; “Demand-side and supply-side substitutability” and “Based on license categories” (CRAN, 2012d). In terms of any of these categories MTC, Leo and TN were preliminarily classified as dominant

(CRAN, 2012d and CRAN, 2012e).

The various stakeholders presented their views. CRAN will then issue the preliminary determination on which licensees are dominant in respect of the markets, after considering the comments and then issue a final determination (CRAN, 2012e). In terms of the Communications Act (2009), the final determination must be made by May 2013.

The issue of dominance relates to the duty of the regulator to create a fair and equitable competitive environment by prohibiting and preventing the abuse of dominance, and the views of the stakeholders will be assessed in how effectively this has been addressed by the regulator.

1.11 CONCLUSION

The aforementioned indicates the context of this study in depicting that the process of establishing an effective regulatory framework to govern communications services has not been administratively efficient.

On the other hand, Namibia enjoys a wide range of quality and innovative telecommunications services from 3G to 4G, with low prepaid voice tariffs indicating affordable pricing and consumer protection. The mobile voice penetration rates are high, with the exception of low data, radio and TV penetration. Advanced facilities such as fibre networks and WACS are being deployed to respond to the diverse needs of commerce and industry and to support the social and economic growth of Namibia (TN, 2011). The government owns, directly and indirectly all the competing telecommunications companies and the impact of this structure on competition requires an analysis. The above issues hint at the regulatory purpose of regulatory frameworks and will be discussed in Chapters Two and Four below. To achieve that regulatory purpose various regulatory interventions are being undertaken by means of the regulatory framework.

The problem is that there is no way of telling what stakeholders are thinking of the implementation of the regulatory framework to give CRAN the comfort that the implementation is on the right track. Furthermore, it is a mystery whether the stakeholders hold the views about the regulatory framework as they did in 2009 when the TRE survey was conducted revealing that Namibia's telecommunication regulatory framework was poorly perceived (RIA, 2010b).

Perceptions are not formed in a vacuum, but on the basis of a given context. The aforementioned developments are that context and relate to how the regulatory purpose of Namibia's communications regulatory framework is being addressed. These developments clearly indicate the state of the regulatory environment and that it is fertile ground for generating diverse perceptions about the effectiveness of the communications regulatory framework, both positive and negative. No academic study has been undertaken to assess these qualitative perceptions dealing with the main themes that are evolving from the above factual background in Namibia, i.e. the role of the Executive, the role of the court, the role of Namibia's norms and practices, the regulatory governance measures, such as the independence of CRAN and how it shares its role with the Executive and the regulatory incentives, such as the power to set tariffs.

A perception study can be criticised for simply reporting opinions, however noting and understanding the perceptions of stakeholders in a regulatory process is important because this influences regulatory effectiveness, compliance and enforcement. It leads to establishing credibility and legitimacy for the framework in which the stakeholders have buy-in and are willing to support and co-operate with. Assessing and understanding such perceptions is crucial in implementing an effective regulatory framework because regulatory frameworks are also not implemented in vacuum.

It is therefore necessary to discover and then understand what these perceptions are, in order to inform the further development of the regulatory framework. It is also important to gauge the possible recommendations from the stakeholders on how they see the framework being improved for it to become effective. The ICT stakeholders are necessary to consult as hey are an integral part of the regulatory framework. Regulatory governance requires stakeholder participation and consultation, and this perception study allows for consultation (Stern & Holder, 1999).

In researching the above gaps and reporting on it herein, this report is divided into seven chapters. Chapter One introduces the theme and sets the background and context of the study to assess the perceptions of the communications regulatory framework of Namibia in relation to its regulatory purpose. Chapter Two discusses the relevant literature and outlines the conceptual framework, which are the regulatory purpose, regulatory governance measures and the regulatory incentives. Chapter Three sets out the problem statement, purpose statement and the research question and gives insight into the methodology of the research undertaken and how the data has been collected and validated. Chapter Four gives a doctrinal analysis of the concepts arising from the statutory provisions and policy documents. In Chapter Five the data collected is simply reported and it is in Chapter Six that such data is analysed and interpreted against the doctrinal analysis, the research problem and the literature reviewed earlier. Chapter Seven makes conclusions on the findings, proposes recommendations, discuses the limitations of the study and highlights areas for future research.

CHAPTER TWO: APPRAISING THE WORKS OF LITERATURE AND THE CONCEPTUAL FRAMEWORK

2.1 REGULATORY PURPOSE AND REGULATORY EFFECTIVENESS

A communications regulatory framework can be perceived to be effective when all its aforesaid various components, indices, dimensions and principles function in such a manner that its overall purpose is met, for example the existence of fair competition in the communications sector (Levy and Spiller, 1996). As indicated in Chapter One and as will be indicated in Chapter Four below, literature indicates the following regulatory purposes of a communications regulatory framework, amongst others: affordable pricing, consumer welfare, innovation and competition (Melody, 2001, p.159, Blackman & Srivastava, 2011, p. 10 and Levy & Spiller, 1996, p. 1- 2).

Additionally, Intven and McCarthy (2000) take a more practical, approach to outline the regulatory purpose. They argue that to successfully change the telecommunications sector from one of monopoly to a more competitive one requires regulatory intervention. This is part of the purpose of regulating the sector. The regulator intervenes to issue licences, remove barriers of entry for new operators, and oversee the interconnection of new market players with incumbents and to prevent market failure (Intven & McCarthy, 2000). The further purpose that may be unique between countries is to meet public interest objectives, as outlined in national policies (Intven & McCarthy, 2000). It is therefore appropriate that regulators are established around the world with the aim of achieving these regulatory objectives. The NCC and now CRAN, are established to achieve these typical aims of regulators, as set out in its enabling legislation (MICT, 2009d). Intven and McCarthy (2000, p.2) list the following regulatory objectives that are widely accepted around the world:

i. To promote universal access to basic telecommunications services,

ii. foster competitive markets,

iii. efficient prices,

iv. good quality of services,

v. prevent the abuse of market power,

vi. promote public confidence in telecommunications markets through transparent and licensing processes,

vii. protect consumer rights,

viii. promote increased telecommunications connectivity for all users through efficient interconnection arrangements, and

ix. optimize use of some scarce resources, i.e. the radio spectrum and rights of way.

Regulation is "…the vehicle to attain, and subsequently sustain, widespread access, effective competition and consumer protection" (Blackman & Srivastava, 2011, p. 10). This can be defined as the regulatory purpose, the attainment of which leads to regulatory effectiveness.

The goals of regulation are to avoid market failure, foster effective competition, protect the consumer interest and to increase access to technology and services (Blackman & Srivastava, p. 10, 2011). Reasonable services must be provided at reasonable prices and this necessitates regulation (Melody, 2001, p. 159). In emphasising the regulatory imperative, Melody (2001) states that interconnection with dominant licensees on reasonable terms is crucial for new entrants, but will only occur if regulation enforces it. Levy and Spiller state, "successful regulatory policy encourages both ***private investment and efficient operation***" (Levy & Spiller, 1996, p.14). (Own emphasis)

From the aforementioned, it is apparent that the communications regulatory framework can be said to be effective, in an ideal world, if the regulatory governance principles and the institutional endowment coupled with the regulatory incentives operate as a system resulting in outcomes that make the communications regulatory framework practically effective or create the perception that the communications regulatory framework is effective in the minds of the stakeholders. In other words, the regulatory framework can be said to be effective if it has met its regulatory purpose.

However, Levy and Spiller (1996) argue that a communications regulatory framework my not be effective and its purposes may not be met because of the way in which the aforementioned regulatory processes interrelate with the political and social institutions.

Levy and Spiller (1996, p.14) further state effective regulation "…rests on the development of a regulatory governance structure that constraints arbitrary administrative action and thereby encourages private investment, and on regulatory incentives that promote efficiency as well as investment."

This interaction gives rise to the institutional endowment of any regulatory framework. This environment in turn may prompt certain stakeholder perceptions. The same environment can equally be used to assess the perceptions of stakeholders regarding the regulatory framework's effectiveness. In this study, the perceptions of the stakeholders are sought based on the institutional endowment and regulatory governance, and the institutional endowment and regulatory incentives of the communications regulatory framework. The latter concepts are useful units in gauging and analysing the perceptions of stakeholders to gain insight for the purpose of this study. Actual effectiveness is based on outcomes and is an area for future research.

Namibia's regulatory framework must be assessed against the

aforementioned regulatory purposes to assess its effectiveness in attaining these aforesaid objectives. The various ways in which the regulatory interventions have been practically implemented with the purpose of meeting the regulatory objectives have therefore been outlined in Chapter 1 and sets the clear basis for the research. It substantiates the research criteria, as the perceptions of the various stakeholders will be assessed in how the regulator has performed in addressing regulatory issues and whether it has been perceived as effective or ineffective.

On terms of the regulatory objectives as set out above, which forms the basis of the typical tasks for regulators, the literature is reviewed below. The concepts as extracted from the Intven and McCarthy (2000), Melody (2001), MICT (2009d), Levy and Spiller (1996) and Blackman and Srivastava (2011) regulatory purpose objectives, are used to construct the conceptual framework for. This therefore sets a useful model for conducting this study as these objectives are widely accepted regulatory objectives, according to Intven and McCarthy (2000), and would be appropriate criteria for the purpose of this study. These elements, as set out above are used to construct a model to assess stakeholder perceptions. These elements, as set out above, are thus useful to borrow, for this purpose.

2.2 THE REGULATORY ANALYTICAL FRAMEWORK AND BENCHMARKING

A regulatory framework generally includes and refers to governmental policies, laws, regulations and various decisions that regulate the communications sector (Levy & Spiller, 1996). This framework contains what Levy and Spiller (1996) refer to as regulatory governance and regulatory incentives.

Regulatory governance refers to "…mechanisms a society uses to restrain the discretionary scope of regulators and to resolve the disputes to which the restraints give rise" (Levy & Spiller, 1996, p. 4 - 5). The relationship between

national regulators and the Executive will be explored in this study regarding role clarification to ensure powers are adequately separated.

In reference to the theoretical basis as outlined by (Levy & Spiller, 1996) above, in the case of Namibia, the regulatory governance framework includes the Communications Act (2009), and other relevant legislation, national ICT policies, the telecommunications policies, the broadcasting policy, the postal services policy, the universal service policy and other relevant policies and guidelines issued by the MICT. It also entails the regulations made by CRAN under the Communications Act (2009) or the decisions made by the NCC that CRAN inherited. The policies, the Communications Act (2009), regulations will be reviewed in Chapter Four of this report as part of the doctrinal analysis.

Both regulatory governance and regulatory incentives do not operate in a vacuum. They operate within the institutional endowment of a nation, i.e. the inherent natural capabilities and characteristics of a country (Levy & Spiller, 1996). In this regard, one has regard of the various traits of a particular country. Institutional endowment refers to the "design" make-up, and composition of the regulatory framework, the processes and the countries institutions (Levy & Spiller, 1996, p.4).

The types of governance measures chosen and the types of incentives chosen are "constrained" by the aforementioned institutional endowment of a country (Levy & Spiller, 1996). In other words, the governance rules introduced and the incentives granted are affected by the institutional make-up of a given country. No study regarding Namibia's institutional endowment and its regulatory governance nor its regulatory incentives has been found. No study gives any insight, whether empirically or even mere perceptions of how the institutional make-up, since the commencement of the Communications Act (2009), constraints regulatory governance or regulatory incentives. The opposite is also true, a country's institutional endowment also

determines how liberal it is likely to be in allowing for increased regulatory governance or regulatory incentives, in the context of deregulation, as opposed to merely stating that the choices of regulatory governance and regulatory incentives are "constrained", as this may be a limited view. They may not just be constrained, but may be enhanced, and this option must also be studied. This study will assess the perceptions in attempting to study if this link exists in Namibia, which has not been studied in Namibia yet.

The regulatory governance framework and the regulatory incentives comprise the analytical framework, i.e. it is the framework used to analyse the perceptions of effectiveness regarding Namibia's communications regulatory framework. This analytical framework operates within the institutional endowment of Namibia. Hence, the framework is being analysed for its effectiveness based on the institutional endowment within which it operates.

2.2.1 THE INSTITUTIONAL ENDOWMENT

Levy and Spiller (1996) identify five, non-static elements for any countries national endowment. The endowment refers to how these bodies are structured and how they interact (Levy & Spiller, 1996). In other words, irrespective of the ideal elements that exist within what is presumably referred to as an effective communications regulatory framework, the interaction between the various bodies has an impact on how the regulatory framework functions. These ideal elements are: Legislative and Executive bodies, the Judiciary, customs and norms, the character of the competing interest and the country's administrative capabilities (Levy & Spiller, 1996).

2.2.1.1 LEGISLATIVE AND EXECUTIVE BODIES

Within this element, Levy and Spiller (1996) makes reference to how policies, laws and regulations are made and implemented. This study will address to what extent policies, laws and regulations have been developed and implemented and how that impacts the effectiveness of the communications

regulatory framework.

Laffont (2003) states that administrative bodies and political entities are prerequisites for effective regulation as they have an impact on regulatory effectiveness.

However, it is how these political bodies interact with the administrative bodies, such as regulators that also impact on regulatory effectiveness, whether positively or negatively. The independent exercise of the regulatory function may be negatively impacted upon. This report will analyse this aspect and how it is perceived with regards to the effectiveness of the communications regulatory framework.

2.2.1.2 THE JUDICIARY

Waverman and Koutroumpis (2011) in turn offer a broader perspective, complementing Levy and Spiller (1996), when they state that within the institutional endowment and the interactions between various stakeholders, a few criteria emerge in assessing their interactions. These include amongst others, "…the existence of a strong and independent Judiciary; and the quality of the regulatory bureaucracy" (Waverman and Koutroumpis, 2011, p.451). A strong and independent Judiciary can make judgments objectively with no political interference that are likely to be objective. This in itself bodes well for the regulatory framework.

Within this element Levy and Spiller (1996) make reference to the structure of the Judiciary and how impartial it may be in resolving disputes between competing parties, whether such parties involve the state, or state-owned entities or merely are between private persons. This issue is highlighted by the court case between TN and MWEB and the Leo transfer court case (Shivute, 2011 and CRAN, 2012l).

The elements of Legislative, Executive powers and the Judiciary indicate the

principle of separation of powers as enshrined in the Constitution of the Republic of Namibia (1990) amongst the three organs of the state. The Constitution of the Republic of Namibia (1990) allows for checks and balances, as a safeguard in limiting the powers of the lawmakers (the Legislature), the policy makers (the Executive) and the interpreters of the law (the Judiciary). Arbitrary changes in law and the exercise of governmental power and the regulators administrative power are kept in check and limited by the principle of separation of powers (Henisz & Zelner, 2001).

Judicial checks and balances curtail "…opportunistic behaviour by governments" (Waverman and Koutroumpis, 2011, p. 451). This report will assess the role of the Judiciary in terms of how they execute their role of judicial review of the actions of the regulator in order create an effective communications regulatory framework.

Gutierrez and Berg (2000) conducted a study for Latin America and not Africa, let alone Namibia and their results are consistent with Levy and Spiller's (1996) conclusion that, for countries in which governments do not commit to maintaining a credible and independent regulatory framework, there will tend to be under-investment in infrastructure.

Gutierrez and Berg (2000) further state:

> The presence of a regulatory institution insulated from short-term political pressure has the elect of reducing investors' risks and increasing their confidence in a nation's governance. A formal institution enhances private (domestic as well as foreign) investment in utilities (see Smith & Wellenius, 1999) (p.869). Hence, we posit that countries with sound economic institutions and stable political systems (polity) will reduce investors' risks, increase confidence in government policies and expand the level of investment in utilities (Gutierrez & Berg, 2000, p.870).

The aforementioned buttresses the notion that private investments will grow and the economy perform better where policy certainty is assured. This assurance is given by means of judicial checks and balances. Levy and Spiller (1996) support the above view by stating that the regulation of communications operators may be a lot more plausible in countries with political systems that limit Executive and Legislative discretion.

2.2.1.3 CUSTOMS AND NORMS

Customs and norms are the unwritten truths, the informal practices that affect the powers and actions of individuals or institutions (Levy and Spiller, 1996). Levy and Spiller (1996) state that they are widely accepted and they tacitly restrain powers. However, the enquiry should not just simply be about restraining, but how it impacts on the powers and actions of individuals or bodies in the communications regulatory space, i.e. whether negatively or positively. Powers may already be too restrictive on regulatory frameworks to the extent that it inhibits attaining regulatory objectives, such as the liberalisation of the communications sector. Namibian customs and norms may dictate how regulatory matters such as pricing, spectrum applications and disputes may be handled practically.

2.2.1.4 THE CHARACTER OF COMPETING INTEREST

Social and other conflicting interest based on the unique objectives of particular institutions are what may fuel disputes (Levy and Spiller, 1996). Within the communications regulatory framework in Namibia stakeholders have various competing interests. These stakeholders include TN, MTC, CRAN, the MICT and the office of the Prime Minister of Namibia, amongst others.

This interaction amongst all the aforementioned institutions may prompt positive or negative stakeholder perceptions. In the midst of all these competing institutions is CRAN. Regulators such as CRAN are established as

independent authorities to balance competing interests, as it seems to be the best way of providing effective but reasonable incentives for efficiency and high productivity (Cubbin & Stern, 2005). The question is whether CRAN's dispute mediation role to ensure an efficiently competitive environment is perceived as being achieved and how this role can be improved. CRAN's regulatory role to ensure consumer welfare may in turn also give rise to disputes with licensees who have commercial interests to ensure shareholder gain.

2.2.1.5 ADMINISTRATIVE CAPABILITIES

The element of administrative capabilities refers to the amount of unnecessary bureaucracy experienced and how that impacts on decision-making and the general administrative capabilities. It also refers to the functionality of CRAN as regulator. The effective functionality of CRAN may also be determined by elements such as clarity of roles, well-defined functions and responsibilities, enforcement, appropriate decision-making, clear rules and criteria on the appointment and removal of the Board and management, recruitment of competent and adequate staff, in applying these principles to Namibia (Blackman & Srivastava, 2011, p.16). It is further buttressed by transparency, accountability and stakeholder participation (Blackman & Srivastava, 2011, p.16).

Effective management of the regulatory function by CRAN is a critical ingredient that assists in instilling investor confidence, attracting investment and to encourage "economic competitiveness" and growth of the communications sector (Waverman & Koutroumpis, 2011, p. 453). As indicated by the GCI ranking of 83, Namibia is not competitive. This ranking means that Namibia simply does not fully leverage information and communication technologies in daily activities and production processes for increased efficiency and competitiveness, compared to the other countries with better rankings (WEF, 2011a).

The effective management of the regulator and its administrative capabilities are a crucial requirement for determining how effective a regulator is perceived to be in performing its duties with competence and agility. Delays occasioned by decision-making may not auger well for regulators hoping to establish effective regulatory frameworks (Waverman & Koutroumpis, 2011, p. 453).

To assess effective management, the years of experience of the regulator are also considered. CRAN has only been in existence since the 18th of May 2011 and none of the staff of the NCC remained with CRAN. The CEO was appointed in June 2011 (Namibia Economist, 2011). The issue for this study is how effective the regulator is perceived to be functioning within this short period of time, with a small staff complement and very little experience.

2.2.2 THE IDEAL DESIGN AND ACTUALISATION OF AN EFFECTIVE REGULATORY FRAMEWORK

In order to assess the perceptions of effectiveness regarding the communications regulatory framework of Namibia, one needs to explore what the normative communications regulatory framework would entail and the ideal types of principles it would possess. These ideals are embedded within the regulatory governance of the ideal communications regulatory framework.

Regulatory governance refers to "…mechanisms a society uses to restrain the discretionary scope of regulators and to resolve the disputes to which the restraints give rise" (Levy & Spiller, 1996, p. 4).

Stern and Holder (1999), Montoya and Trillas (2007), Waverman and Koutroumpis (2011), the World Bank (Intven & McCarthy, 2000) have indicated a variety of principles that the regulatory framework must possess, if such are designed to restrain the discretionary powers of regulators. These principles are predictability, transparency, accountability, clarity of roles and

responsibilities and independence of the regulator. They are the principles and the mechanisms Levy and Spiller (1996) refer to when referring to regulatory governance. These are the ideal principles to be contained in what should presumably be an effective regulatory framework in terms of its design and actualisation. These ideal principles will be dissected below. For the purposes of this report, the enquiry is about the type of institutional governance principles that the Namibian communications regulatory framework should ideally have in place that would give its stakeholders the perception that, in the manner that the principles are practically implemented that:

- the regulatory governance is of high quality,
- that stakeholders are confident about the regulatory framework,
- that the roles and objectives of the regulator are clear,
- that the regulator is autonomous (independent),
- that stakeholders are consulted and participate in the regulatory process,
- the decisions of the regulator are transparent and reasons are given for decisions and
- the regulator is accountable for its decisions (Waverman & Koutroumpis, 2011).

The Telecom Regulatory Environment survey (TRE) regards the General Agreement for Trade in Services (GATS) telecommunications reference paper as the best practice for regulatory effectiveness because over 80 countries have acceded it to (Malik, 2008 and Galpaya & Samarajiva, 2009). The TRE perception survey evaluates the effectiveness of the telecommunications regulatory and policy environment on the basis of six measurements from the GATS regulatory reference paper on telecommunications. The results are used to diagnose the positives and the negatives of the regulatory environment. Five of the principles embodied in

GATS will be extracted and used to gauge perceptions on Namibia's communications regulatory framework. These principles are market entry, allocation of scarce resources, anti-competitive behaviour, interconnection and universal service (Galpaya & Samarajiva, 2009). These are the regulatory incentives that Levy and Spiller (1996) refer to. These are rules governing pricing, competition, market entry and interconnection. In other words, does Namibia's communications regulatory framework contain these ideal principles? If so, how are these principles practically implemented as described in Chapter One? The question for this report is whether the communications regulatory framework can be perceived to be effective by its stakeholders by assessing how these principles have been implemented, in Namibia's attempts to achieve its regulatory purpose.

2.3 BENCHMARKING AND BEST PRACTICE ELEMENTS OF REGULATORY EFFECTIVENESS

The TRE is a perception survey that embodies principles contained in an ideal regulatory framework. The European Competitive Telecommunications Association's (ECTA) and the Telecommunications Regulatory Governance Index (TRGI) are not perception surveys but uses the similar elements as components, but in an objective manner, to assess regulatory effectiveness. These ideal elements will be extracted and discussed below.

2.3.1 TRGI

Waverman and Koutroumpis use the Telecommunications Regulatory Governance Index (TRGI) to rank regulators in terms of their regulatory effectiveness.

The TRGI is based on the principles of transparency and independence of the regulator. The TRGI uses these governance principles as indices to measure governance. Other principles include resource availability, enforcement on licenses and per capita income (Waverman & Koutroumpis, 2011).

Waverman and Koutroumpis (2011, p. 453) state, the "…TRGI measures governance not outcomes. The legal bases of regulation are measured, the processes that the regulator use – institutional design. This institutional design is based on the written laws – *de jure* and not *de facto* – and may not reflect the actual operations of the regulator." This research paper similarly measures the *de jure* design of the regulatory framework against the backdrop of some of the contextual regulatory interventions and ICT performance, as indicated by the statistics in Chapter One, of the NCC and CRAN as former and current regulators, to assess the stakeholder perceptions of effectiveness of the regulatory framework.

In 2007, NEPRU stated that Namibia is lagging behind Botswana and South Africa in the telecommunication sector reform and performance, due to its institutional weaknesses (NEPRU, 2007). Waverman and Koutroumpis (2011), who ranks Namibia poorly regarding its TRGI at 27 out of 38 countries in Africa and 110 globally, further supports this view. The Namibian score is 0.3. Kenya is ranked 21, with a score of 0.37 and a global ranking of 93, whereas South Africa is ranked three in the region with a score of 0.48, and global ranking of 39. Namibia is singled out as a country that "…need(s) to improve their relative telecoms governance structure to above average, the same as their general political governance relative rank" (Waverman & Koutroumpis, 2011, p.449 - 450) (own emphasis). Given this, it would be interesting to uncover what perceptions stakeholders have of the regulatory governance process and how it can be improved. The TRGI study attempted to highlight how vital a country's "social infrastructure" is. In other words, "…the general quality of institutions…" in a given country and it links the TRGI to that general quality as determined (Waverman & Koutroumpis 2011, p. 450). The study assessed whether the existence of "good" institutions is related to the high score in telecommunications regulatory governance (Waverman & Koutroumpis, 2011, p. 450). It would be necessary to assess

how Namibia's establishment of CRAN as the new regulatory institution will be perceived, as the TRGI did not consider the commencement of the Communications Act (2009) after 18 May 2011.

This study is limited to institutions, which institutions are simply located within the general regulatory framework. The TRGI only considers the general regulatory framework, i.e. institutional endowment insofar as it states that telecommunications governance does not consider general political governance. It is correct that political governance should be considered in assessing the effectiveness of the communications regulatory framework, as depicted by Levy and Spiller (1996), because political governance impacts on the effectiveness of the regulatory framework. The TRGI does not consider regulatory incentives and therefore does not assess the overall effectiveness of the regulatory framework. It looks at the policies, laws and regulations only insofar as they relate to regulatory governance, as depicted by Levy and Spiller (1996). The TRGI is limited in its focus in this regard, whereas this research paper will consider the overall regulatory framework to give a broader perspective on the effectiveness of the regulatory framework as a whole, because in addition to political governance, regulatory incentives also impacts on regulatory effectiveness (Levy and Spiller, 1996). Also, the study also only focussed on telecommunications governance and not on the whole of the communications sector. This research paper addresses the broader communications landscape, which includes telecommunications and broadcasting. Simply assessing telecommunications regulatory governance will not make us any wiser in evaluating whether communications regulatory frameworks are perceived as effective for its regulatory purpose. The enquiry should go deeper than assessing transparency for example, as this research paper will do, because regulatory governance is only part of the enquiry and not the end of the enquiry to answer the question of regulatory effectiveness. This research paper extends the search from the TRGI and extends its scope,

even if it is simply a perception study. The assessment of actual effectiveness is a ground for future research.

Furthermore, the TRGI study uses econometric tests and statistics to rank the countries. The TRGI uses quantitative data whereas this study will be a qualitative perception study. The result of this study will only be depicted in tables and figures in Chapter Seven.

The TRGI study was conducted prior to the commencement of the Communications Act (2009), and used a rating scale approach to governance. It did not provide insight into the particular views of the stakeholders and did not explore the dimensions and concepts discussed above.

2.3.2 TRE and GATS

Using the TRE survey, the stakeholders are asked to rate the dimensions on the Likert scale from one to five, a rating of one being highly unsatisfactory and a rating of five being highly satisfactory (Galpaya & Samarajiva, 2009).

Six of the dimensions used are exactly the same as the sub-units of analysis as will be used by this perception study, i.e. market entry, allocation of scarce resources (spectrum), anti-competitive behaviour (competition), interconnection, tariff regulation and universal service obligations (Galpaya & Samarajiva, 2009). These dimensions include the regulatory incentives as referred to by Levy and Spiller (1996), except for subsidies.

Sherbourne and Stork in the RIA (2010b) study regarding Namibia's telecommunications sector performance review, reported on their assessment of Namibia's TRE for the period 2008 and 2009. In their assessment the stakeholders perceived the Namibian regulatory environment as having drastically improved compared to 2006.

The 2009 TRE for Namibia used the Likert scale from -2 to +2, with -2

meaning highly ineffective and +2 meaning highly effective (RIA, 2010b).

The regulatory environment for interconnection was perceived as having improved, with a rating of -0.2. Market entry was rated more positively with more market entrants. It reported that TN has an infrastructure monopoly and that TN's wholesale pricing requires regulatory intervention as it negatively impacted competition. The 2009 TRE revealed that Namibia's telecommunications regulatory framework was overall rated as ineffective as none of the dimensions were rated as effective or partially effective.

Moreover, both this study and the TRE are perception studies. It is therefore evident that perception studies have been conducted to assess effectiveness and improve on the effectiveness of a regulatory framework.

2.3.3 ECTA Scorecard

In contrast to the TRE survey, the ECTA regulatory scorecard assess the regulatory environment of the electronic communications sector in the EU and not in Africa nor Namibia, and its effectiveness in promoting the objectives of the EU regulatory framework (ECTA, 2009). The scope of the ECTA scorecard refers to the institutional and legislative environment similarly to this perception study. The ECTA scorecard furthermore looks at the practical application of regulation by regulators and the market outcomes, unlike this research report that does not assess outcomes but only uses the latest regulatory events to assess the perceptions of stakeholders. The ECTA scorecard also assesses the impact of the regulatory environment on consumer welfare, investment and competition (ECTA, 2009). This research report is aligned to the ECTA in that both draw conclusions and make recommendations on actions that could improve the regulatory outcomes. The ECTA scorecard considers the following dimensions, which dimensions have been considered for this report, i.e. overall institutional environment, market entry and regulatory processes. The ECTA scorecard allocates a

quantitative score up to 400, which this study will not do.

From the aforementioned, it is clear that communications regulatory frameworks require constant review to improve their quality. Varoudakis and Rossotto (2004) confirm that market openness and pro-competitive regulation improve sector performance. The aspects of openness and pro-competitiveness will be assessed under the "regulatory governance" and "regulatory incentives" units of analysis in assessing how stakeholders view the quality of the framework and how they wish to improve it.

2.4 INSTITUTIONAL ENDOWMENT AND THE REGULATORY GOVERNANCE PRINCIPLES

The key regulatory governance principles as studied by various authors in jurisdictions outside of Namibia are outlined below and used as key principles to gauge the perceptions of Namibian stakeholders in this study. These are independence of the regulator, appointment of the Board and management of the regulator, accountability, transparency and predictability.

2.4.1 INDEPENDENCE OF THE REGULATOR

The World Bank supports the Independent Regulatory Model (IRM) as the *de facto* global standard and one of the key eight factors for independent telecoms regulation (Waverman & Koutroumpis 2011, p.452). Melody explains that independence "…does not imply independence from government policy, or the power to make policy, but rather independence to implement policy without undue interference from politicians or industry lobbyists" (Melody 2001, p.19). Government may thus still set national policies to meet public interest objectives and national regulators may be required to make regulations that attain these stated national goals, as long as government does not take over the role of making the regulations or unduly interfering with the process of making the regulations.

The IRM principle requires of the regulator to be at an arm's length basis from

the Executive, i.e. the government, so that it does not fall prey to political pressure (Waverman & Koutroumpis, 2011). It further requires the regulator to be at an arm's length basis from its licensees, so that it does not fall prey to regulatory capture. Independence is the first key factor and autonomy the 3rd key factor for an independent regulator (Waverman & Koutroumpis 2011, p.452).

The ITU identifies structural independence as a dimension of effectiveness (ITU, 2011b) and (Blackman & Srivastava, 2011). This research investigates whether the stakeholders perceive the Namibian framework as effective or as ineffective on the basis of this dimension as designed within the regulatory framework and depending on its practical application during the short period of the regulator's existence.

Similarly to the aforementioned, along with the resources available to the regulator, the organisational structure of the regulator is the 8th key factor for an independent telecoms regulator (Waverman & Koutroumpis, 2011, p.452). This principle denotes that that the regulator is created and established as an independent entity from the industry and political influence alike.

Despite the aforementioned, structural independence may not be the single sufficient principle to determine regulatory effectiveness, as some governments are reluctant to surrender political control over regulatory decisions. Mustafa (2002) writes, whereas some Arab countries have set up independent regulatory authorities, some governments seem reluctant to hand over the regulatory role. This limits the effectiveness of sector regulation and the agencies formed to implement it (Mustafa, 2002). As part of the doctrinal review in Chapter Four, this report will determine what the role of the Namibian government is *vís-a-vís* the role of the regulator and whether it is balanced and structured in such a fashion that it is not seen as an impediment to the regulatory role but rather seen as allowing for effective

regulation by means of arms-length relationships (Smith, 1997).

Adding to the aforementioned criteria, Stern and Holder (1999) identify the following indices for measuring regulatory governance, which indices are referred to as regulatory governance principles in this report:

i. **Clarity of roles and objectives.** This principle states that the role, tasks and objectives of the regulator must be clearly spelt out in the enabling piece of legislation. Practically, that role must also be separated from the policy and commercial functions. The separation of the roles, i.e. policy role and regulatory role and how that is spelt out will be assessed herein (Stern & Holder, 1999).

Montoya and Trillas (2007) on the other hand use the below-mentioned indices in a quantitative manner, to assess regulatory independence in Latin America and the Caribbean. They use ratings between one and zero. A rating of one denotes independence and a rating of zero denotes the contrary. Contrary to the above study of Montoya and Trillas (2007), this study will not numerically rate any of the principles that it studied. This study extracted the indices as principles and gauged the perceptions of stakeholders regarding such principles. In Chapter Four, this legislative and policy review will further explore exactly how these principles are contained in the *de jure* regulatory framework. In the meantime, these principles can be mentioned herein as follows:

ii. **Percentage of private ownership of the incumbent.** In the event the incumbent is totally private it receives a rating of one. In the event the incumbent has majority private ownership it is rated 0.66 and 0.33 if private capital is in the minority. It obviously receives a zero rating for not having any private capital (Montoya & Trillas, 2007).

Similarly to Levy and Spiller (1996), Shehadi (2002) on the other hand identifies the dimensions of efficiency of the market and equity towards service providers and users (Shehadi, 2002).

This implies that the more private ownership incumbents have, the better the stakeholder confidence that regulators would treat all service providers equally.

iii. **Degree to which the regulatory agency has powers in the allocation of fixed telephony licenses**. A rating of one is applied if the agency allocates service licences, and if not, the rating is an obvious zero (Montoya & Trillas, 2007). For this index this study will generalise and determine the powers of the Namibian regulator to award telecommunications and broadcasting service and spectrum licences.

iv. **Powers to set fixed line tariffs.** For having the power to set fixed line tariffs a rating of one is applied and a rating of zero is applied for not having such power (Montoya & Trillas, 2007). For this principle we will generalise and determine the powers of the regulator to regulate pricing for retail fixed and mobile services, wholesale pricing, interconnection rates as well as pricing for sharing of infrastructure.

v. **Power in administering universal service.** If the regulator administers the fund the rating is a one and if it does not administer the fund, the rating is a zero (Montoya & Trillas, 2007).

vi. **Budget independence, depending on whether the resources come from government and what percentage of it is government funded or not at all.** A rating of zero was applied if 100% of the resources came from government to a rating of one if no resources come from government funds

(Montoya & Trillas, 2007).

Similarly, the ITU identified financial independence as another dimension of effectiveness (ITU, 2011b). The funding and the sources of such funds for the regulator provides information about the regulator's ability to perform its legal duties as spelled out in its enabling legislation. The resources available to the regulator are the 8th key factor for an independent telecoms regulator according to the World Bank (Waverman & Koutroumpis, 2011, p.452 - 453).

The aforementioned indices are valuable to consider for Namibia considering that Namibia's Communications Act (2009), as its enabling legislation as will be discussed in Chapter Four, addresses the same principle issues as these indices and in assessing the effectiveness of Namibia's framework the benchmark is necessary in using the individual indices as principles to assess the independence of CRAN as the regulator. The above indices will be used to craft the conceptual framework for this study.

2.4.2 APPOINTMENT OF THE REGULATORS BOARD, MANAGEMENT AND REMUNERATION

Montoya and Trillas (2007) used the following indices that will be used as principles, for the purpose of this study. In assessing the principle of appointment of the Board and the management of the regulator, to determine the effectiveness of the regulatory framework, for the purpose of this study, the duration of appointment, is relevant as it refers to the duration of regulatory experience.

i. **Term in office of the Board of the regulator.** If the Board has been in existence for a term of five years or more the rating given was a one and a rating of 0.5 was applied for a term of between one and four years. A final rating of zero was applied for lesser terms or if the term was undefined (Montoya & Trillas,

2007). This implies greater confidence in the effectiveness of the Board the longer it served.

ii. **Appointment rules of the Board and management of the regulator.** Depending on the whether Parliament participates in the appointment of the Board, the rating is a one and if only government participates in the appointment decision the rating is a zero (Montoya and Trillas, 2007). This implies that parliamentary appointments, are viewed as more effective and having integrity as opposed to governmental appointments, because Parliament may consists of multiple political parties taking part in the decision, versus only a single political party if it is government.

iii. **Job stability.** This index assesses the duration of the employment contracts of the management. If all the contracts of the Board and head of the agency have a fixed duration the rating is one and 0.5 if the fixed contract is only for the head of the agency. The rating turns to a zero if there is no fixed term contract (Montoya & Trillas, 2007). On the contrary, job stability may not be as useful an index as a politically linked head of the agency or the Board may be appointed for fixed terms due their political links.

iv. **Possibility of renewal.** This assess if there is the possibility of renewal for directors and the management team. A rating of one is applied if the possibility of renewal exists for all directors and 0.5 if the possibility only exists for a fraction of them and a zero if no possibility of renewal exists (Montoya & Trillas, 2007). The possibility of renewal is implied to allow for succession and experience, but it could be used to undermine the regulators performance to renew the contracts of politically affiliated appointees as well, so it is barely an appropriate index in these

circumstances, and this must be borne in mind, considering the rules of appointment of regulator employees.

v. **Number of employees.** The number of employees were measured based on the average within the Latin and Caribbean region. In the event the number of employees was higher than the average, the rating was one and if lower in less than one standard deviation from the average the rating was 0.5, and zero if lower in more than one standard deviation from the average (Montoya & Trillas, 2007). The smaller number of employees may indicate that the regulator is not sufficiently resourced to execute its duties and therefore this becomes an important consideration, although a regulator may have the financial capabilities to outsource such functions and keep employee numbers low.

2.4.3 ACCOUNTABILITY OF THE REGULATOR

Accountability is a critical ingredient that assists in instilling investor confidence, attracting investments and motivate “economic competitiveness” and growth of the communications sector (Waverman & Koutroumpis, 2011, p. 453). Namibia’s framework must similarly seek to be accountable for these reasons.

Stern and Holder (1999) use the accountability index to assess if there is full accountability in terms of appeals, including a specific legal right of redress. This entails the accountability of the regulator to courts in having their decisions reviewable and whether the regulator itself can reconsider such decisions. On the other hand, this principle assess whether Parliament may have a role to play for fulfilling general legal duties appropriately, without being excessive.

Lodge (as cited in Jordana & Levi-Faur, 2004, p.124) identifies accountability

and transparency as noticeable qualities of governance, as promoted by the World Bank (Waverman & Koutroumpis, 2011, p. 453).

The above authors demonstrate that usefulness of the principle of accountability for regulatory effectiveness for regulatory governance, and this principle is relevant for Namibia's circumstances to consider, for the purpose of this study as a benchmark.

2.4.4 TRANSPARENCY OF THE REGULATOR

The decision-making processes, be they formal or informal, transparency of decision-making by the regulator or other entities making regulatory decisions, predictability of regulatory decision-making and accessibility of regulatory decision-making are the 4th, 5th, 6th and 7th key factors for an independent telecoms regulator according to the World Bank as referred to by Waverman and Koutroumpis (2011, p. 453). In encouraging transparency, GATS and the annex on telecommunications require the public availability of conditions that affect access and the use of public telecommunications, e.g. tariffs, licence requirements, decisions of the regulator (World Bank, 2007).

Openness of the process of decision-making is viewed as key to reduce arbitrary decision-making or eliminate it all together with the aim of promoting investor and consumer confidence (Intven & McCarthy, 2000, p.17 and Waverman and Koutroumpis, 2011, p. 453). Openness of the process of decision-making instills integrity in the framework and the work of the regulator.

The principle of transparency places certain reporting requirements on the national regulator. Transparency aims to disclose the bases of decisions so that the public can judge the rationality of such decisions, hence the requirement to disclose reasons publicly for regulatory decisions (Stern and Holder, 1999, p.43).

Stern and Holder (1999, p.43) use the index of stakeholder participation to assess whether there is a comprehensive process of formal consultations, including public hearings and publication of and comment on consultation responses, is followed before decisions are made. This participatory process is made possible by the transparency of the regulator.

2.4.5 PREDICTABILITY

Stern and Holder (1999) use predictability as an index to assess if regulatory powers and duties cannot be changed without changes in primary law; key regulatory instruments or documents cannot be changed without undergoing appropriate processes; and there is a clear policy and coherent approach behind all decisions. It assesses whether changes to all aspects of regulation can be undertaken relatively easily, and little or no consistency has been observed in regulatory practice (Stern & Holder, 1999, p. 45).

A legal instrument that has to undergo a rule-making process to change ensures predictability for the stakeholders, so that they can gear themselves towards approaching changes. This is a good principle for regulatory effectiveness, as demonstrated by Stern and Holder.

2.5 THE INSTITUTIONAL ENDOWMENT AND REGULATORY INCENTIVES

Universal service, to aid socio-economic benefits for communications services has become enshrined in the licensing of communications services (Intven and McCarthy, 2000, p.1 - 2). As such, the regulatory framework should incentivise the deployment of the latest technologies and services and promote innovation.

Levy and Spiller (1996) state that the institutional endowment of a regulatory framework will determine to what extent the above objectives are met. Regulatory incentives refer to the "…rules governing pricing, subsidies, competition and entry, interconnection and the like" (Levy & Spiller, 1996, p. 4). There are other regulatory incentives, i.e. resolution of disputes, that are

mentioned in the Communications Act (2009) that Levy and Spiller (1996) do not specifically mention, that will be reflected below, as part of Namibia's institutional endowment and regulatory incentives. This report investigates the regulatory governance and incentive structure for Namibia, as has never been studied before, to assess what the structure is, based on the institutional endowment and the types of perceptions it gives rise to in the minds of stakeholders, i.e. whether they consider the overall regulatory framework as effective in achieving the regulatory objectives of the Communications Act (2009) or not.

Levy and Spiller (1996) state:

> Indeed, utility performance turns out to be best when countries have achieved a good fit between their institutions and their regulatory governance and incentive designs and worst when regulatory design proceeds without attention to institutional realities.

The aim of this report is to assess how Namibia has designed its incentive structure and whether it strikes an adequate balance to achieve utility performance within the given institutional realities of Namibia.

The TRE study regards the GATS telecommunications reference paper as "best practice" for regulatory effectiveness as over 80 countries have acceded it to (Galpaya & Samarajiva, 2009, p7.). The principles embodied in this paper include competition (avoid abuse of dominance), interconnection (guarantee fairness), regulator (independent of operators), universal service (competition friendly), finite resources (administer fairly - e.g. spectrum, numbering, rights of way) and licensing (transparency) (Galpaya & Samarajiva, 2009) and (WTO, 1996 as cited in World Bank, 2007).

For the purpose of this study the following rules, meant to incentivise licensees will be studied to determine how the regulator has regulated such

incentives and the nature of perceptions it may have created. Some incentives have been mentioned above by Levy and Spiller (1996) and others have been identified from the TRGI study. These are:

i. **Rules governing pricing:** In 2006 India scored 3.9 due to its slashed roaming rates and requirement that only integrated operators should submit tariffs. Indians enjoy among the lowest tariffs (Galpaya & Samarajiva, 2009). The low rates enjoyed by Indians demonstrate how the socio-economic benefits are attained for consumers and the regulatory objectives are met. For the purpose of this study it needs to be determined if Namibians enjoy low rates and whether the regulatory purpose is perceived to have been achieved in this regard as a result.
ii. **Competition and market entry:** In terms of the 2008 TRE assessment of Pakistan, its market entry was scored 3.9. The factors that contributed to such growth included straightforward licence conditions, unbundled fixed line services, no limitations on foreign ownership, no limitations on mergers and acquisitions (Galpaya & Samarajiva, 2009). For the purpose of this study, we need to determine, using this benchmark, how competition and market entry is addressed in the Namibian regulatory framework and how stakeholders perceive same.

Levy and Spiller identify competition and price regulation as tenets of effective regulatory frameworks, because competition spurs "…innovation an technical efficiency" and "mechanisms of price regulation also affect efficiency" (Levy & Spiller, 1996, p.14 - 15).

In support of the aforementioned regulatory rationale, Laffont states "regulation has several functional dimensions". These include price regulation, quality, and market entry, *ex ante* or *ex post* as competition policy.

Furthermore, economic theory of regulation looks at frameworks in terms maximising consumer welfare (Laffont, 2003, p.171).

Tenbücken and Schneider (as cited in Jordana and Levi-Faur, 2004, p.245), state that regulators are mainly tasked with fair competition once an industry is liberalised. Prior to liberalisation, state monopolies exerted market power which market power the regulator has to control. Regulators must therefore address interconnection disputes, unbundling or licence allocation and control in mobile-and fixed-voice telephony.

iii. **Interconnection:** The regulator, in certain jurisdictions, must vet and approve interconnection agreements and on terms and requirements as prescribed by it (Montoya & Trillas, 2007). In terms of Namibia's laws and rules, operators are mandated to negotiate and interconnect with each other by law (MICT, 2009d). In Pakistan, dominant operators should submit interconnection offers detailing the terms of their offers for negotiation as well in terms of Pakistan's laws (Galpaya & Samarajiva, 2009).

iv. **Sharing of infrastructure and scarce ICT resources, i.e. rights of way and spectrum:** Montoya and Trillas (2007) identifies the power of the independent regulator to allocate spectrum encourage sharing of infrastructure and managing rights of way, as an index for assessing effectiveness, as opposed to that power being exercised by the government**.** For the power to allocate spectrum the regulator receives a rating of one and of such power is lacking the rating is a straight zero. In this study the power to allocate and assign spectrum was assessed to gauge the perceptions of the stakeholders.

v. **Resolution of disputes:** For an effective regulatory framework, it is required that provision be made for addressing and

resolving disputes. This principle assess whether there are clear mechanisms to resolve disputes between the regulator and the licensees and amongst licensees (Montoya & Trillas, 2007). This is a crucial regulatory incentive to implement in liberalising communications markets and to achieve the regulatory aim of preventing abuse of dominance by incumbents and reducing barriers of entry as incumbents may abuse their position of power to negotiate in bad faith with regards to interconnection arrangements, for example.

2.6 THE VALUE OF PERCEPTIONS STUDIES

Chapter One gives an overall picture of the *status quo* of the regulatory framework in Namibia and the state of ICT in general based on how the Namibian regulatory framework has attempted to meet its regulatory purpose. From the aforementioned background, it can only be assumed that the regulatory environment may be rife with perceptions, which perceptions, if they exist, may be positive or negative and the jury is still out on the effectiveness of the communications regulatory framework. These assumptions therefore need to be put to rest and this study will attempt to assess what perceptions exist. The evolving regulatory framework is still very much in its infancy, as can be seen from the status of the industry as outlined above. Major telecommunications regulatory events occurred during the period 2008 – 2012, a period of four years, the major parts happening during 2010 to 2012, the effects of which are yet to be fully measured, assessed and evaluated regarding the actual impact of the regulatory interventions as outlined above, i.e. the interconnect rates capping, the “On-Net” and “Off-Net” price ruling and the liberalisation of the broadcasting sector. It would be premature and difficult to try and assess the actual effectiveness of the regulatory framework during these early days. The statistics depicted in Chapter One during this short period since the inception of the

Communications Act (2009) and the regulatory events do not allow for a quantitative nor qualitative assessment of actual effectiveness of Namibia's communications regulatory framework. However, the perceptions regarding the effectiveness of the regulatory framework can be assessed in order in order to involve stakeholders in the on-going improvement of the regulatory framework, to obtain their views and request what recommendations they have to improve the framework, as informed stakeholders who interact with the regulatory framework in their professional capacities.

During the early stages of the introduction and implementation of the communications regulatory framework it is crucial for major role players, such as the MICT and CRAN to establish and transition the framework "…with an intimate concern for the responses and reactions of people", in the context of town planning (Denham as cited in Wood, 1970, p. 137). These responses and reactions are the perceptions as held by the various stakeholders.

Craik emphasises the need for a "systematic understanding of specific client groups for whom increasingly total environmental changes are being made" in the context of town planning (Craik as cited in Wood, 1970, p. 137). This principle, albeit in geography, is useful guidance in the context of this telecommunications study, as the regulatory framework is also set to bring about environmental changes to the communications sector that will affect multiple stakeholder groups, what Craik refers to as client groups. It is by conducting this perception study that responses are gauged, received and understanding is gained. The purpose of gauging stakeholder perceptions is a way of allowing key stakeholders to review the regulatory framework and to improve the framework this early, because continual improvement can only serve the industry well and create a regulatory framework that performs effectively and is well received by the stakeholders.

This study is one of an evaluative nature, as it will assess the perceptions of

effectiveness of Namibia's communications regulatory framework. Clarke and Dawson state that this type of research "…aims to produce information about the implementation, operation and ultimate effectiveness of policies and programmes designed to bring about change" (Clarke & Dawson, 2000). The aim is to add on to the existing knowledge about regulatory effectiveness, to inform decisions within the regulatory and policy making process, elucidate options, and to provide the much needed feedback on the regulatory program to the regulator (Clarke & Dawson, 2000). There are various ways of studying regulatory effectiveness, be it by assessing outcomes of effectiveness or perception studies. A perception study is one important element to guide the researcher to think of how the regulatory framework can be improved. A number of authors and researchers utilise and recommend perception studies to inform and guide the process of continuous improvement of communications regulatory frameworks. The following authors have all used perception studies to conduct their research and assess regulatory effectiveness to provide the much needed feedback to regulatory programs: Stern and Holder (1999), Montoya and Trillas (2007), Waverman and Koutroumpis (2011), and the TRE study.

The importance and value of perception studies is demonstrated by researchers administering the Telecom Regulatory Environment (TRE) (Malik, 2008) it is quantitative and has been valuable in shaping regulatory frameworks, as will be discussed below (Galpaya & Samarajiva, 2009). Unlike ECTA scorecard and the TRE surveys, this study actually goes deeper into gauging actual explanations for views held and analyses such views. This study will be more than just a perception study of recording scores and ratings between 1 – 10 and ticking boxes of "satisfactory" to "not satisfactory". This study will be grounded in the relevant regulatory events and the doctrinal analysis and the literature on regulatory effectiveness.

In assessing regulatory governance Lodge (as cited in Jordana & Levi-Faur, 2004) states, “The perception of limited accountability and transparency of regulatory regimes has been at the forefront of criticisms by the media, the wider public, business and so-called public interest groups” (2003, p.124). The hypothesis of this study is on the perceptions held by stakeholders about the governance of Namibia’s regulatory framework and such perceptions are to be gauged and assessed in order to improve the framework.

Assessing the perceptions of stakeholders is a consultative process seeking the buy-in of stakeholders. In the words of Stern:

> The sustained effectiveness of regulatory systems depends on their continued acceptability to governments, producers, consumers and the populace. Whatever legal safeguards may be put in place, unless they remain acceptable they will be changed. An independent regulatory agency that does not command continued acceptability would be replaced. Governments have a thousand and one ways of undermining a supposedly “independent” regulator, whatever the underlying legal framework (Stern & Holder, 1999, p. 42 – 43).

From the above quote, it is evident, in order to ensure the regulatory framework is continuously acceptable to its stakeholders this perception study offers a valuable methodology in this regard. The views of stakeholders are necessary to gauge to obtain their buy-in.

2.7 THE CONCEPTUAL FRAMEWORK

The literature studied above gives rise to the conceptual framework as depicted in detail below and in Figure 2.1.

The interrelated five main units of analysis are (i) regulatory purpose, (ii) the institutional endowment, (iii) regulatory governance in relation to the institutional endowment, (iv) regulatory incentives in relation to the

institutional endowment and lastly (v) perceptions of effectiveness of Namibia's communications regulatory framework. This report assesses the objectives of Namibia's communications regulatory framework within the context of Namibia's institutional design. The manner in which the governance of the framework and the incentives, to meet the regulatory objectives are designed is assessed to determine the perceptions of the stakeholders. These perceptions emanate from the context of the latest regulatory events as dealt with in the institutional set-up and addressed in policy and laws. The perceptions are then captured as to the effectiveness or ineffectiveness of the framework, bearing in mind the regulatory purpose. Conclusions and recommendations are made to improve the framework.

The "regulatory purpose" concept refers to the objectives of regulatory frameworks, such as competition, price regulation for costs based and reasonable pricing, consumer welfare, access and usage to affordable and quality services, consumer protection, innovation and technological advancement. These concepts are extracted from Melody (2001), Blackman and Srivastava (2011), Levy and Spiller (1996), Tenbücken and Schneider (as cited in Jordana and Levi-Faur, 2004), Laffont, J (2003), Galpaya and Samarajiva (2009) (using the TRE survey), the ECTA (2009) scorecard the Communications Act (2009) and the national ICT policies.

The "institutional endowment" concept refers to how the various political, judicial, stakeholders and legislative institutions relate to each other in achieving the above objectives. These are Legislative and Executive bodies, Judiciary, customs and norms, the character of competing interests, the country's administrative capabilities and CRAN as regulator. The concepts are extracted from Levy and Spiller (1996), Waverman and Koutroumpis (2011), Henisz (2000, 2002), Henisz and Zelner (2001), Gutierrez and Berg (2000), Cubin and Stern (2005), and Sherbourne and Stork (2010), Galpaya and Samarajiva (2009) (using the TRE survey), the ECTA (2009) scorecard

the Communications Act (2009) and the national ICT policies.

The “regulatory governance” concept refers to the rules that restrain the power of the regulator, i.e. structural independence, financial independence, administering universal service, functionality, government ownership, power to allocate licences, budget independence, role clarity, appointment of the regulators Board and management, accountability, transparency and predictability. The principles are extracted from Levy and Spiller (1996), Lodge (as cited in Jordana and Levi-Faur, 2004), Intven and McCarthy (2000), the ITU (2011b), Smith (1997), Mustafa (2002), Stern and Holder (1999), Montoya and Trillas (2007), Waverman and Koutroumpis (2011), Galpaya and Samarajiva (2009), Namibia’s TRE as reported on by Sherbourne and Stork in the RIA (2010b), GATS and the TRGI and TRE surveys, the ECTA (2009), the Communications Act (2009) and the national ICT policies. In this report we want to explore whether stakeholders perceive Namibia’s communications regulatory framework and its institutional endowment with regards to the Judiciary, as credible, independent and administratively efficient and whether this is likely to lead to achieving the regulatory purpose and thereby establish an effective communications regulatory framework.

The “regulatory incentives” concept refers to the incentives granted to the stakeholders so that the “regulatory purpose” can be met, such as price regulation, competition and private ownership, market entry, interconnection, sharing infrastructure, rights of way, spectrum and resolution of disputes. The concepts are extracted from Levy and Spiller (1996), Montoya and Trillas (2007), Tenbücken and Schneider (as cited in Jordana and Levi-Faur, 2004) Galpaya and Samarajiva (2009), Namibia’s TRE as reported on by Sherbourne and Stork in the RIA (2010b), GATS and the TRGI and TRE surveys, the ECTA (2009) scorecard the Communications Act (2009) and the national ICT policies.

The final concept of “perceptions of effectiveness” addresses the views of stakeholders based on the actual latest regulatory events and the literature and doctrinal analysis on:

(a) How the stakeholders and the various institutions relate to each other in achieving the regulatory purpose and

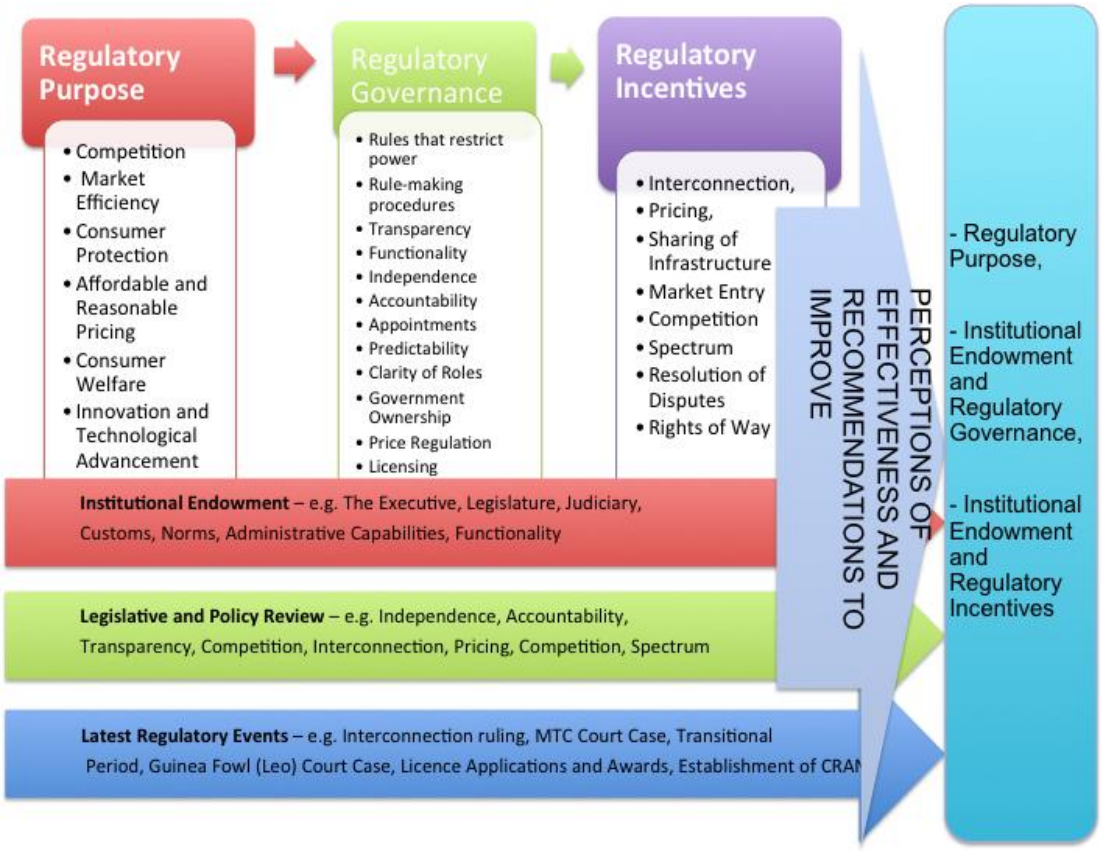
(b) Whether regulatory governance and regulatory incentives are addressed in such a manner that the regulatory purpose can be perceived as achieved and therefore the communications regulatory framework is perceived as effective or as ineffective and how the framework can be achieved.

Figure 2.1 demonstrates that the principles of “regulatory purpose”, “regulatory governance”, and “regulatory incentives” studied together give rise to stakeholder perceptions of effectiveness. The “institutional endowment”, the “legislative and policy doctrinal analysis”, and the “latest regulatory events” all centrally across the above principles of “regulatory purpose”, “regulatory governance”, and “regulatory incentives” in giving rise to the stakeholder perceptions of whether Namibia’s communications regulatory framework is effective or ineffective and the stakeholders recommendations to make it effective.

This framework is assembled from and comprises the various main concepts and principles borrowed from the various authors and the doctrinal analysis. This conceptual framework has the academic value of providing a re-defined model that comprises various principles that can be used to assess the perceptions of effectiveness of regulatory frameworks by stakeholders. This study goes beyond simply recording the subjective opinions of the stakeholders. Instead, this study proposes a re-defined model for evaluating perceptions by recording the actual views and the reasons for such views of stakeholders, with concrete examples, based in factual developments, validating those views with a legal and theoretical analysis and obtaining

material recommendations for improvement. This is not the approach of the TRE and TRGI surveys or the ECTA scorecard. It was therefore necessary to devise this study and this conceptual framework to fill this gap. The TRE, TRGI are surveys and the ECTA is a scorecard and not interviews that request respondents to score and rate various dimensions and makes conclusions without delving into the underlying issues whereas this perception study does.

Figure 2.1: Conceptual Framework for Assessing Perceptions of Stakeholders



The above concepts will be used to examine and to categorise stakeholder perceptions within the context of the latest regulatory developments. The concepts are interrelated as they define the overall environment. Certain perceptions arise from developments in the state of the regulatory framework and these regulatory events take place within the ambit of legislative

requirements. Furthermore, the views of the stakeholders will be gauged and analysed according to the theoretical concepts and the legislative review, aiming to identify where these views agree with or depart from what is appropriate to regulatory governance, regulatory incentives and effectiveness. Where perceptions raise valid concerns, they lead to recommendations and where they appear to have little or no foundation, they were discounted on the basis of triangulation, reliability and validity.

CHAPTER THREE: THE APPROACH USED TO CONDUCT THE STUDY

3.1 PROBLEM STATEMENT - IDENTIFYING THE RESEARCH GAP

In the RIA (2010b) study regarding Namibia's telecommunications sector performance review for the period 2008 to 2009 Sherbourne and Stork assessed Namibia's TRE. Sherbourne and Stork in the RIA (2010b) study reported that Namibia's regulatory framework still required improvement in order to be evaluated as efficient (RIA, 2010b). However, the RIA (2010b) TRE study was conducted prior to the establishment of CRAN and the commencement of the Communications Act (2009) and RIA (2010b). No assessment of the performance of Namibia's laws and policies has been conducted since the 2009 TRE by Sherbourne and Stork even after the establishment of CRAN and the commencement of the Communications Act (2009). This study therefore seeks to fill this research gap.

As Namibia's communications regulatory framework is transformed from the NCC era to the CRAN era, new principles of regulation are introduced. The research problem is that it is unknown how the stakeholders view the transition and the manner it is being implemented, so that stakeholder buy-in is assessed. The problem is that there is no way of telling what stakeholders are thinking of the implementation of the regulatory framework to give CRAN the comfort that the implementation is on the right track. Furthermore, it is a mystery whether the stakeholders still hold the same views about the regulatory framework as they did in 2009 when the TRE survey was conducted. The TRE revealed that Namibia's telecommunication regulatory framework was poorly perceived (RIA, 2010b). Three years has passed since the TRE survey was conducted and it is still unknown whether the framework is still poorly perceived or perceived as performing effectively, having regard to the latest regulatory events. If there are practical implementation

challenges for CRAN, such challenges can be made known by the stakeholders and addressed with their participation. This is the real life problem this research aims to solve.

Sherbourne and Stork in conducting the 2009 TRE in Namibia stated that the TRE is based on perceptions and needs to be assessed against actual developments in the telecommunications sector. This study is filling that gap by using the latest regulatory developments but in the communications sector, as opposed to only the telecommunications sector as discussed in Chapter One above.

The TRE assessed Namibia's regulatory performance and implied that Namibia's telecommunications regulatory framework had certain gaps that made it "inefficient", and therefore one can conclude that the regulatory framework was not effective. They did not conduct a full academic study that adequately considered how the main units of analysis, i.e. the regulatory purpose, the institutional endowment and the principles of regulatory governance; the institutional endowment and regulatory incentives impacted on Namibia's communications regulatory framework, rendering it "inefficient" in the eyes of the stakeholders. The 2009 TRE only assessed the following dimensions: fixed-line, mobile and broadband sub-sectors, market entry, allocation of scarce resources, interconnection, regulation of anti-competitive practices, universal service obligation, tariff regulation and quality of service. This study will not assess the quality of service dimension.

There is no mention of the reasons that explain such inefficiency on the basis of the factual regulatory events, neither of the improvements that could be recommended for the framework to be perceived as efficient. The review also only focussed on telecommunications and did not consider the broader communications sector thereby excluding broadcasting. This study will assess telecommunications and broadcasting. This latter research gap is left

open for this study to fill.

The common elements, dimensions and indices of effective frameworks as indicated by the ITU, Levy and Spiller (1996), Lodge (as cited in Jordana & Levi-Faur, 2004), Intven and McCarthy (2000), the ITU (2011b), Smith (1997), Mustafa (2002), Stern and Holder (1999), Montoya and Trillas (2007), Galpaya and Samarajiva (2009), Namibia's TRE as reported on by Sherbourne and Stork in the RIA (2010b), GATS and the TRGI, TRE surveys, the ECTA (2009) scorecard, the Communications Act (2009) and the national ICT policies, are the much-needed dimensions and principles for contrasting and assessing the communications regulatory framework from which we can make interpretations on how effective it is perceived to be on the basis of how it is addressing its regulatory aims.

There is no academic knowledge as to why stakeholders have the perceptions they do about Namibia's communications regulatory framework on the basis of the units of analysis and not obtaining the reasons of the stakeholders regarding their views and recommendations to improve the framework, using the abovementioned concepts to generate new academic knowledge. This is the gap left open by Sherbourne and Stork in the RIA (2010b) study in not conducting an academic study.

3.2 THE PURPOSE STATEMENT

The purpose of this study is to assess the perceptions of the informed stakeholders regarding the effectiveness or ineffectiveness of Namibia's communications regulatory framework. The effectiveness is as measured against the regulatory purposes of the Namibian communications regulatory framework, as set out in the Communications Act (2009) and the national ICT policies. The study will holistically consider the regulatory events and issues throughout the NCC and CRAN periods, in assessing the perceptions of stakeholders. These regulatory events will contextualise the basis of the

stakeholders' perceptions.

The perceptions will be gathered and considered against the theoretical background and the doctrinal analysis. In other words, the particular aspects of effectiveness, i.e. financial independence, structural independence, the functionality of the regulator, interconnection, pricing, rules that restrict powers and the interaction with the Executive will be investigated, amongst others. The study also wishes to obtain the reasons behind the stakeholders thinking and to gain understanding of their views and to obtain valid recommendations to make the regulatory framework effective. This would give insight into the level of confidence the stakeholders have in the regulatory framework. In this fashion the identified knowledge gap will be filled.

The importance of this perception study to the academic world is that it offers insight into what informed stakeholders think of the regulatory framework and how it has been implemented. The study aims to achieve the further aim of highlighting challenges and opportunities of Namibia's communications regulatory framework and how the challenges can be addressed and how the opportunities can be taken advantage of in positioning Namibia as a global and regional competitor in the sector. This is valuable intelligence, as the information gathered will expose any frustrations experienced, praises, errors made and allows an opportunity to the key stakeholders to review the framework at this early stage of its implementation. It allows the role players to improve on the framework based on the recommendations made so that it is able to be practically effective. The regulatory framework is relatively new and it may have far reaching business risks for stakeholders. Insight into how stakeholders are being impacted by the change in the regulatory environment is valuable in improving it to meet its overall regulatory purpose and make Namibia globally and regionally competitive.

3.3 QUESTIONS GUIDING THE RESEARCH

The following main and sub-questions will guide this research:

What are the perceptions of stakeholders about the effectiveness of the communications regulatory environment in Namibia?

a. What are the stakeholder's views about the communications regulatory framework and the latest regulatory events?
b. Why do the stakeholders have the views they do about the communications regulatory framework and the latest regulatory events?
c. How can the communications regulatory framework be improved?

3.4 RESEARCH DESIGN - QUALITATIVE INTERPRETIVIST RESEARCH

Quantitative research methods and the data collected give details of the subjective experiences of the participants. This is so because interpretivism denotes that there are various realities and various perspectives (Neuman, 2011, p.94) and (Clarke & Dawson, 2000, p.54 - 56). It explores events and experiences from the viewpoint of the persons experiencing the phenomenon. This allows for in-depth studies that explore the inherent complexities. It allows for the development of a holistic picture on which generalisations can be made and reliable recommendations can be made for improvement (Clarke & Dawson, 2000).

The role of qualitative research is to understand past events and actions (Thompson & Walker, 1998). It is for this reason that this study is adopting the qualitative research method as the best method to address the problem statement, to meet the purpose of this study and to answer the main research question.

Qualitative research is reliant on interpretive social science, as this study

places emphasis on meaningful social action, socially constructed meaning and value relativism (Neuman, 2011, p.87).

Similarly, Neuman (2011, 87 - 89) summarises qualitative research to be research that constructs social reality and cultural meaning. It focuses on interactive processes and events and is value-based, but constrained to the particular situation. In this study, the various regulatory events act as the particular situations on which the various participants expressed their subjective views and offered suggestions for improvement.

Hence, in this study, the responses from the participants constructed a social reality. The views of participants were gauged and this brought forth their judgments and their subjective views and opinions. As a result the data gathered requires to be authenticated via triangulation, as will be discussed below.

Hence, the qualitative method was the best method to use in exploring the diverse views of the stakeholders and to dissect the reasons for their views in detail. This approach is interpretive because it places emphasis on conducting a detailed examination and to present authentic interpretations of the data gathered.

In conducting this research, as the researcher, the following simplified steps were followed in coming up with this research idea: With the introduction of the new ICT regulatory framework in Namibia in 2011, and being part of the project team tasked with introducing the regulatory framework and ensuring the enabling foundations for such introduction, it was necessary to reflect on how effective this new framework would need to be in achieving its stated objectives and wondered how well the relevant stakeholders received the communications regulatory framework. This gave rise to the idea to interview stakeholders on how they perceive the regulatory framework and what recommendations they may have to improve its effectiveness.

3.5 DATA COLLECTION

Data to be collected in every study should be valid and reliable (Clarke & Dawson, 2000, p.64). The task this study must dispose of is "…to provide the most accurate information practically possible in an even handed manner" (Berk & Rossi, 1990, p.9, cited in Clarke & Dawson, 2000, p.4). Multiple techniques have been deployed to allow for confidence in the information and to allow for an in-depth report. This qualitative research study has used the below mentioned research data collection techniques and data to ensure that it disposes of the above duty of validity and reliability of data (Clarke & Dawson, 2000).

Generally, the data has been collected within the conceptual framework as described in Chapter Two based on regulatory effectiveness and its various elements (Burnard, 2004).

3.5.1 IN-DEPTH INTERVIEWS

The approach adopted in gathering the information was qualitative interviews. The reason is that this approach was valuable in that it revealed the views of the stakeholders, which views contain their explicit personal values about the communications regulatory framework as informed persons who are direct participants in the framework due to the nature of their professions.

Patton (as cited in Clarke & Dawson, 2000) states:

> The purpose of qualitative interviewing in evaluation is to understand how people in a program view the program, learn their terminology and judgments, and to capture the complexities of their individual perceptions and experiences (Clarke & Dawson, 2000, p. 73).

This study was aimed at interviewing participants to understand how they view the communications regulatory framework, as the so-called programme, to learn about their judgments about the framework and to capture the

complexities of their individual perceptions and experiences.

Further, this approach helped depicting the attitudes, opinions or characteristics of the stakeholders participating in the interviews, which assisted with putting their views into context.

The primary sources of data used were the interviews conducted with the various stakeholder participants and the doctrinal analysis. This was because interviews are seen as guided conversations allowing participants to speak freely (Lofland & Lofland as cited in Clarke & Dawson, 2000).

The interview format used was the semi-structured or semi-standardised interview, for the reason that it follows a flexible format. The semi-structured interview guide is attached as Annexure A hereto and discussed in detail below.

Except for the standardised questions regarding the business or biographical details of the participants, the questions were open-ended to elicit in-depth qualitative responses, based on the particular circumstances of the individual interview. The questionnaire comprise of 34 detailed questions. The participants were requested to expand and explain their responses and there were follow up probes based on their individual responses (Clarke & Dawson, 2000). The latest regulatory events as outlined in Chapter 1 were used to set the context. In this fashion, better understanding was facilitated of the participant's subjective viewpoints (May, 1993 in Clarke & Dawson, 2000). An open-minded interview guide was used to allow for flexibility for the individuals to respond in an in-depth manner and thereby enrich the data (Clarke & Dawson, 2000). These interviews posed central questions that were specifically aimed at extracting the issues of effectiveness that the study aimed to explore and recommendations for improvement (Clarke & Dawson, 2000).

Clarke and Dawson (2000) suggest that interviews may be best suited for smaller group of participants, as is the case for this study, and the data is intrinsic to the individual experiences of the participants. This method is also appropriate when the researcher wishes to explore in some depth, the opinions, expectations and actions of individuals.

However, prior to conducting the interviews, the interview guide was forwarded to the participants approximately a few weeks in advance to enable the participants to prepare themselves, along with the invitation to voluntarily take part in the interview. The interviews were conducted between one to six persons per stakeholder. The problem with a larger group may have been difficult to manage and not all participants may have been allowed to take part in the interview. Using this method allowed for larger and diverse quantities of data. The interviews were relatively time efficient, as a group is interviewed for the same amount of time it would have taken to interview an individual. It allowed the participants to raise issues that were important to them and that was left unaddressed by the interview guide. Notes were kept to capture the responses from the interviews and this helped with keeping track of the interviews (Clarke & Dawson, 2000).

Although conducting interviews was the intended approach, two of the participants, namely Government (G1) and Expert and Consultant (EC3) opted not to be interviewed and opted to submit responses in writing. This mixed approach for gathering the data was used.

3.5.2 THE SEMI-STRUCTURED INTERVIEW GUIDE

In order to gather data, the main and sub-questions of this research, a semi-structured interview guide was used. The semi-structured interview guide was structured according to the main units of analysis, namely “regulatory analytical framework”, the “institutional endowment” in relation to the “regulatory governance principles” and the “institutional endowment in relation

to the regulatory incentives", as set out in the literature review as extracted from Levy and Spiller (1996), Waverman and Koutroumpis (2011), Henisz (2000, 2002), Henisz and Zelner (2001), Gutierrez and Berg (2000), Cubin and Stern (2005), and Sherbourne and Stork (2010), Galpaya and Samarajiva (2009) (using the TRE survey), the ECTA (2009) scorecard, the Communications Act (2009) and national ICT policies. The questions were structured in accordance with the main themes investigated, in a flexible manner to solicit broad responses and to allow for follow up questions. The questions asked the interviewees to express their views on particular regulatory elements and to give reasons for their responses and finally to make recommendations for improvement, in order to offer understanding to the regulatory framework so as to lead to its continual improvement.

The interview guide lists the main themes explored, crafted in an open-ended, neutral, sensitive and clear manner in terms of their relevance in extracting from the interviewees the answers that address the main questions of research (Patton, 1987, p. 122 as cited in Clarke & Dawson, 2000). The topics were factually based on the latest regulatory events, legislative provisions and principles of regulatory effectiveness as extracted from the theory.

The questions were not posed using a scale, as done for the TRGI and TRE survey or the ECTA scorecard. This methodology would not have been effective for the purpose of this study, as this study aimed to gauge the underlying reasons for the perceptions of the participants and having its quality analysed. The TRE survey and the ECTA scorecard do not ask questions requiring participants to outline underlying reasons. Applying the ECTA scorecard and the TRE survey strictly as is, would also not have proven useful for this research, because the aim of this research was to gain insight into the views of the stakeholders and gauge their explanations of their views, which cannot be done by using scorecard rankings and weightings.

However, the dimensions of the TRE survey and the ECTA scorecard used are valuable for this study and those dimensions have been extracted to put together the conceptual framework of this study.

The questions were compiled from the combined themes extracted from Levy and Spiller (1996), Waverman and Koutroumpis (2011), Henisz (2000, 2002), Henisz and Zelner (2001), Gutierrez and Berg (2000), Cubin and Stern (2005), and Sherbourne and Stork (2010), the Communications Act (2009), the doctrinal analysis in Chapter Four and the TRE survey and ECTA scorecard. These theoretical themes were then grounded in the factual and practical realities of Namibia's regulatory framework, so as to inform the data. In this fashion the matches and mismatches between theory and practical realities were exposed and the perceptions of stakeholders were better informed and extracted as valid data. This is necessitated by the fact that what happens in practice may be varied from what is contained in doctrine and in solely assessing the theory one may not be able to obtain an accurate reflection of the perceptions. The ECTA scorecard tries to be objective, whereas this study assesses the subjective opinions of both stakeholders and the regulator but validates such opinions against the practical facts and the views of other stakeholders. The questions are open-ended.

Each part then contained questions on sub-concepts that are used as yardsticks for regulatory effectiveness, such as independence of the regulator, accountability, power to issue licences, power to set prices, spectrum management and rights of way, to mention a few. The questions were phrased in such a manner as to obtain response from the stakeholders as to what their subjective views are on how these concepts have been addressed in Namibia and whether they think those concepts have been practically addressed in a manner that creates the perception that the regulatory framework is effective or ineffective. Hence, a central way of questioning the interviewees was to ask "How do you think, does the way in

which…affect the effectiveness of the regulatory framework?" This was considered more neutral and to obtain the personal responses of the interviewee, but also not to get vague responses. The "How" part required the interviewee to give practical thought to the response and support it with practical examples and cite such examples. The aim of this study was to obtain suggestions from the interviewees and an additional central question was "How do you think can the aforementioned be improved?" The guide was left open ended so that interviewees were free to explain their responses and follow up questions could be asked to the interviewees to clarify their responses.

3.6 PURPOSIVE SAMPLING

This research report needs to inform the reader of the size and type of sample used for the study (Burnard, 2004).

A major stakeholder of the telecommunications sector and another major stakeholder of the broadcasting sector were invited to be interviewed but declined to participate or did not respond to the request at all.

The above sample comprised of legal entities as represented by their duly authorised officials, who were a purposively selected sample, from which accurate findings can be made representing the general held truth. The key persons identified and interviewed included Managing Directors, the CEO's, persons dealing with regulatory matters, legal advisors, Chief Technical Officers, General Managers, persons responsible for tariffs and persons responsible for regulatory risks and strategy. These stakeholders were selected because of their relevance to the research topic (Flick, 1998, as cited in Neuman, 2011).

Neuman (2011, p.219) states that the primary purpose of sampling is to collect specific cases, events, or actions that can clarify and deepen

understanding. The interviewees selected were involved in the regulatory events recorded in this report, in one way or another. For this reason, Chapter One gives the background of the significant events and their timelines. These are the events that have represented the actions studied to deepen the understanding of whether the communications regulatory framework is perceived as effective or ineffective and how it may be improved (Neuman, 2011). As a result, the participants selected were based on the criteria that they are relevant to the to the research topic and the actions and specific cases as mentioned above.

This study used a non-random sample, specifically purposive sampling through key informant interviews. This technique is common for exploratory research, such as this study. The participants are purposively selected because of their personal experience (Thompson & Walker, 1998). The judgment of the researcher is used to select cases with a specific purpose in mind and my judgment as researcher has been used to select participants that are relevant in respect of the latest regulatory events as stated above. It must be stated that a limitation of this study is that the researcher is an employee of the Namibian regulator, and there exists the potential of bias as a result. This limitation will be dealt with further below.

The participants have been selected because of their interaction with and their interests in the regulatory framework and their knowledge of the communications regulatory framework, which knowledge they are able to share in this study. Not a large number of interviewees are required, as large amounts of data will be generated. The sample was aimed at collecting a small number of stakeholders that are specifically affected by the aforementioned regulatory events, in order to gain understanding of their perceptions (Neuman, 2011). As the data collection progressed, saturation levels were closely monitored and assessed as every piece of data was collected by means of identifying the common themes that emerged and new

issues that were raised. Further, the data was being validated by interviewees in this regard as well (Thompson & Walker, 1998).

A total of 28 persons from the below mentioned institutions were purposefully selected and interviewed on the dates indicated below, for the purpose of this study, due to them being informed about the sector and holding such strategic positions at relevant stakeholders and to come up with neutral responses. They are coded as follows:

1. Government – (G1) – 4 September 2012.

2. Regulatory Bodies - 16 November 2012.
    a. Regulator1,
    b. Regulator2,
    c. Regulator3,
    d. Regulator4,
    e. Regulator5, and
    f. Regulator6.

3. Telecommunications stakeholders:
    a. Telco1 – 5 September 2012,
    b. Telco2 – 17 August 2012,
    c. Telco3 – 22 August 2012,
    d. Telco4 – 22 August 2012 and
    e. Telco5 – 28 August 2012.

4. Consumer rights group:
    a. CR1 – 7 September 2012.

5. Academic stakeholders:
    a. A1 – 4 September 2012

b. A2 – 4 September 2012
c. A3 – 4 September 2012
d. A4 – 22 August 2012

6. Experts and Consultants:
    a. EC1 – 17 September 2012,
    b. EC2 – 6 September 2012,
    c. EC3 – 14 September 2012, and
    d. EC4 – 26 September 2012.

7. Postal services stakeholders: PS1 – 18 September 2012.

8. Broadcaster stakeholders:
    a. B1 – 30 August 2012,
    b. B2 – 6 September 2012,
    c. B3 – 20 August 2012,
    d. B4 - 20 August 2012, and
    e. B5 - 20 August 2012.

9. Industry stakeholders:
    a. I1 – 22 August 2012.

3.7 DOCUMENTARY SOURCES

Documentary information was used as data in this study. These included the data from authors and other researchers regarding the research subject matter (Clarke & Dawson, 2000). It also included the decisions and regulations of CRAN, legislation, court decisions, policies of the MICT, interviews with CRAN, licensees and the MICT personnel.

For the purpose of this study, only public documents were used. The regulator is obliged in terms of the Communications Act (2009) to keep

documents public registers regarding matters it addresses, unless correspondence and memoranda are declared as classified (MICT, 2009d). Clarke and Dawson (2000) importantly state the following about the value of documentary evidence: “A perusal of correspondence, internal memoranda, file notes and progress reports can reveal the extent to which there are any differences of opinion over the structure, organisation or delivery of the programme” (Clarke & Dawson (2000, p.84). These differences were captured and analysed and the reasons for such differences were explored during the interviews and reported in the data analysis.

The data has been critically assessed, considered with caution and only then used in this study and their subjective limitations have been considered. No assumptions have been made with regards to its objectivity and neutrality but its social and political context has been duly considered (Clarke & Dawson, 2000). The data was scrutinised via the process of triangulation, validation and reliability before it was used in this study, as will be explained below.

The text and documents studied were studied to gain insight into the viewpoints of the stakeholders as a whole and the true meaning was extracted (Neuman, 2011).

3.8 DATA ANALYSIS

Qualitative data comprises written words and need to be analysed in a logical and systematic manner. Such data flow from the interviews and the documents, as described above. It is important to indicate the step-by-step process by which the data was analysed (Neuman, 2011).

The views gathered during the interviews formed part of the research data, which data was analysed and interpreted, as reported in Chapter Six (Babbie & Mouton, 2004). The data is in the form of words (Neuman, 2011). These include quotations and descriptions from the interviewees. In interpreting the

data, significance was assigned to the words and weaved into discussions based on how well it related to answering the research question, its relevance to the research and how valid it was (Neuman, 2011).

The analysis of data means the search of patterns, trends and common themes within the data. The interview notes were collected and arranged into groups according to the various stakeholders. The interview responses, documents and notes were then analysed according to the various groups, to obtain the views of the particular group of participants as depicted in paragraph 3.6 above, e.g. the Telecommunications stakeholders. This was done in terms of the various units of analysis. The common responses were then interpreted in terms of the conceptual framework, the literature reviewed and the doctrinal analysis in order to reflect on the research problem (Neuman, 2011).

In this study, common patterns of responses were identified in the planning process as depicted by the conceptual framework and this guided the subsequent data collection process. In this manner, the responses were grouped according to the various concepts (Neuman, 2011).

This study made generalisations and conclusions based on the perceptions of the interviewees as to whether they think the framework may or may not be fulfilling its objectives or whether it is structured and designed in such a way that it may, or whether it operates in an environment that allows it to achieve its purpose and thereby making the communications regulatory framework effective or ineffective (Babbie & Mouton, 2004).

From the aforementioned, it is clear that the data gathered was organised using conceptualisation logically to represent the data, by using the major themes and similar features and examining the relationships between the various concepts. This is so because the theories and evidence are mutually interdependent. These themes were however guided by the research

question (Neuman, 2011). The above process was followed for every stakeholder group. The summaries and preliminary generalisations of the various groups were then compared and contrasted, via triangulation, to make further generalisations and depicting any differences in this regard. The differences themselves were a source of information that was further critically analysed. Final generalisations were then made about the similarities that were validated via the doctrinal analysis, the literature and the research questions, problem statement and purpose statement and conclusions were reached on the opinions of the stakeholders and this resulted in the research data collected as reported in Chapters Five, Six and Seven.

3.9 TRIANGULATION, RELIABILITY AND VALIDITY

3.9.1 TRIANGULATION

The data gathered in this study was observed from different angles or viewpoints to improve its accuracy, objectivity and authenticity, especially given the ethical considerations (Neuman, 2011).

In this study, triangulation was used to authenticate the results. The type of triangulation used was the triangulation of data gathering methods (Neuman, 2011). In this method, the measures used were interviews of the various selected participants and a doctrinal review.

The data was collected by using purposive sampling strategies and sources of information (Fotheringham, 2010). Various stakeholders were interviewed and various authors were researched in this study.

Additionally, the data was triangulated in the following ways: Data from the various interviews were compared and contrasted against each other and against the literature studied, the legislation and the policies.

The data was compared to related evidence, such as the documentary

evidence. The patterns in the themes from the interviews and the doctrinal review were dissected and differences and similarities have been exposed. The overall aim was to prevent falsehoods and making misleading inferences. Merits and de-merits were tested in the aforementioned manner and evaluated (Neuman, 2011).

Triangulation is the use of multiple methods of data collection, as was done above and that limits any possible bias (Cohen, Manion & Morrison, 2000).

3.9.2 RELIABILITY

The reliability of the measures is crucial and this study attempted to achieve reliability. The aim was to ensure that the findings are honest, credible, and believable (Neuman, 2011).

Neuman (2011) refers to reliability as meaning dependability or consistency. Under reliability, the same consistent findings are made in similar situations. No research can be reliable, if the findings are inconsistent, erratic and unstable (Neuman, 2011). The findings have to be stable and variances should be able to be tracked over time (Thompson & Walker, 1998).

The questions drafted in this study were aimed at ensuring reliability. The other techniques used to ensure reliability were interviews and the study of documentary data. Questions were phrased in the negative and re-phrased in the positive during in the interview to ensure the same responses are still received and thereby ensuring reliability and follow up questions were asked. Using a semi-structured interview guide was valuable in this regard. Furthermore, the data from various sources were compared in terms of the literature and the doctrinal analysis, against the common views of the various stakeholders. As a result, by using the semi-structured interview guide, a different researcher, would make the same conclusions and findings in a similar situation. The interviewees were asked to elaborate on responses to

ensure consistency and the context of regulatory events were used in a flexible manner, as examples, to set the context although no specific examples were cited in the interview guide. Alternative questions were also asked with the same meaning in the same interview (Long & Johnson, 2000).

These were the multiple measures used to ensure reliability because the process of gathering the data is interactive and context plays a varying role (Neuman 2011).

3.9.3 VALIDITY

The validity of the results refers to its truthfulness and authenticity, recognising however that there is no single truth. Neuman (2011, p.192) states that validity refers to how well an idea "fits" with actual reality. Validity also means the extent to which the data-gathering instrument measures what it is intended to measure (Polit & Hungler, 1995, as cited in Long & Johnson, 2000). This study measured the perceptions of effectiveness. This study used conceptual constructs that are not ironic and that ensured that a proper fit between the theories used to describe the Namibian regulatory framework and the actual happenings within the Namibian regulatory framework as the social world being studied.

Neuman (2011) defines the elements of authenticity as presenting fair, balanced and honest findings. This study will attempt to give a true account of the experiences of the stakeholder participants of the implementation of the regulatory framework. The study delved deeper into obtaining an inside view and giving a detailed and valid account thereof so that suitable perceptions of effectiveness held by the stakeholders is actually measured and derived at (Neuman, 2011).

The perceptions of the stakeholders were not accepted at face value but were interrogated to assess quality and validity. Literature, the Communications Act

(2009), national policies and with regards to regulatory governance, independence and effectiveness were used in validating the value of the views of stakeholders. The validation was done after the specific views of stakeholders were gauged and then analysed against the doctrinal analysis and literature reviews and doctrinal analysis. For example, Gutierrez (2003) states that the Regulatory Framework Index (RFI) should have the following three main elements of regulatory governance: "the scope of the legal mandate that creates the regulatory institution, the separation of regulatory activities from the operating activities of different entities, and certain main characteristics that a regulatory body should have" (Gutierrez, 2003, p. 229). This sort of expert literature serves as validating data and was used to interpret and validate the views of stakeholders and to extract useful responses that are supported by literature and documentary data or offers new and interesting insight (Babbie & Mouton, 2004 and Leedy & Ormord, 2005). These multiple tools of data gathering and semi-structured interviews with informed interviewees of relevant stakeholders that were purposively selected ensured that the data was free from errors and true by representing accurately those features of judging effectiveness that the study is aimed at (Hammersley, 1992, p.69 as cited in Long & Johnson, 2000).

3.10 DELIMITATIONS, LIMITATIONS AND ETHICAL CONSIDERATIONS

This study did not assess outcomes or actual effectiveness of Namibia's communications regulatory framework, because it was premature to do so, as the regulatory framework established since 18 May 2011 is relatively new. Levy and Spiller (1996) also indicated that they were unable to assess the outcomes of Jamaica's regulatory framework because it would have been premature at the time of conducting their study.

Since the 18th of June 2011, the author of this proposal has been appointed as the CEO of CRAN (Namibia Economist, 2011). This initially raised issues of ethical concerns, dilemmas and disputes regarding the proper manner of

gathering the data, analysing, interpreting and presenting it. As a result, the risk existed that the participants may be cautious with their responses to the questions and may not answer questions in detail and truthfully. This risk was addressed and thereby minimised by the semi-structured interview guide that guaranteed the confidentiality of the interview responses. The consent form further emphasised that the data gathered would only be used for the academic purposes of this study. Throughout the data gathering and analysis the researcher demonstrated professionalism and acted objectively in maintaining his dignity and integrity.

Furthermore, no confidential documentation of CRAN or information disclosed that are not for the purposes of this research were used as data.

Ethical considerations entailed ensuring that the interests of the stakeholder participants is safeguarded (Hollway & Jefferson, 2000). This study valued the integrity, impartiality and respected the participants so that it does not seem as if the researcher is abusing his position as CEO with CRAN, thereby intimidating the participants. The participants were informed that the researcher did not conduct this study in his capacity as CEO, but as a student. It was important that the participants did not feel intimidated and end up being fearful of being victimised because of their honest responses or sugar coating their responses. This was made clear to the participants beforehand, after which they volunteered to be interviewed. This fear and risk was addressed by the information form forwarded to the participants in advance and explaining to participants the sole academic purpose of the study at the start of the interview. The proper interests of the participants were safeguarded. The questions that were used in the interviews were formulated strictly within the academic domain. The expectations and pre-conceived ideas of the researcher had no role to play and this was be ensured by maintaining professionalism and not allowing any irrelevant matter affect the data gathering process. No pre-conceived conclusions were

made and the research was not prejudiced as a result. Prior informed consent of the participants were sought to guard against any harm. The participants were debriefed on the purpose of the study and all necessary information was disclosed to them regarding the nature of the research to prevent any unforeseen negative effects. The participants were informed that their responses would not be disclosed to any other third party. The participants were promised that the final report would be made available to them. The participants were not deceived in this manner. Their anonymity was safeguarded (Hollway & Jefferson, 2000).

The TRE survey indicates that perception bias is a methodological problem when using a survey (Galpaya & Samarajiva, 2009). To minimise such bias this study used an open-ended interview questionnaire to assess and re-assess the views of stakeholders. Such views are then contrasted and validated against existing theory and the views of other stakeholders. In this manner inconsistencies were minimised.

CHAPTER FOUR: SUMMATION OF DOCTRINAL ANALYSIS AND REVIEW OF NATIONAL POLICIES

The doctrinal analysis reviews enabling legislation and national ICT policies of Namibia. The analysis is conducted in terms of the conceptual framework as set out in Chapter Two. This chapter also sets out the doctrines applicable to the various regulatory events as outlined in Chapter 1. The doctrines outlined herein will be used in the triangulation process to authenticate the perceptions of the stakeholders, by critically assessing the perceptions held against the doctrines and the literature, and not by simply accepting the perceptions at face value. This validation process of the perceptions will be done in Chapter 6.

4.1 DOCTRINAL ANALYSIS OF THE REGULATORY PURPOSE

The regulatory purpose of national regulators was hinted at in Chapter One and highlighted in Chapter Two. The Communications Act (2009) sets out the regulatory purpose of Namibia's regulator as including as its objectives, the aim to establish the general framework governing the opening of the telecommunication sector in Namibia to competition; to promote the availability of a wide range of high quality, reliable and efficient telecommunications services to all users in the country; to promote technological innovation and the deployment of advanced facilities and services in order to respond to the diverse needs of commerce and industry and support the social and economic growth of Namibia; to increase access to telecommunications and advanced information services to all regions of Namibia at just, reasonable and affordable prices; to ensure that the costs to customers for telecommunications services are just, reasonable and affordable; to encourage private investment in the telecommunications sector; and to ensure fair competition and consumer protection in the telecommunications sector respectively.

In terms of the Communications Act (2009), CRAN must also ensure the establishment of the Universal Service Fund once the relevant section of the Communications Act (2009) is put into operation (MICT, 2009a and MICT, 2009d)). This is meant to be for the socio-economic benefit of all Namibians in achieving the regulatory purpose of the regulator.

The regulatory objectives of Namibia's regulatory framework are aligned to widely accepted regulatory objectives as discussed in paragraph 2.1, with the writings of Intven and McCarthy (2000), Melody (2001), Blackman and Srivastava (2011) and Levy and Spiller (1996).

4.2 DOCTRINAL ANALYSIS OF THE INSTITUTIONAL ENDOWMENT – THE REGULATORY ANALYTICAL FRAMEWORK

The institutional endowment refers to institutions such the Legislature, the Executive and the Judiciary and how they relate to each other in the execution of their powers (Levy and Spiller, 1996). The competing interests and the countries administrative capabilities are also assessed on the aforementioned institutions to assess whether it influences an effective regulatory environment.

With regards to the Executive and the Legislature, the National Assembly makes the laws. The Executive is comprised of Cabinet Ministers, and they make the policy decisions in terms of the Constitution of the Republic of Namibia (1990). These are the three organs of the state that demonstrate the principle of separation of powers, as discussed in paragraph 2.2.1.2.

In terms of the Communications Act (2009), CRAN must submit its annual report to the Minister of ICT, who must in turn submit it to Parliament as a means of accountability and transparency.

In terms of the Communications Act (2009), the decisions of CRAN are reviewable by the court as was done in the MWEB and Leo transfer court

cases. The courts, in terms of the Constitution of the Republic of Namibia (1990) are bestowed with the judicial powers of review. It is this judiciary that Waverman and Koutroumpis (2011) refer to as one of the various stakeholders of the institutional dimension.

In terms of the licence applications regulations, decisions can be made between two to four months. During this period, administrative processes range from publishing the application in the government gazette for public comment, to receiving comments, allowing for reply comments, requesting further information, having a possible hearing and then making a final decision and making the final decision (CRAN, 2010). All these administrative justice processes may be considered as bureaucratic and cumbersome or may be considered as being transparent, democratic and ensuring public participation.

4.3 DOCTRINAL ANALYSIS OF THE INSTITUTIONAL ENDOWMENT AND THE REGULATORY GOVERNANCE PRINCIPLES

The regulatory governance principles such as independence of the regulator, clarity of roles and responsibilities, accountability, transparency and predictability, licensing, administering the USF and appointment of the Board, as studied by various authors in Chapter Two will be outlined below and used as key principles to gauge the perceptions of the Namibian stakeholders.

4.3.1 STRUCTURAL INDEPENDENCE OF THE REGULATOR

CRAN is established by and in terms of the Communications Act (2009) as the independent Communications Regulatory Authority of Namibia for the regulation and control of communications activities.

However, there is a clawback clause to the independence of the regulator contained the Communications Act (2009). CRAN is recognised as a State-owned Enterprise (SOE) for the purposes of the State-owned Enterprise Governance Council (SOEGC) Act (2006), which provisions are made

applicable to it, this, despite the fact that CRAN is a regulatory authority and not a business enterprise.

CRAN is structured to report to the SOEGC, the Minister of ICT and the Minister of Finance in terms of its business and financial operations, and the management of its Board and management, with penal measures outlined if such obligations are not met. These are indirect measures of limiting regulatory decisions although the Communications Act (2009) spells out the autonomy of the regulator in terms of its decision-making. The Board and management may however be indirectly influenced in terms of the aforementioned structure when making decisions.

The Namibian government recognises that the independence of the regulator, by stating: “The Regulatory Authority is juristic person and operates independently from the Ministry of I&CT and is governed by a Board of Commissioners” (MICT, 2009a, p.15). The policy then spells out the role of the Authority, which role includes to implement government policy, providing advice on the formulation of national policies to the Minister, protect consumers, regulate the sector and quality of service.

4.3.2 FINANCIAL INDEPENDENCE OF THE REGULATOR

Regarding financial independence, in terms of the Communications Act (2009), the budget of the regulator is approved by the Minister of ICT. This, despite the fact the Authority is solely funded through licence fees, and may include fees for spectrum auctions and fines. No resources come from government (MICT, 2009a). This is in line with the proposition of Montoya and Trillas (2007), to secure the financial independence of the regulator.

However, in terms of the SOEGC Act (2006), all investments the regulator makes must be authorised with the written approval of the Minister of ICT with the concurrence of the Minister of Finance.

The regulator is required to submit a business and financial plan to the MICT annually, at least ninety days before the commencement of its next financial year, in terms of the SOEGC Act (2006). The annual budget must also be submitted in terms of the SOEGC Act (2006) to the MICT, which the Minister must in turn submit to the SOEGC for comment. The MICT must submit comments to the regulator in writing on the annual budget. The parties are then allowed to meet and discuss comments and make the necessary adjustments. The SOEGC Act (2006) specifically prohibits the regulator from incurring any expenditure except in accordance with an estimate of expenditure approved in terms of the annual budget.

The approval of the budget is not discussed by Montoya and Trillas (2007), but for the purpose of this study it is an element relevant for consideration in the Namibian context and will be discussed herein.

4.3.3 LICENSING: ALLOCATION OF TELECOMMUNICATIONS AND BROADCASTING LICENSES

In terms of the Communications Act (2009), the regulator may award service and spectrum licences. This is in line with the ratings of one for independence given by Montoya and Trillas (2007) to consumers that authorises regulators to exercise these powers. These licences are based on a service and technology neutral regime.

4.3.4 LICENSING: ALLOCATION OF SPECTRUM LICENCES

In terms of the Communications Act (2009), the regulator is empowered to manage the efficient use of spectrum and assign it as such.

The regulator has the power to manage and allocate spectrum and administer the radio frequency spectrum. Spectrum will be allocated with the high level principles of pluralism and diversity, competition, open markets, transparency, consistency and proportionality in decision-making and regulation (MICT, 2009a). This is in line with the views expressed by Montoya and Trillas (2007)

that spectrum assignments by the regulator indicates the independent authority to assess regulatory effectiveness.

4.3.5 ADMINISTERING UNIVERSAL SERVICE

In terms of the Communications Act (2009), the regulator administers the universal service fund. This is in line with the god rating of one for independence if the regulator administers the USF (Montoya & Trillas, 2007). The section dealing with universal service of the Communications Act (2009) has however not come into operation yet. The fund has not been established and has not rolled out any projects.

4.3.6 ROLE CLARITY

The separation of the roles, i.e. the policy role and the regulatory roles and how that is spelt out is assessed herein. The role and powers of the regulator and the Minister of ICT are spelled out in the Communications Act (2009). The Communications Act (2009) clearly spells out the powers of the Board to manage the regulator and clearly states where the Minister is to be consulted or the Minister's approval is required, for example the Minister of ICT makes and issues policy guidelines in consultation with CRAN. In turn, the issuing of licences and making certain regulations, e.g. spectrum regulations, is a power reserved for the regulator (MICT, 2009d).

The concept of role clarity explores the separation of roles between the Executive and the regulator and to what extent they may consult or take instructions from the Executive, in making decisions. In terms of the Communications Act (2009), the Minister of ICT may publish policy guidelines on the basis of which CRAN must make regulations. CRAN must be consulted in terms of these guidelines prior to their publication.

The regulatory powers of the Authority and the policy powers of the MICT are spelt as stated above are also set out in the Overarching ICT,

Telecommunications and Broadcasting Policies of 2009 (MICT, 2009a). These roles are further described in this Chapter 4.

The Minister of ICT makes the policies and CRAN implements it by making the necessary regulations. This structure is aligned to the separation of roles and clarity between the policy maker and the regulator as proposed by Melody (2001, p. 19), as discussed in paragraph 2.4.1 and Stern and Holder (1999).

4.3.7 APPOINTMENT OF THE REGULATORS BOARD, MANAGEMENT AND REMUNERATION

The Minister of ICT appoints the Board (MICT, 2009a). The Board is appointed in accordance with the SOEGC Act (2006). In terms of Montoya and Trillas (2007) this would not be guaranteeing effectiveness, as the rating would be 0.5 for a three-year term. The terms are however renewable (MICT, 2009d). However, the renewability and duration ensures job stability and in the view of Montoya and Trillas (2007) this would guarantee a good rating of one in favour of regulatory effectiveness.

The Board is appointed for a period of three years, in terms of the Communications Act (2009).

The Board is appointed by the Minister of ICT, in consultation with the SOEGC in terms of the Communications Act (2009). The Minister of ICT submits the lists of intended Board members to Cabinet for approval prior to appointing them as Board members. The management is appointed by the Board in terms of the Communications Act (2009). Contrary to indirect suggestions by Montoya and Trillas (2007) Parliament does not participate in appointing the Board.

The Board may vacate their offices in terms of the Communications Act (2009). They may be removed by the Minister on the grounds stated and after

being granted the right to be heard. The CEO of CRAN may only be removed in terms of the law, as contained in the Communications Act (2009) and the provisions of the employment contract.

The contracts for the CEO and management are for a period of five years and are renewable, in terms of the SOEGC Act (2006) and the Communications Act (2009).

It is a specific pre-requisite, in terms of the Communications Act (2009), that the members of the Board must, when viewed collectively, be persons who represent a broad cross-section of the population of Namibia including with reference to gender, and who possess proven qualifications, expertise and experience in the fields of information and communication policy and technology, radio services, law, economics, business practice and finance.

In terms of the SOEGC Act (2006), the Board members are appointed in terms of a report submitted to the SOEGC by the secretariat if the SOEGC and the Minister of ICT, recommending appointments. The appointments must be published in the government gazette.

4.3.8 ACCOUNTABILITY OF THE REGULATOR

The role of the regulator includes reporting to Parliament through the Minister of ICT, on all activities in the sector, including charges paid by consumers (MICT, 2009a). In terms of the SOEGC Act (2006), CRAN must submit its annual report to the SOEGC and the MICT. The Minister of ICT must then submit a copy to the National Assembly at its ordinary session. In terms of the Communications Act (2009), the regulator must reconsider its decisions and the court can review such decisions. This legal right of redress is what Stern and Holder (1999) use to assess accountability. The presence of this right in Namibia's regulatory framework is a boost for regulatory effectiveness.

4.3.9 TRANSPARENCY OF THE REGULATOR

The role of the regulator includes implementing a transparent and fair pricing regime. Spectrum must be managed with transparency, consistency and proportionality in decision-making and regulation (MICT, 2009a).

The principle of transparency places certain reporting requirements on the national regulator. In the Communications Act (2009), CRAN is required to disclose its decisions, reasons for its decisions, the interpretations of such decisions, keep public registers of proceedings, registers of licences and allow for public inspections and making of copies by any requesting party, except if any party to any proceeding claims confidentiality and such claim has been granted by the regulator after having had a confidentially hearing.

In terms of the Communications Act (2009), the regulator made rulemaking procedures outlining the process for making regulations. These procedures stipulate how stakeholders may request regulations to be made, how the regulator should publish notices of its intention to make regulations and publish draft regulations with reasons for public comment and have formal hearings in certain instances and how the regulator may be requested to reconsider the regulations made (CRAN, 2010). In this manner the stakeholders are allowed to participate in the decision-making process and their views are to be duly considered. This is a way of informing the regulator of the impact of its decisions on the stakeholders allowing the regulator to re-assess its proposed regulations.

This process of stakeholder participation is aligned to transparency requirements as outlined by Stern and Holder (1999), Intven and McCarthy (2000) and Waverman and Koutroumpis (2011).

4.3.10 PREDICTABILITY

Changes to the Communications Act (2009) can only be proposed by CRAN in terms of its annual report. Such changes will then be tabled to the Minister of ICT to consider and table to Parliament for approval (MICT, 2009d).

In terms of the Communications Act (2009), any affected party may apply to CRAN for it to reconsider its decision and may then have its decision reviewed in terms of the Communications Act (2009) by the courts. As CRAN is *functus officio* (meaning that once CRAN has served its legal duty it has no further official authority), it may not change its decisions at without following due process (MICT, 2009d). This is aligned to the requirement of predictability by following appropriate processes to make changes to laws and regulations, as outlined by Stern and Holder (1999).

4.4 DOCTRINAL ANALYSIS OF THE INSTITUTIONAL ENDOWMENT AND THE REGULATORY INCENTIVES

The principle of universal service, to aid socio-economic benefits for communications services has become enshrined in the licensing of communications services. As such, it is the role of the regulatory framework to incentivise the deployment of the latest technologies and services and promote innovation to meet the regulatory purpose (MICT, 2009d). The operators are thus incentivised by price regulation, competition and private ownership, market entry, interconnection, sharing of infrastructure, rights of way, spectrum management and the resolution of disputes.

4.4.1 PRICE REGULATION

The Authority may benchmark and monitor tariffs, including interconnection rates, and report to the Minister of ICT (MICT, 2009a). The Authority must protect consumers in respect of prices (MICT, 2009b). In terms of the Communications Act (2009), the regulator may set prices for all services once filed for approval. Licensees must file tariffs and rates with the regulatory

authority prior to them coming into operation. The regulator may reject the tariff and spell out the grounds for such disapproval.

The above review confirms that Namibia's regulatory framework allows price regulation as a regulatory incentive, as proposed by Levy and Spiller (1999), Galpaya and Samarajiva (2009) and Laffont (2003).

4.4.2 COMPETITION AND GOVERNMENT OWNERSHIP

The Authority role includes the responsibility to promote efficient competition amongst service providers and operators (MICT, 2009a). The Authority must implement a fair pricing regime that facilitates competition in the market to control or prevent anti-competitive actions or omissions by an operator. Spectrum must be managed and allocated based on the principle of competition (MICT, 2009a).

Government will create an equitable, fair, just and competitive environment based on the principles of the free market and open unfettered access to products and services (MICT, 2009c). As stated by Tenbücken and Schneider (as cited in Jordana and Levi-Faur, 2004, p. 245) the regulator is mainly tasked with fair competition once an industry is liberalised.

Competition is further harnessed by diluting government shareholding in ICT SOEs that will benefit Namibia through increased market efficiency and the ability to attract international investors and technology partners (MICT, 2009a). Government policy states, "So long as Government continues with shareholding participation in ICT SOEs, Government will separate its policy development and regulatory roles from its role to maximise shareholder value. Commercialised state owned enterprises in the ICT sector are managed separately from its Policy and Regulatory responsibilities" (MICT, 2009a, p.19). However, contrary to the proposals of Montoya and Trillas (2007), as depicted in Figure 1.1, government ownership continues, whilst the Ministry of ICT is still the policy Ministry possessing policy development and regulatory

roles (MICT, 2009a).

The Communications Act (2009) prohibits anticompetitive behaviour. Any activity that has the object of preventing or distorting competition.

Any abuse of a dominant position in the telecommunications or broadcasting services sector is prohibited. Proposed mergers and acquisitions of controlling interests must be assessed by the regulator to ensure it complies with the objects of the Communications Act (2009) to ensure it will not result in no reduction in competitive markets, which are not offset by sufficient benefits to the public (MICT, 2009d). Except as stated herein, the Namibian regulatory framework does not place limitations on mergers and acquisitions (MICT, 2009d).

Government ownership of ICT companies has its impact on competition. In terms of the Post and Telecommunications Companies Establishment Act (1992), no one except the state holds any shares in TN. It is solely state-owned and will be until the above provision of the law is amended to allow for private ownership. In terms of the Post and Telecommunications Companies Establishment Act (1992), TN's line Minister is the Minister of ICT. It is also worth noting that the Minister of the MICT is also the policy Minister of CRAN, as the regulator, both parties having various reporting requirements to the Minister in terms of their enabling legislation and the SOEGC Act (2006). Regarding the NBC, government, via the MICT, is also the sole owner (Namibia Prime Minister, 1991).

In terms of the Communications Act (2009), the regulator held a consultative dominant hearing to determine dominance in the market (CRAN, 2012d).

Government will lower barriers to the ICT market, to allow third parties to compete with established providers of ICT products or services, as stated in its policy provisions (MICT, 2009a).

The public broadcaster is not regulated by CRAN in respect of its broadcasting services (MICT, 2009c).

4.4.3 MARKET ENTRY

Interestingly, government aims to establish a service and technology neutral licensing regime (MICT, 2009a). The policy states, “Although this may not immediately facilitate the entry of new market entrants, it will allow increased competition among the incumbents which will be beneficial to the country.” (MICT, 2009a, p.11). This is in line with the various views of Laffont (2003) by stating that the regulatory rationale includes market entry.

However, the broadcasting policy states that the 51% Namibian ownership requirement will be reviewed with the aim to its relaxation (MICT, 2009c). This statement is aimed at relaxing this possible barrier of market entry.

The Communications Act (2009) requires 51% Namibian ownership for licensees, subject to Ministerial approval of majority foreign ownership (MICT, 2009d). This places a limitation on foreign ownership, contrary to the views of Galpaya and Samarajiva (2009), when they gave Pakistan a good rating of 3.9 in its TRE survey for having a policy of no limitations on foreign ownership.

4.4.4 INTERCONNECTION

The Authority may benchmark and monitor tariffs, including interconnection, and report to the Minister of ICT (MICT, 2009a). The Authority must encourage the sharing of networks between operators at fair and equitable rates (MICT, 2009a). The Authority governs interconnection arrangements between operators (MICT, 2009b). The licensees must allow for interconnection unless it is technically or financially infeasible. The Authority may prescribe benchmark charges for interconnection (MICT, 2009b).

On the contrary, in terms of the Communications Act (2009), licensees are

required to interconnect their networks with each other for the purpose of the transport and termination of telecommunications and information, based on reasonable charges to be contained in an agreement. The regulator vets and approves interconnection agreements and on terms and requirements as prescribed by it (CRAN, 2011c).

The above is in line with proposals by Tenbücken and Schneider (as cited in Jordana and Levi-Fair, 2004) requiring regulators to address interconnection disputes. This is positive for Namibia's regulatory framework.

4.4.5 SHARING OF INFRASTRUCTURE

The Authority must encourage the sharing of networks between operators at fair and equitable rates that are non-discriminatory (MICT, 2009a). The licensees must, upon request, lease facilities to other licensees and that shared access is required unless such request is technically or financially infeasible (MICT, 2009b).

In terms of the Communications Act (2009), to promote competition and the objects of the regulatory framework, licensees must allow each other to install telecommunications equipment on such infrastructure or to otherwise utilise such infrastructure. This legal requirement also extends to providers of broadcasting services, contrary to the provisions of the broadcasting policy that requires the sharing of broadcasting infrastructure (MICT, 2009c).

On reasonable terms, utilities are obliged to lease any spare capacity available in any tower, mast, pole, duct, conduit or pipe to any carrier who requests that utility to lease such capacity in order to attach any telecommunications equipment to such infrastructure or to lay any telecommunications wires or fibres in such infrastructure, in terms of the Communications Act (2009).

In comparison with the ratings of Montoya and Trillas (2007), Namibia's

framework would receive a good rating for granting this power to the regulator by means of its laws.

4.4.6 RIGHTS OF WAY

Servitudes are vital for the provision of communications services. These resources are difficult to acquire and limited, hence they require efficient management.

In terms of the Communications Act (2009), licensees are granted statutory servitudes subject to authorisations from local authorities. Licensees must obtain rights of way, servitudes and/or way leaves to dig trenches or plant poles for cable systems and place facility infrastructure over privately owned land (MICT, 2009b and MICT, 2009c). The regulator only facilitates the process when a dispute arises between the operator and the local authority.

4.4.7 SPECTRUM MANAGEMENT AND LICENSING

In terms of the Communications Act (2009), the regulator is vested with the control, planning and administration, management and licensing of the radio spectrum. The spectrum must be managed in an orderly, efficient and effective manner (MICT, 2009d). This is in line with suggestions by Montoya and Trillas (2007) giving good ratings of one to regulators for the power to allocate spectrum.

4.4.8 RESOLUTION OF DISPUTES

The Authority acts as an arbitrator in cases of deadlock or dispute on tariffs (MICT, 2009a).

In terms of the Communications Act (2009), the regulator must resolve disputes regarding interconnection based on the principles of fairness, non-discrimination and forward-looking incremental costs.

Whenever the Communications Act (2009) provides that a dispute between

two licensees to be adjudicated by the regulator, the regulator may appoint any person to conduct mediation proceedings in order to obtain a settlement of dispute concerned. The regulator may make regulations to prescribe any matter relating to the mediation proceedings. The regulator has only published these regulations in December 2012 for public comment (CRAN, 2012m).

As stated by Montoya and Trillas (2007), for an effective regulatory framework, provision must be made for addressing and resolving disputes, as outlined above in terms of Namibia's regulatory framework.

4.5 CONCLUSION

This chapter outlined the tenets of Namibia's regulatory framework and concludes that in line with the literature as set out in Chapter 2, Namibia's legal and policy doctrines are not aligned in all instances, although it is in most instances (e.g. power to allocate spectrum), to benchmarked international trends in terms of elements necessary for an effective regulatory framework. For example, incumbent operators are owned by the state, as depicted in Figure 1.1, contrary to the literature reviewed (Montoya and Trillas, 2007) and contrary to its national ICT policies. This is not a characteristic, of an effective regulatory framework, having regard the views of Sherbourne and Stork when they state:

> In contrast to times past, when it could be argued that state ownership was necessary to prevent inefficient pricing by a natural monopoly, there is no longer sound economic logic in favour of state ownership in a sector where genuine competition can be created through intelligent regulation. As long as government remains a shareholder in one or more competing companies, there will always be an incentive to make regulatory decisions on the basis of what is best for the shareholder

rather than the consumer and the national economy" (RIA, 2010, p. 10).

This does not augur well with Namibia's regulatory objective of encouraging private investment. However, as this is a perception study, the stakeholders' views will be assessed in this regard in Chapters 5, 6 and 7.

CHAPTER FIVE: PRESENTING THE STAKEHOLDERS PERCEPTIONS

The subjective views of the stakeholders are summarised and presented in this chapter as the research outcomes. The commonly held views as well as the divergent views discussed. These perceptions are substantiated with quotes and references to the specific stakeholders and their particular views as the research findings.

5.1 FINDINGS REGARDING THE PERCEPTIONS ABOUT THE INSTITUTIONAL ENDOWMENT - REGULATORY ANALYTICAL FRAMEWORK

The direct responses of the interviewees and their analysis and interpretations of the regulatory events are captured herein. Where there are generally similar views such are indicated and if there are diverse views the disagreements are pointed out, with regard to the institutional endowment, i.e. the interaction between the Legislative, the Executive bodies, the Judiciary, the customs and practices, the nature of competing interests an the administrative capabilities of the regulator and the country.

5.1.1 LEGISLATIVE AND EXECUTIVE BODIES

QUESTION: How has Parliament and Cabinet (Ministers) practically affected the effectiveness of the communications regulatory framework?

The interviewees indicated that the Minister of ICT positively affected the communications regulatory framework by tabling the Communications Act (2009) in Parliament. However the Communications Act (2009) was delayed and only put into operation in May 2011. This delay however impacted negatively on the aim to reform the regulatory framework.

The Ministry of ICT also spearheaded the appropriate development and adoption of national ICT policies. The fact that the Minister and Cabinet

eventually approved these policies in 2009 was positive. However, the implementation of these policies by the Executive is considered as weak and not effective.

Passing the Communications Act (2009) does not address convergence adequately, it does not regulate NBC and UAS is limited to telecommunications only. The Communications Act (2009) is seen as containing contradictions. For example, broadcasting infrastructure requires sharing and appropriate guidelines, but there is no legal requirement in this regard.

However, passing the Communications Act (2009) only after the market entry of Leo was considered as "putting the horse before the cart" as stated by interviewee EC2 and "…a fundamental error". This may have been created because the NCC and the MICT was not well advised and did not understand the economic regulation issues and how to deal with same, interviewee EC2 stated. This interviewee stated, there is no appreciation of the economics and the value of it at a political level.

5.1.2 THE JUDICIARY

QUESTION: How have the courts practically affected the effectiveness of the communications regulatory framework?

The interviewee B3 stated the court is an impartial third party stepping in to resolve disputes. Interviewee CR1 replied that smaller entities such as community radio stations and the public might not have the necessary financial resources to access the judicial system.

Interviewee Telco2 were also of the view that it seems that the regulatory framework did not set sufficient discretionary restrictions for the regulator,

when having regard to the “On-Net” and “Off-Net” price ruling court decision against MTC.

The interviewee Telco2 stated, although the actions of the regulator may be reviewed in terms of the Communications Act (2009), the powers of the regulator in the Communications Act (2009) are too wide and not limited and certain enough for courts to be able to limit the exercise their powers, even though licensees are afforded the legal review remedy. MTC (2011) in its annual report indicated that it suffered revenue losses due to this decision. Telco2 stated further that the objective of the regulatory framework to maintain competition was not met, in that the decision did not level the playing field for the other operators and the apparent result of that was that the regulatory framework was perceived as negatively impacted.

The interpretation of some of the telecommunications stakeholders in particular was that the discretionary powers of the regulator are far too wide and the courts simply endorse the decisions of the regulator without curtailing it. Coupled with that is the fact that the regulatory framework is still in its infancy and there are many actions to come and outcomes cannot be predicted, this creates a lot of uncertainty for the interviewees, they stated. This is the impression created from the “On-Net” and “Off-Net” price ruling court case between MTC and NCC. On the other hand, other telecommunications stakeholder interviewees had contrary views. They indicated that this was a good decision to uphold the NCC’s ruling. It boosted the regulatory framework. A1 was of the view that “…the court handled the matter fair and square and was not one-sided nor corrupt”. The effect of this on the regulatory framework was that it boosted confidence in the framework, interviewee A1 stated.

It seems to interviewee Telco2 that whatever the regulator decides the licensees just have to "… eat it and swallow it…" A whole new set of regulations still need to be crafted by the regulator and this makes the interviewees uneasy as to what is coming their way, Telco2 responded.
With regard to the 2011 MWEB versus TN court case, Telco2 responded that the court did not know what it was doing when it decided that MWEB should not be allowed to re-sell ADSL wholesale services of TN. Subsequent to the court case, TN allowed MWEB to resell its ADSL services, which is what the court case was all about in the first place. The interviewee stated the court judgment gave TN the monopoly in that respect, which is contrary to what is being advocated for in the Communications Act (2009), i.e. allowing reselling of wholesale services. The courts have taken the approach of pure black and white implementation of the law as it was then, without applying the rules of competition prior to the new Communications Act (2009). With respect to this MWEB court decision, some interviewees stated, the courts did not contribute to the effectiveness of the regulatory framework.

Interviewees further indicated that they couldn't recall any political interference with any court case, stating that the courts operate independently. Interviewee L1 stated, "These cases are testimony of the fact that the rule of law is alive and well, irrespective of the decisions, and the decisions are accepted and abided to and as law-abiding citizens."

With regards to the MTC versus NCC court case, the courts expressed its concerns with regards to how operational aspects of the NCC were handled, but the decisions were taken as fair and as stating what is right. The interviewees indicated that there was credibility in the decision of the court, such as Telco1. They concluded that the courts are credible institutions.

The interviewees indicated that generally, there were shortcomings in the legislation prior to the commencement of the Communications Act (2009) and the courts did what they could in the circumstances. However, there does not seem to be a good understanding of the economics behind the laws and the policies and this needs to be put right and then be translated into laws, EC1 stated.

Interviewee CR1 indicated that the courts are friendlier to the consumers, if one considers the MTC versus NCC court case. The respondent stated, it was a good example that the court set in making that decision to enforce similar rates for “On-Net” and “Off-Net” customers. Some interviewees commented that in this case the Namibian courts have shown that they would look favourably upon a competitive communications market in the public interest. The interviewees further indicated that in this case, the court set a precedent, as per the objectives of the Communications Act (2009), the competition arena for the mobile market in Namibia be open and be based on fair competition, that the regulator plays the role in the setting of procedures, conditions and tariffs for licenses, as underpinned by the Communications Act (2009). In this respect CR1, Expert and Consultants and the Academic stakeholder interviewees felt that the courts have understood the issues and made good decisions.

Regulatory body interviewees stated, the court got its decision wrong in the Guinea Fowl Investment versus CRAN case. The court wrongly found that TN, a public company, buying Leo, a private company, trading as Leo, encourages private investment, they stated. The court was seen as taking the easy solution and ruling in accordance with the government and Cabinet decision, raising the question as to whether there was any undue influence on the court, in this regard. This decision was wrong and could have been appealed and did not do much for confidence in the regulatory framework, the

regulatory body interviewees stated. The general comment from interviewees were that courts are not sector specific and are not geared to handle such complicated tasks as the court case in question. They respectfully stated that the court did not have a clue and did not understand competition issues at all. Respondent EC4 suggested possible training for the judiciary in this regard.

5.1.3 CUSTOMS AND NORMS

QUESTION: What are those unwritten truths and the informal practices about the way of doing things in Namibia, that affect the powers and actions of parliament, cabinet, courts, individuals or institutions in the communications regulatory framework?

The Telecommunications, Experts and Consultants and Academic stakeholders seemed surprised by the interventions of the Minister of ICT in particular given situations, such as the "On-Net" and "Off-Net" price ruling, where the Minister of ICT convened and hosted a consultation workshop, which workshop ideally had to be convened by the NCC instead. This action can be interpreted to be one of Executive intervention, stepping outside of the policy zone and stepping into the regulatory zone. This confused the roles between the Ministry and NCC as the then regulator. The Minister made a statement supporting the ruling of the NCC, whereas the Minister, at the same time is the shareholder Minister of both MTC and TN. This, the interviewees said, caused a strange situation. Telco2 stated, "It should not happen". This they stated "absolutely weakens the framework and puts pressure on the situation in some way, which should not be the case." This informal practice and custom of Ministerial intervention can be interpreted to undermine the regulatory framework. This way of implementing the regulatory framework does not make the framework effective, the above interviewees stated.

All interviewees there is a lot more informal collaboration to get things done, as opposed to speaking via lawyers, and this some interviewees indicated is

a good Namibian culture. It creates a very thin line with respect to things that are not written in the laws. In this way it makes it difficult to get things done. In some instances they know each other very well and personally. On the positive side, these informal talks can help with informally solving issues without having to go to court. In this way it gets things done easier. Generally, the interviewees view these personal relationships as positive.

Interviewee EC2 was of the view that politicians, by not being subject matter experts in economics etc., have no real appreciation for policy. As a result all actions to be taken are seen in political and ideological ways. All actions are seen in terms of plots and conspiracies and this leads to a particular way of doing things. There is no clear economic policy direction and this is not best for the country. As a result decisions are not taken regarding the privatisation of TN for example, although this would be a lot more visionary. This makes life for the regulator harder, for which the line Minister is the Minister of ICT because of government retaining that 100% shareholding in TN and majority shareholding in MTC. Due to the government's shareholding in TN, Telecom TN gets government guarantees and is seen as too big to fail, interviewee EC2 stated. As long as the latter practice continues there cannot be proper competition until all the players are on the same level.

They indicated that there is political interference. This is evident from operators who run to politicians when they do not get what they want, for example, MTC that complained to the Prime Minister of Namibia with regards to their application for 4G spectrum.

Regarding the efficiency, the Academic stakeholders interviewees are of the opinion that there is no follow through on activities undertaken, even after numerous consultations. No decisions are taken after that and there is no implementation, although it starts with the best of intentions. Matters are left

to the last minute and if it is finally implemented it is done in a haphazard manner and it is a last minute job. This has however largely changed since the inception of CRAN, as monitoring and enforcement structures are in place, interviewee B1 stated.

5.1.4 THE CHARACTER OF COMPETING INTERESTS

QUESTION: What are those social and other conflicting interests between various stakeholders in the communications regulatory framework?

Interviewee CR1 was of the view that consumers only have an interest in having to spend less money on telecommunications services. This relates to subscription rates for satellite television for example, that is considered expensive in comparison to Internet rates. A company that has links to the ruling party owns one of the commercial broadcasters and since the Minister of ICT appoints the Board of the regulator it creates the impression of bias that there has been no intervention with regards to the costs of broadcast services.

The operators are business entities that want to make a profit at all costs even if at the expense of the consumer and providing a poor service. This profit motive makes for competing interests. On the other hand government has an interest in social development, that conflicts with the above interests. On the other hand, commercial entities have a commercial and profit drive and they have a tunnel vision attitude of “everyone for himself”, as opposed to driving the national interest, for example when it comes to infrastructure sharing Telco5 stated. They do not realise the common opportunities respondent Telco5 continued to state.

The interviewee CR1 further stated that the Minister of ICT appoints the Board and it seems as if the Board does not want to offend the appointing authority in its decision-making. There is conflict between the Board and it

exercising its mandate in terms of the Communications Act (2009) and the influential role of the Minister.

The operators have overlapping interests, however they are also competing with each other. The interests of the dominant operators are different to those of the non-dominant operators. Namibia has a small market size and there will be competition between the operators. For example, some operators will oppose the pricing regulation whereas others will support it and this is due to the nature of their commercial interests. They stated that dominant operators have the interest to maintain their monopoly powers and this creates competing interests, which the regulator is called upon to resolve.

There are also disputing interests between the regulator and the Ministry of ICT, as the policy body. The differentiated roles are however spelt out clearly in the Communications Act (2009). The dispute however arises when it comes to implementing these provisions. These disputes may arise due to the interest the government may have in one of the licensed operators. These interests are split between commercial and social interests. For example, the regulator is given the mandate to promote the public interest of affordable universal access and this creates disputes with the commercial and profit making objectives of the licensed operators.

The historical situation, prior to the Communications Act (2009) is what created more of the disputes. The state-owned enterprises have been operating under different rules than the private companies, i.e. they did not regulate licensing from NCC.

The NBC is not regulated by CRAN, except for issuing them with spectrum. This creates competing interests between the private broadcasters that are regulated by CRAN and the NBC and does not create a level playing field.

The Minister has more power over the NBC than the regulator does. This weakens the position of the regulator, the interviewees stated.

5.1.5 THE COUNTRY'S AND CRAN'S ADMINISTRATIVE CAPABILITIES AND FUNCTIONALITY

QUESTION: What is the amount of bureaucracy experienced with regards to parliamentary, cabinet, ministerial, court and/or regulatory administration processes that impact on regulatory effectiveness?

The interviewees responded that there is a lot of bureaucracy when it comes to being granted access to public land. The interviewees claim that there were huge delays in experienced with rolling out fibre. Additional bureaucratic requirements to conduct EIA's just add to the costs and delays, Telco2 stated. Generally, this process is not clearly defined by the local authorities and the situation is diverse from one local authority to the next depending on the region you intend to rollout in. One local authority will grant access for free whereas the other will charge high rental fees and the next local authority makes astronomical demands of entering into joint ventures with telecommunications service licensees, whilst not having applied for and not being granted such telecommunications licences.

Regulatory body interviewees, academics, experts and consultants, and telecommunications stakeholders were of the view that the bureaucracy is too much in terms of executing the regulatory roles and functions. The impression that interviewee A2 had was that "things take forever".

Regulatory body interviewee's complaint that their strategic plan and budget took a while to be considered for approval between the MICT and the SOEGC. The regulator is in a fast moving industry but the strategic plan approval process takes too long and impacts on the regulatory process. It negatively impacts on the regulator because the regulator is unable to be as predictable and transparent as it ought to be with its regulatory plans. Furthermore, the regulator is not able to communicate these plans in good

time to the stakeholders. The plans require to be approved so that they are still relevant when they need to be implemented.

The Communications Act (2009) links decision-making powers to the Board while the Board is a non-executive Board. The timelines in the regulations lead to frustration and as the Board does not meet within the said timelines, the interviewees stated.

The policy making process with the MICT takes too long. The UAS Policy has not been approved as yet and has been in the making for a while.

Interviewees also indicated that they experienced bureaucracy when applying for spectrum and the inability of the NCC to issue specifically broadcasting spectrum licenses. This they considered as an issue that has been coming on for decades. As a result some licensees have not been able to expand their networks for a while. In dealing with the new regulator the interviewees were of the opinion that it has been easier as it is open and transparent with regards to its processes and things get done properly.

Interviewees were of the view that at parliamentary and Cabinet level there is no driving force and no champion to get things done. Interviewee EC2 commented that it was “pretty inefficient, no energy and direction”. They commented that it is bureaucratic and that the whole government is guilty of this. A decision cannot be made if the decision-maker cannot be reached. No consolidation process has been put in place. They indicated that the bureaucracy was too much because politicians are involved and is slow, as opposed to if it were a private initiative and things would get done. It is input centred as opposed to being output centred. Respondent B3 is of the opinion that “everyone is too involved and this leads to bureaucracy”.

On the other hand, some interviewees were of the view that the timeframes contained in the new processes allowing for public comments, for example, is time consuming. They considered this to be out of touch with technological developments that move quickly. Interviewee Telco4 added, “It is ridiculous to wait for six to nine months for a licence as it delays the rollout of infrastructure.”, suggesting that timelines be revisited and shortened.

On the contrary, other interviewees indicated that the bureaucracy was not excessive, but somehow felt that it was a necessary evil for the purpose of keeping the necessary records. Interviewee B3 replied, “The NCC did not keep adequate records, whereas CRAN does, and this may be a necessary evil, although we may not like the paperwork.”

Other broadcasting stakeholder interviewees did not experience much red tape when it came to radio stations. There are procedures in place, especially with regards to the application processes, they stated. The process and the stages are defined. The written rules are clear and defined, however it is the unwritten red tape that we get caught up in, some responded. They stated further that it is the individuals within the defined rules that create the bureaucracies.

Interviewee B2 commented “CRAN is not bureaucratic, because CRAN is obliged to respond within set time frames to matters and the bureaucracy is controlled in that way”. They stated further it is “quite quick and swift” and there does not appear to be much bureaucracy.

Interviewee EC1 and EC4 indicated that in an economy dominated by the state, with the inherent power to allocate limited resources, bureaucratic processes will increasingly dominate regulatory administrative processes in Namibia. They further stated that this is a phenomenon in the Namibia public

policy design and implementation space, which currently determines regulatory effectiveness.

5.1.6 IMPACT ON CRAN AS REGULATOR

QUESTION: How is CRAN affected in its roles as regulator, by the aforementioned?

The interviewees indicated, amidst all the aforementioned, that they are at this stage generally positive with the latest developments and the launch of CRAN and the way it is operating. They stated that the introduction of the new framework was a good decision by the Minister and they have more confidence in the framework then before.

From the above, it seems as if CRAN has handled the transitional process and the introduction of the new framework in a manner that instils overall confidence in the framework. CRAN's role can be said to have been positively affected. Other interviewees reiterated this perception.

The Interviewees were of the opinion that CRAN's operations may be impacted by the aforementioned. Due to the timeframes contained in the regulatory processes the impact on CRAN is to ensure that such timelines are met and to put the necessary mechanisms in place to ensure timeous responses. If not, then the bureaucracy can slow CRAN down in executing its functions. It will make it truly difficult to enforce the Communications Act (2009) on a day-to-day basis.

Other interviewees indicated that CRAN is put under a lot of pressure to deliver on the demands of the community, the private and public broadcaster. CRAN's independence needs to be guarded and protected, as CRAN is yet to fully implement its independent role and CRAN is under pressure to do so.

The impression is created that “CRAN seems to know what it is doing and it seems they have their ducks in a row but people are waiting for the scandal” the Academic stakeholders stated A1 – A3 responded. This puts CRAN under a lot of pressure.

The regulator seems to be empowered by legislation and is afforded the necessary resources to become an effective organisation to be able to address the aforementioned, respondent EC1 stated.

There is some political influence due to the fact that the Minister appoints the Board, CR1 stated. CRAN may also make enemies in executing its role, if one considers how small the Namibian populace is and the fact that everyone knows everyone. The Board members of CRAN are also business people and they may become unpopular due to the role of CRAN and their businesses may be hurt as a result and Board members may refuse to be re-appointed, the interviewees stated.

Some interviewees were of the view that if operators are fearful of lodging complaints against each other or co-operate with CRAN to address issues there is very little CRAN can do to enforce its regulations and procedures. They also stated that it makes it difficult for CRAN to execute its mandate.
The NBC is not regulated by CRAN, except for issuing them with spectrum. This creates competing interests between broadcasters that are regulated by CRAN and does not create a level playing field. This weakens the position of the regulator.

Regulator2 stated that “The problem for CRAN at the moment is the traditional and historic issues of people being used to doing what they wanted. This places the burden on CRAN to be seen to be visible in enforcing regulation so that it can be more effective.” CRAN has to be swift in dealing

with issues. It has to make complaints visible on its website, the respondent recommended.

The timelines in the regulations lead to frustration for the Regulatory body interviewees stated. The Board of the regulator is unable to meet within the said timelines to make decisions. Interviewee Regulator3 therefore stated “I think it makes us ineffective”. The bureaucracy is taking its toll on the regulatory framework and makes the industry and regulator employees lose their energy and affects the work morale as they do not see progress and results as quickly as they would like to, to stay motivated, the Regulatory body interviewees stated.

The MICT is to drive the policy for the industry and if they do not understand the ICT issues, the interviewees indicated that there would be problems within the framework. The policies and the legislation come from the MICT and if operators are going to the Executive to complain then this will negatively impact on the regulatory framework. The Executive has reacted to the complaints from the operators and this may compromise the independence of CRAN, although to a large extent the Executive has demonstrated its impartiality, the interviewee PS1 stated.

5.2 FINDINGS REGARDING THE PERCEPTIONS ABOUT THE INSTITUTIONAL ENDOWMENT AND THE REGULATORY GOVERNANCE PRINCIPLES

5.2.1 STRUCTURAL INDEPENDENCE OF THE REGULATOR

QUESTION: Do you think CRAN is created as an independent entity from the industry and government and how does that affect the effectiveness of the framework?

Some interviewees consider CRAN to have been created as an independent juristic body from the industry and from government. The law provides

sufficient independence to CRAN in terms of decision-making, staff appointments and financial management. This independence was evident from the court case of Guinea Fowl suing CRAN. CRAN made its independent decision despite the odds. Interviewees state that the industry views the role of CRAN as an independent player as it is seen as being at arms-length from government.

Other respondents are however of the view that, although CRAN is created as an independent entity, the industry sees it as an extension of the Ministry, due to requests being made by the Minister to CRAN, as stated by Telco5. This creates the impression that CRAN is not independent. They stated that prior to the CRAN era there was no independence and the environment was so unregulated or not properly regulated by the NCC.

With regards to the “On-Net” and “Off-Net” price ruling, prior to it being made by the Board, the Ministry of ICT was involved in the decision and MTC looked for political clout to have the decision changed (New Era, 6 February, 2012b). It can be said there was attempted interference in this regard.

Other respondents stated that CRAN was absolutely independent judging from the decision taken with regards to TN’s application to take over control of Leo. This despite the Namibian Cabinet approving the transaction beforehand.

However, whether CRAN will really practically be independent remains to be seen. Further, CRAN is legally defined as an SOE, and if it were not an SOE it would have been more independent (MICT, 2009d), suggesting that this requires reconsideration of this classification.

Some interviewees further stated that CRAN might not be independent enough from the operators. “It seems as if CRAN is afraid of MTC because of MTC’s economic might and its majority connection to government.” CR1

commented. This concern was expressed because CRAN opted not to impose a fine on MTC for a complaint lodged regarding a misleading Internet advert for special rates and bundles being reduced.

5.2.2 FINANCIAL INDEPENDENCE OF THE REGULATOR

QUESTION: Do you think CRAN is created as an independent entity from the industry and government and how does that affect the effectiveness of the framework?

AND

How do you think, does the requirement that the Ministers of ICT and Finance must approve CRAN's budget affect the effectiveness of the regulatory framework?

The interviewees indicated that the requirement that the Minister of ICT must approve and the SOEGC may comment on CRAN's budget negatively impacts on the effectiveness of the regulatory framework as it creates too much red tape. "CRAN's operations were delayed for a period of 6 months because the budget has not been approved", interviewee Regulator5 stated.

The interviewees indicated that the bureaucratic processes involved in the approvals might delay implementation of some regulatory activities of CRAN.

Certain interviewees however stated it's a good thing and do not think that there is room for the MICT to impact negatively on the budget to compromise the role of CRAN. They indicated that this does not negatively impact on regulatory effectiveness but is oversight. "This is to ensure the money is spent prudently and there is a degree of accountability to ensure levies are set to budgetary needs of CRAN", Telco5 stated and A4 expressed a similar view. However, contrary to the above, other respondents stated if the state is providing financial resources from taxpayer's money then this requirement is correct. "If however the state is not funding CRAN then Ministerial approval

should not be required because it is not the MICT's money" respondent A1 stated.

Other interviewees, such as EC4 recommended Parliament should instead approve the CRAN budget, to ensure accountability.

However, some interviewees asked whether the Minister of ICT would have an idea on how to apply the funds of CRAN towards its regulatory role. CRAN must decide on its plans and activities and operate independently from the Ministry to ensure that CRAN has sufficient funds for their activities. They indicated that the requirement of CRAN having to obtain Ministerial budget approval might be bureaucratic micro management and disturbing to CRAN and tying CRAN's hands. CRAN should have freedom from this or else they are not independent. This bureaucratic budget approval process opens doors for leverage and influence against CRAN.

The interviewees stated the budget should not be approved by the MICT. It can hamper the strategy of CRAN, in the event it does not agree with the political ideology. This bureaucratic budget approval process will fetter the discretion of the regulator. They further stated that a strict and conservative budget can hamper growth and if that is not properly managed it may lead to CRAN not being able effectively to execute its mandate.

5.2.3 FUNCTIONALITY OF CRAN SINCE INCEPTION

QUESTION: CRAN has been in operation since 18 May 2011. How has CRAN operated during this period? Explain your answer.

The interviewees indicated that CRAN has been working very hard since its inception on 18 May 2012 and that the demands have been high and strenuous so far. Interviewee Regulator1 commented that CRAN is "growing and things are falling into place", despite the many challenges and demands. Regulator4 and Regulator5 stated that "we have done well" and "we have set the basics" in place. They stated that they have done well in sorting the

legacy they inherited from the NCC, although it took a bit of time.

CRAN held hearings and consultative meetings, finalised the licence fees, proposed solutions, drafted regulations in line with statutory requirements, issued service and technology neutral licences, completed the spectrum audit, as stated by EC1. CRAN is not stagnant and people see “we are moving the industry forward” interviewee Regulator2 indicated.

Respondents generally agree that CRAN has made strides with its regulatory activities that a lot of regulators in other countries may not have achieved, i.e. market studies, termination rates and the next issue is wholesale prices for broadband and leased lines. CRAN appears to have a will to be effective and that they want to execute the mandate, from what interviewees have read in the press.

CRAN has moved fast to institutionalise its processes as required by the Communications Act (2009) and various regulations have been issued. The Authority seems to have secured a credible skills set for its Board and its management team. The staff at CRAN is seen as dedicated and interested in their work.

The interviewees were of the opinion that they have seen a lot of activity after the establishment of CRAN. Interviewee B4 stated, “The whole process has been pleasant and things are done timeously and thoroughly”. CRAN is considered to be doing a reasonable job under the circumstances and at times a fantastic job. Some responded that so far they have been treated so well that they did not need to go to the Minister. The interviewees consider CRAN not to be as bad as other regulators. The timelines in the regulations are being followed. Some interviewees considered CRAN to be very visible and transparent.

The expectations on CRAN are very high and the industry expects things to

move much faster irrespective of the legacy inherited. Telco5 stated “You cannot create a massive change if you are moving like an elephant.” Other interviewees are however concerned about the processing speed of administrative functions and the institutional capacity. Interviewee B3 considers CRAN to be “thorough but slow”.

On the other hand, the interviewees indicated that they have raised certain issues with the regulator that have not been addressed and not seem to have been taken seriously. This may result in the industry losing faith and becoming negative. Interviewee Telco1 stated, “CRAN got sidetracked in the meantime” and “…may not be fully aware of the industry needs.” The interviewees see CRAN is busy finding its feet and making a few mistakes.

They indicated that a lack of broadcasting skills and the proper planning and management of spectrum is making life difficult at CRAN, respondent B1 stated. CRAN also does not have the spectrum monitoring vehicles to be able to do its job. However, under the circumstances, they consider CRAN to be doing satisfactory.

CR1 stated that CRAN has not done enough in terms of consumer protection as yet as there are no public educational campaigns being conducted.

5.2.4 COMPETITION AND GOVERNMENT OWNERSHIP

QUESTION: How, do you think, does the 100% shareholding of NPTH (Gov.) in TN, 66% in MTC and 100% in NBC impact on the regulation of TN, MTC and NBC by CRAN?

The interviewees indicated that the 100% shareholding of NPTH in TN, the 66% shareholding in MTC and the 100% shareholding of government in NBC puts pressure on CRAN, in an industry that is dominated by SOEs. It places pressure on CRAN in terms of complying with the statutory objective of promoting private investment. CRAN can possibly succumb to the pressure because it must report to the same line Minister as the operators it regulates.

“This can place undue influence on the regulator.” CR1 stated. For example, when a complaint was lodged by the NCT against MTC, CRAN found that MTC violated the laws, but did not issue a penalty and that was awkward, some interviewees indicated. This, interviewee CR1 said showed that the CRAN Board members are being fearful while there is nothing to be fearful about.

The interviewees were of the impression that these shareholdings are monopolies and, the enforcement of fair competition and the equality of treatment objectives as stipulated in the Communications Act (2009) will take some time to evolve for public broadcasting, telecommunications, and mobile phone dominance.

Respondent B1 stated, “the framework cannot be effective if all the operators are not under the same framework”, e.g. NBC that is not regulated by CRAN. It places CRAN in a difficult situation to discipline the government owned operators. This creates an anomaly in regulating private entities whereas public entities are not regulated and not subject to the same rules but is in a favourable position instead. The interviewees view this as taking away the powers of the regulator. This, B1 stated “negatively impacts on the regulatory framework, as convergence cannot be fully addressed. If the NBC is not regulated it is a disaster.”

Theoretically it should not place pressure on CRAN. Practically however, word was spreading that Cabinet already approved the TN takeover bid for Leo and that the NaCC and CRAN were under indirect pressure to approve it as well. This creates an uneasy situation for CRAN.

Also, interviewees indicated that it creates a conflict of interest situation for the MICT, by being the line Minister of both the operators and the regulator. The fact that CRAN has a line Minister is wrong, they indicated. They

questioned how the Minister could play a supervisory role in this instance, suggesting that this structure must be re-looked. Respondent EC4 suggested Parliament might be best suited to exercise the supervisory role.

Interviewees felt that if CRAN makes decision against these companies, it would be seen as a decision against government.

Interviewees, such as Telco5, indicated that people see CRAN as an extension of the MICT and not as an independent body. This creates challenges for CRAN. For example, with regards to the TN takeover bid for Leo, it depends on what government's ultimate goal is in the end. CRAN's role is negatively impacted. They stated that informal practices would continuously play out on a daily basis because the overall government role can influence the decisions of CRAN. They are of the opinion that there is room for interference in that government is the majority shareholder and it makes the regulators job difficult CR1 stated. This makes for an undesirable situation that creates confusion and raises the questions as to how effective CRAN can really be. Interviewee CR1 used the "mommy and daddy analogy" where a kid would play the one parent off against the other one. This they said is how CRAN and the MICT can be played off against each other by the ICT SOEs.

5.2.5 LICENSING: TELECOMMUNICATIONS, BROADCASTING AND SPECTRUM

QUESTION: How do you think, does the power of CRAN to issue new licenses, as opposed to the Minister for example, affect the effectiveness of the regulatory framework?
AND
How do you think, does the power of CRAN to issue spectrum, as opposed to the Minister, affect the effectiveness of the regulatory framework?

The majority of the interviewees indicated that it is a good thing that CRAN is bestowed with the power to issue telecommunications, broadcasting and

spectrum licences. Interviewee EC4 stated that “This is a requirement if you want an effective market” and “CRAN has the experts”, as opposed to the Ministry. This impacts positively on the regulatory framework they stated. The licences are awarded on commercial and technical reasons and not on a political basis. This is an acceptable and standard approach in every country the interviewees stated.

The interviewees indicated that CRAN is better suited to issue licences, as its focus is purely industry development as opposed to the political objectives that may form part of a ministerial determination of licences. This process has a legal and technical component and it is not the role of the Minister. It is an operational matter and the Minister must not get involved. CRAN has a specific mandate and must decide how best to manage and grow the industry. It may involve too much red tape if the Ministry were to award these licences they stated.

Due to the fact that government is a majority and sole shareholder of communications companies, it is it seems to be much proper that this power is with an independent objective body. The government is not the objective body for this purpose.

In the event that the Minister were to issue licences, it would mix up the policy and regulatory roles between the Minister and CRAN and the Minister would be interfering with the regulatory process.

5.2.6 ADMINISTERING UNIVERSAL SERVICE

QUESTION: How do you think, does the power of CRAN to administer the universal service agency, as opposed to the Minister, affect the effectiveness of the regulatory framework?

The interviewees indicated that it impacts positively on the regulatory framework that CRAN administers the USF, although sections in the

Communications Act (2009) dealing with universal service have been held back until such time as decided by the Minister of ICT.

The interviewees would rather entrust this function with CRAN as CRAN is best placed to administer it as the entity that is issuing the licences and the UAS obligations too. They indicated that this function could never be with the Minister as the Ministerial role is an Executive role. The Minister will make the policies in this regard and CRAN will implement the policies.

Interviewees however indicated that CRAN, in administering the fund should set up a committee of representatives from industry and civil society, to administer the fund.

Contrary to the aforementioned, other interviewees are of the view that this function should be with the Minister of ICT, although they have questions about how effective this function would be administered by the Minister of ICT. In that instance they responded, if CRAN is to administer it, it should have another department that would administer it. If the Minister administers the fund the government must provide money to the fund because it is expensive. CRAN can also be an expert advisor.

Alternatively, the interviewees indicated that there should be government involvement with this function to address social inequalities in terms of national socio-economic goals. They suggested that for this function, the government must have seat on the Board of CRAN, for example. This suggestion contradicts some benchmarks and will be discussed in Chapter Six, as part of the analysis.

Other interviewees stated, the fund should be independent from both CRAN and the MICT, and be set up as a statutory non-profit organisation, so that there is not interference. They stated CRAN is placed in a vulnerable position to administer this fund.

5.2.7 ROLE CLARITY

QUESTION: How do you think, does the way in which the Ministry of ICT and CRAN relate to each other in terms of exercising their roles, impact on the effectiveness of the regulatory framework? Are these roles clearly defined and how does that impact on the effectiveness of the regulatory framework?

Interviewee Telco5 indicated CRAN relates to the MICT as an extension of the government. This impacts on CRAN's independence. These respondents indicated that the roles of the MICT and CRAN are confusing to them.

Some interviewees indicated that the roles are misunderstood by the MICT. If the reasons for the separations between CRAN and the MICT are not properly understood there will be disputes with the MICT. The roles are differently defined in the Communications Act (2009), but it seems as if the MICT wants more powers than outlined in the Communications Act (2009) Telco1 stated. The MICT should not directly interfere in the operational regulatory matters EC4 stated.

5.2.8 APPOINTMENT OF THE REGULATORS BOARD, MANAGEMENT AND REMUNERATION

QUESTION: How do you think, does the way in which the management of CRAN is appointed in terms of the State-owned Enterprise Governance Council, impact the effectiveness of the regulatory framework?

CRAN did recruit experts and "not political buddies" for its management portfolios Regulator4 stated. EC1 stated that it "It seems as if CRAN is moving in the right direction to get the right people in place."

Other respondents stated that what they see so far is fine. They stated that the process at least seems transparent but however without a specific public nomination process for Board appointments. Public interview panels should be held to appoint the right people, and appointments must be made by

Parliament other respondents suggested. The process must allow for the appointment of varied requisite skills that have industry experience and understanding. Contrary to the above, several other interviewees were however of the view that the principle of the Minister of ICT making the appointments is in line with the principle that the Board manages state resources and there is nothing wrong with Ministerial appointments.

However, although not provided for in the Communications Act (2009) nor the SOEGC Act (2006), there is a practice that Board appointments are ratified by Cabinet (Namibian, 2010, January 6). As such the Board of CRAN was appointed with effect from 01 February 2010 for a period of three years (MICT, 2010).

The Minister appointing the Board of Directors and may compromise the independence of the Board. The Board may first consider if the decision is likely to offend people in the ruling party. The Board may be politically influenced.

The period of three year appointments is too short and that is hampering the independence, professionalism and credibility of the organisation because the Board members may want their terms to be renewed and may not want to do anything that will offend the Minister of ICT.

It is difficult to say how the number of employees of CRAN impacts on the effectiveness of the regulatory framework. The fact that CRAN is not fully staffed, as it now has identified a new organogram and strategic plan, creates stress for the current staff and they are overworked, the Regulatory body respondents indicated. EC4 stated CRAN should recruit the right skills. The interviewees however caution that CRAN must be kept lean and mean for efficiency. So far CRAN has received positive feedback from the industry with 16 employees, from respondents such as Telco2, whereas Telco1 indicated that there are many regulatory matters, such as anti-competitive action, that

has not been addressed by CRAN yet. CRAN is thus perceived to be performing slowly at the moment, despite the good work respondents say it has done so far.

Despite the small numbers, interviewee B3 indicated that the employees of CRAN “are totally up to scratch”, however they are still growing in terms of acquiring the necessary skills to fulfill the regulatory tasked effectively.

Other respondents such as Telco4 stated that the number of current staff is not an issue. A lean organisation is a lot more efficient and given the size of the market, it should not have a negative impact. If the organisation is too big then it is ineffective.

They stated that more staff numbers will affect the costs of the operations and that size is not very important. CRAN can use experienced consultants to outsource to and follow the latest regulatory trends, they indicated, as opposed to having more people that have very little experience, Telco2 stated.

Other interviewees such as B1 were of the view that the number of staff impact tremendously on the effectiveness of the regulatory framework. B1 stated that because of the number of staff members increasing CRAN became more visible. Respondent B2 stated, “There are new rules and so much work. Not providing enough resources would be a disaster”. The NCC could not do this, B1 stated.

5.2.9 ACCOUNTABILITY OF THE REGULATOR

QUESTION: How do you think, does the way in which CRAN is held accountable affect the effectiveness of the regulatory framework?

Some interviewees indicated that they think that the way in which CRAN is held accountable makes the regulatory framework stronger and enhances accountability. CRAN submits annual reports to the MICT and the MICT in

turn makes submissions to Parliament in terms of the Communications Act (2009). Additionally CRAN submits its budget and business plans to the MICT and the SOEGC. CRAN must give reasons for its decisions and publish such decisions and maintain public registers. CRAN may reconsider its decisions and the court can review such decisions. Other interviewees such as EC4 however indicated additionally that "if CRAN were directly accountable to Parliament, that would have been more effective." In this manner the media would have access to the CRAN budget, EC4 stated. Additionally, if CRAN were to publish its annual budget for public comment, the regulatory framework would have been more effective, which CRAN is currently not required to do EC4 continued.

EC2 indicated that the SOEGC process of accountability is fundamentally flawed. Interviewee EC2 stated, "there is no way a handful of civil servants can hold SOEs accountable". Better accountability measures they suggested were to put their reports on the website and to request for feedback.

In terms of the Communications Act (2009) actions of the Authority can be taken to court for review, it allows for consultations first. The regulator is responsible for the decision and must defend it.

5.2.10 TRANSPARENCY OF THE REGULATOR

QUESTION: How do you think, does the way in which CRAN is transparent affect the effectiveness of the regulatory framework?

Some interviewees stated that the manner in which the stakeholders are consulted by CRAN, by having public hearings and submitting comments, allows for the effectiveness of the regulatory framework and in turn makes CRAN more effective. "It makes matters less open for disputes" EC4 stated. With the consultations matters take longer to implement other interviewees such as B3 responded, stating further that it may however result in fewer delays of implementation, as there may be fewer court cases as a result of

the consultations.

Respondent B4 indicated that some parties do not read the government gazette notices, or they do not receive the notices, they claim not to know about the notices, or not having heard about the notices, or they do not understand the notices. This is irrespective of the newspaper notices that are being placed and still are not read. They stated that the notices might not be clear enough, not understandable and contain insufficient detail.

Telco3 and Telco4 responded that CRAN allows for a vibrant form for discussions, to make comments, discuss disputes. It is fairly open and transparent and this makes CRAN approachable, Telco3, Telco 4, CR1 and EC2 stated. EC2 recommended that CRAN becomes pro-active in this regard by having regular briefings with stakeholders. The stakeholder meetings held by CRAN has done a lot for the image of CRAN. “The communication flow has been good from CRAN”, B2 stated. The consultations have improved. Respondent B2 stated, “It indicates that there is a lot of reaching out. It creates the impression that there will be an exchange of information.” The respondents indicated that they have an opportunity to make their voices heard.

They indicated that CRAN seems to be quite effective and they have heard positive things about CRAN EC4 stated.

Some interviewees added that discussions are held and comments are reacted on and therefore, from the outside it seems as if this way of being transparent is effective. Some interviewees indicated that CRAN is very open and they let the industry know of what is happening. Some interviewees state that this is latest development since the establishment of CRAN. Some interviewees indicated that information is being placed on the website regularly. Some interviewees further indicated that CRAN is transparent enough and consults broadly on the government gazettes and do not think

that it has a negative effect. CRAN is perceived to be very good at issuing information and issuing regulations and having hearings. Some interviewees indicated that this improves the ability of CRAN to regulate. Some interviewees stated that this adds to the effectiveness of the framework. Some interviewees stated that this helps because if everyone is consulted and you will not have people wanting to sue you and this contribute to the effectiveness of the framework, whereas other interviews indicated that they do not receive any communication from CRAN.

Other respondents indicated that CRAN is required to comply with an interesting set of statutory requirements, which will determine how transparent CRAN is. Not many SOEs in Namibia are required to comply to this extent, in its founding statutes. The public availability of information, what constitutes confidential information and confidential communications with the Authority are clearly spelled out in the Communications Act (2009). The extent, to which the legislator has gone to spell out governance in this regard, is in all likelihood targeted at transparency of CRAN's operations. The transparency provisions are so exhaustive in all its guises that it will require the specific administration attention of CRAN. The emergence of such a reality can already be seen in the manner by which regulations are drafted and issued by the Chairperson.

Interviewees Telco1 and Telco2 indicated, "CRAN is too transparent". They indicated that company specific information that may need to be dealt with as confidential might be disclosed in error. On the contrary, the majority of the interviewees stated that the more transparent the regulator can be, the more effective the industry can be.

Other responses from Telco5 were that transparency *per se* does not make CRAN directly effective, but indirectly so. The spinoff is that it creates more

trust in CRAN and there's a better relationship between CRAN and its stakeholders.

5.2.11 PREDICTABILITY

QUESTION: How do you think, are CRAN's actions predictable and how does that affect the effectiveness of the regulatory framework?

The majority of the interviewees indicated that CRAN's actions may not be that predictable, as yet, and does not make the regulatory framework that effective. They stated that the industry has a good perception of the possible activities but do not have certainty with regard to the outcome of regulatory decisions. Respondent Telco2 stated that the final decisions of CRAN are unpredictable because they do not have certainty about these decisions.

The other interviewees however indicated that certainty and predictability comes with time and is improved upon with time. CRAN however, does have regulations and these are predictable and stakeholders can read it and know what it states.

The Regulatory body interviewees stated that the clear and transparent procedures prescribed by the Communications Act (2009) for CRAN to follow enhance predictability, such as the rule-making procedures, the requirement to publish licences for objections, etc.

Interviewee Telco1 indicated, "CRAN's actions are not predictable". The interviewee attributed this to reasons of the Board trying to please the Minister and not issuing fines to people that are economically powerful. Others indicated that CRAN might not be predictable when it comes to mergers and acquisitions. The interviewees were under the impression that CRAN would not approve this TN and Leo transfer, but according to them CRAN simply approved the application.

Other interviewees indicated that during the licence transitional period, there

was a grey zone and a lot of decisions were taken that did not give comfort, such as the new service and technology neutral licenses being issued, Telco2 stated.

Other interviewees indicated that they were not sure whether CRAN was predictable or not. These interviewees stated that when it comes to applying for licences, anything could happen. The interviewees had mixed feelings. They indicated that some actions are perceived as predictable and others are not perceived the same. For example, there were certain licences issued that were not published in the gazette, which “came out of the blue” Telco5 stated. Telco5 responded it was known that MTC’s 4G-spectrum application would be granted, irrespective of how long it took.

The Academic interviewees indicated that in the short existence of CRAN, it has made it clear that it will do its job and protect the public interest and one can predict that that can happen. The stakeholders indicate that they see the long term planning that shows improvement of the legacy CRAN inherited from the NCC and matters do not come as a surprise. They stated that if the stakeholders do not read these plans and what is communicated, and then it is not CRAN’s fault B5 stated. EC1 stated, “There is a coherent plan in place that if you look at it you can predict what is going to happen”.

Some interviewees indicated that CRAN is good at being predictable, stating that if they apply, they know what will happen in the process. Respondent B1 and B3 stated “so far so good” and that it has been what was hoped for. There has been a lot more interaction. They did not get this feeling from the NCC. Interviewee B3 stated, “the framework has been set up pretty well.”

5.3 FINDINGS REGARDING THE PERCEPTIONS ABOUT THE INSTITUTIONAL ENDOWMENT AND THE REGULATORY INCENTIVES

5.3.1 PRICE REGULATION

QUESTION: How do you think, does the power of CRAN to set tariffs, as opposed to the Minister or the licensees having free reign for example, impact on the effectiveness of the regulatory framework?

Some interviewees indicated that the power of CRAN to set tariffs, as opposed to the Minister of ICT or the licensees having free reign, impacts positively on the effectiveness of the regulatory framework. “MICT does not have the capacity to be able to set tariffs” EC2 stated. “If CRAN is unable to do it, CRAN can easily appoint a consultant, whereas the MICT may have to follow a bureaucratic long process and may not have the necessary funds.” Regulator4 continued. CRAN has the technical capacity and resources and know how much the services cost. The example cited was when the NCC set interconnection fees and the “On-Net Off-Net rates ruling”. Interviewee G1 stated, “CRAN can act as a neutral party and independent mediator”. CR1 stated this price ruling was a good intervention for the consumers.

It is very effective if CRAN sets the prices, since it is the regulator, and since setting prices is an operational issue, Telco5 stated.

CRAN having that power is the correct way and step forward, as no individual interests would be used. People would be paying double without the regulator setting the prices, as prices are a huge part of making profit for the operators.

Having a small market, as Namibia does, and fewer operators, it is important to have a regulator that can set price caps and make sure that there is a decent service. Hence, it is important to have regulator if things are getting out of hand or if there is a complaint about the cost of telecommunications services.

Other replies from Regulator2, CR1 and B2 were that licensees, especially dominant ones should not set their own prices. An independent party should establish parameters as operators can collude. The MICT should only set the policies they stated and that it would not be effective for the MICT to set tariffs.

5.3.2 COMPETITION AND GOVERNMENT OWNERSHIP

QUESTION: How do you think, does the way in which CRAN regulates competition affect the effectiveness of the regulatory framework?

The telecommunications sector interviewees indicated that not much has been done with regards to regulating competition. The competition rules are in place and sufficient, but may not be tested yet. Other interviewees stated that the legislative provisions give CRAN the power to regulate competition. The interviewee Telco1 stated that it is important that CRAN starts doing that and introduce access to infrastructure regulation as a means of regulating competition.

With regards to the application to transfer control of Leo to TN, Telecommunications stakeholders, except for Telco2, stated that they agreed with CRAN's decision of approving the transfer on the condition that TN is partially privatised. Interviewee B4 stated, "unfortunately government companies does not have competition to keep them on their toes". Interviewee B3 stated that "different people must get involved and government cannot be the only party involved. This cannot be said to be competition. In the end, the man on the street must win". The quotes above are in support of private investments in ICT SOEs.

The majority of the interviewees further indicated that the way in which CRAN regulates competition is not effective yet. They commented that it is a total mess. The Guinea Fowl court case against CRAN was cited as an open-ended attempt in this regard, which failed against sole government

ownership. They further stated that the manner of addressing competition is more of a reactive approach as opposed to a pro-active approach. Interviewees EC4 and Telco3 stated, "…competition has not been addressed effectively." Others raised questions about one individual owning three radio stations namely Radio Kudu, Fresh FM and Omulunga Radio and Democratic Media Holdings owning a radio station and a newspaper, raising concerns about cross media ownership, control and competition.

Respondent B2 stated, ICT SOEs and private SOEs have been operating under different rules. Respondent B2 stated NBC should similarly be regulated in accordance with the Communications Act (2009). The fact that NBC is not regulated, B2 stated is a problem as regulatory objectives cannot be achieved and is discriminatory. Respondent B3 stated NBC should be encouraged to share broadcasting infrastructure.

Interviewee CR1 stated Leo failed because of MTC's ant-competitive conduct and the regulator not addressing "MTC's ill treatment" of Leo.

Other interviewees responded that the market is too small for three mobile voice operators and that the economics most probably does not make sense, meaning that that the sector may not be viable with the current number of operators.

Interviewee Telco2 suggested that the dominant carrier study should still be finalised and a determination should be made in this regard. Once this is done competition and market entry would be more effective in the regulatory framework.

5.3.3 MARKET ENTRY

QUESTION: How do you think, has the regulation of market entry affected the effectiveness of the regulatory framework?

The majority of the interviewees indicated that due to the 51% Namibian

ownership requirement in the Communications Act (2009), market entry is not effective.

Interviewee EC1 stated "…the Communications Act (2009) provides for a liberal licensing regime…" based on the principle of open access, with very few limitations, market entry should be enhanced. There are no limitations made as yet on the number of licences and no licence issuing moratoriums are in place. Some interviewees claim that the number of licences must be limited as the market is being flooded.

They further stated that CRAN issued new licences and converted existing licences and thereby increased competition as required by the Communications Act (2009). Prior to CRAN being established, market access was not regulated effectively they stated. In the past licences were issued to some and others did not require licences. The playing field is now being levelled and the fact that all operators, irrespective of private or government ownership, should get a licence is a good thing.

Interviewee EC3 claimed that the mistakes were made when Leo was introduced in the market. The basic rules to promote fair competition were not in place for that market entry and that is blamed for crippling the success of Leo.

Interviewee Telco4 commented that that the big barriers of entry are regulatory uncertainty of the rules still to be developed and that his will take a while to sort out seeing that the framework is new.

Other interviewees however stated that CRAN has not gone down the path of regulating entry into the market except for setting minimum criteria. They stated that regulating market entry properly is the way to go in a convergence market place, and competition is the goal of the regulation.

Other interviewees further commented that the way licences are awarded is transparent, the licensing criteria and rules are outlined and the feedback has been positive with the smaller entities and they discuss issues with CRAN. The reports in the media are positive and the media gets reports from CRAN and necessary documents. Contrary to the above, other stakeholders criticised the slow licensing process as licensing is key to market entry, suggesting that this may be a barrier.

5.3.4 INTERCONNECTION

QUESTION: How do you think, has the regulation of interconnection affected the effectiveness of the regulatory framework?

Some interviewees indicated that the regulation of interconnection as been effective. The interventions by the NCC with the ruling to progressively reduce interconnection resulted in interconnection agreements being entered into and it achieved lower consumer prices, which is the aim of the regulatory framework. These interviewees indicated that the interconnection rate determination by the NCC was a good idea. Interviewee CR1 stated that “It made the framework effective” and “…it has truly protected the consumers”. They stated that this is the one thing that has been done well and they saw a positive result. It made the sector more competitive, leveled the playing field and made market entry easy.

On the other hand, Interviewee Telco1 indicated that they complaint about further intervention being required in reducing interconnection rates further and that CRAN has not attended to this matter. Telco1 stated, “All worked well in the beginning but CRAN got sidetracked”. This implies that CRAN did not address the interconnection complaints submitted to it.

5.3.5 SHARING OF INFRASTRUCTURE

QUESTION: How do you think, has the regulation of interconnection affected the effectiveness of the regulatory framework?

Interviewee EC1 indicated that the regulation of the sharing of infrastructure is adequately addressed in the Communications Act (2009), but that the necessary regulations and guidelines have not been made yet. The Communications Act (2009) addresses it effectively and the regulations and enforcement of CRAN will strengthen the framework. However, CRAN is yet to enforce the sharing of infrastructure.

The interviewees indicated that tariffs for sharing towers should be controlled and towers should be shared as long as there is no technical interference. The Telecommunications stakeholders complaint about each other, stating that there are tricks that dominant operators are using to make it difficult for new entrants, by not sharing infrastructure. “The regulation has not been effective and everyone is complaining” some interviewees stated whereas others claim that they have not heard of any complaints. Telco2 continued, “It is not regulated well at all or not regulated enough”.

“Operators are not sharing the infrastructure and some will never allow such a thing because they do not like competition” interviewees Telco2 and Telco3 stated. Teclo1 stated, “regulation can step up a bit” in this regard. Interviewees Telco2 and Telco3 stated that the costs of leased lines and wholesale prices should be proportional and fair, but instead is too expensive. The current experience is that operators give various parties different rates and discounts and this affects the profitability of the operators Telco1 stated. Telco1 stated, “Here we need CRAN to come in. Different entities pay different rates.”

The provisions in the Communications Act (2009) requiring resale of wholesale services should be enforced. This would then improve competition in the market in a vast country like Namibia where there is no economies of scale to rollout own infrastructure PS1 stated.

It’s positive that the Communications Act (2009) allows for facilities to be

shared and broadcasters and everyone should work together. The Academic stakeholders stated that NBC is not regulated and CRAN is powerless in this regard to enforce sharing of infrastructure and has to rely in NBC volunteering to share infrastructure and CRAN is unable to enforce minimum standards against the NBC the Academic stakeholders stated.

5.3.6 RIGHTS OF WAY

QUESTION: How do you think, has the regulation of rights of way affected the effectiveness of the regulatory framework?

Interviewee EC1 indicated that rights of way are also adequately and effectively addressed in the Communications Act (2009) by granting operators statutory rights of way and this assists operators to avoid unnecessary disputes.

However, the interviewee Telco2 indicated that rights of way are not effectively administered and has a negative impact on the regulatory framework. The plans of MTC to set up a tower at “Bowker Hill” was held back and the customers migrated to another operator, Telco2 claims. CRAN however only plays a facilitation role as per the Communications Act (2009).

On the other hand, interviewee Telco2 indicated that the City of Windhoek municipal council (CoW) requires Environmental Impact Assessments (EIAs) and questioned whether this was effective. The whole process of the CoW was confusing and not effectively regulated Telco2 stated. The respondent stated that the issue was the time it takes to award the rights of way. Telco2 stated that it is a “mess” and needs to be addressed. Other respondents stated that some operators obtained rights of way because they were politically connected and with disregard to the peoples’ interests, which interests only remain to be addressed via the court, for which they do not have the money.

The telecommunications stakeholders stated that there are too many role players, i.e. the road contracting companies, town councils and municipalities to deal with. There are varied rules requiring payments from some operators whereas others do not pay. The CoW also wants to install its own fibre infrastructure and wants operators to lease this from them and the Telecommunications stakeholders questioned whether the CoW has an ECNS licence.

Respondent EC1 stated, “Legislation can be cleaned improved and certain areas need to be fundamentally amended regarding rights of way. It’s a free for all, what needs to be set out is that it allows licensees a certain amount of rights that balances the rights of landowners. This paradigm of thinking should change as many licensees come into the market, as that could be an untenable situation. CRAN’s strength is important, given the right political support to meet the expectations.”

5.3.7 SPECTRUM MANAGEMENT AND LICENSING

QUESTION: How do you think, has the regulation of spectrum affected the effectiveness of the regulatory framework?

Some interviewees indicated that spectrum has been regulated effectively in terms of the audit process that CRAN commenced in 2011. They stated that spectrum management by CRAN is more effective then this function being handled by the MICT. The audit has been completed successfully, they stated. This gave CRAN a good basis to work from and was effective. The audit “…was the right way to move ahead” Interviewee B3 commented. The Regulatory body respondent’s views were that this process was quick and fast. Going forward CRAN can use this basis to built on further regulatory aspects such as the spectrum band plan, spectrum pricing, spectrum licence conditions and management strategy to ensure that it promotes growth and development. Interviewee B4 stated that CRAN is “doing a good job” and the clearing of bands is working fine and there is effective collaboration between

the various parties. B1 stated that they do not think MTC would have launched its 4G service if CRAN were not effective.

Prior to the audit being done, the majority of the interviewees commented that it is not known who is using what spectrum, there are too many players who have not disclosed their use of the spectrum. There are those that use spectrum illegally. They stated that time will tell if there has been a glitch somewhere. They are of the opinion that spectrum regulation has improved because the parties now know what spectrum is assigned to them.

On the other hand, some interviewees indicated that spectrum is not regulated very well. Respondent B2 stated that the national band plan is yet to be made and until then when the plan is harmonised it is difficult to judge and not a lot will happen. Respondent B2 said spectrum interference and monitoring still needs to be addressed and is a big issue. Telco4 stated, “It is ridiculous to wait for six to nine months for a licence as it delays the rollout of infrastructure.”

5.3.8 RESOLUTION OF DISPUTES

QUESTION: How do you think, does the manner of dealing with conflict affect the effectiveness of the regulatory framework?

The current manner of addressing disputes is not effective and not strengthening the regulatory framework. Interviewee Regulator2 stated, “it takes too long and the operators are playing delaying tactics to avoid competition and needs to be addressed much faster”. They stated “there are too many issues and that there is still a lot that needs to be done”. The manner in which the dispute was handled does not bear any fruit and does not give an indication of how the public feels. Smaller operators may not be standing up against bigger operators because they are suppliers to these companies and will affect the small businesses. As a result many operators suffer in silence, the majority of the interviewees claimed.

CRAN does not have sufficient staff to address this matter as well and it remains a gap to be addressed.

On the contrary, other Telecommunications interviewees indicated the current process is effective and it's not negative because CRAN must only intervene as much as is necessary.

Respondent EC4 stated that operators are very shy to take issues to court. EC4 stated, "Courts not very productive. CRAN is to find a way to minimise courts and litigation without compromising its mandate." On the contrary others indicated that the courts seem to work and things seem to be moving forward, to resolve disputes.

5.3 CONCLUSION

The paragraphs above capture the large data of perceptions of the stakeholders to reflect the generally held perceptions and recommendations. The commonly held perceptions are summarised and supported at times by quotes or references to the statements of the respondents for emphasis. Contrary held views are depicted to indicate the diverse views held. The above demonstrates how widespread and unique the various perceptions of the stakeholders are.

CHAPTER SIX: THE COMBINED DOCTRINAL AND PERCEPTION ANALYSIS

This chapter will analyse the research outcomes, as captured in Chapter 5 against the latest regulatory events and the doctrinal analysis. These perceptions will be analysed in Chapter 6, linking it to the regulatory events in Chapter 1, the literature review in Chapter 2 and the doctrinal analysis in Chapter 4. The analysis will address the regulatory purpose, the institutional endowment, the regulatory governance principles and the regulatory incentives.

6.1 ANALYSIS REGARDING THE REGULATORY PURPOSE

The objectives of Namibia's communications regulatory framework, as set out in the Communications Act (2009) are commendable, as benchmarked against the typical regulatory objectives as expressed in Chapter 2, by Blackman and Srivastava (2011, p.10), Melody (2001, p. 159), Levy and Spiller (1996, p.14). However, there is a mismatch between these aims and the institutional endowment, regulatory governance and regulatory incentives. The mismatch is that the *de facto* institutional endowment design, as outlined in Chapters 4 and 5, from the national doctrines and perspective of the stakeholders, is such that state-owned telecommunications companies emerge dominant (CRAN, 2012d). This design will not promote competition and encourage private investment, unless regulatory intervention is stepped up, for example with regards to interconnection, as expressed by Telco1 and the perception of CR1 that anti-competitive practices, which he called "MTC's ill treatment" of Leo that the regulator has not addressed. It contradicts the liberalisation philosophies, the prevention of anti-competitive behaviour and the divestment of shares in ICT SOEs (MICT, 2009a) stated in the government ICT policies, as outlined in Chapter 4 and the Communications Act (2009). The conclusion, based on the aforementioned is that there is

therefore no liberalisation of the telecommunications but a concentration of power in the hands of the state (CRAN, 2011i; OSISA, 2011; Namibia Prime Minister, 1992 and MTC, 2011).

This structure dominated by ICT SOEs will not ensure that costs to customers for telecommunications services are just, reasonable and affordable. It will not encourage private investment and ensure fair competition. This was demonstrated by the Guinea Fowl court case that indirectly decided TN taking over Leo encouraged private investment. This situation instead encourages public company monopolistic behaviour.

Namibia's telecommunications sector performance in the region is poor because of poor penetration of a basket of communications services on average (Stork, 2011; ITU, 2012; RIA, 2012a, WEF, 2011b). While these poor penetration levels continue, the Executive has not decided to commence the part of the law that creates the USF and has delayed in making the UAS policy as determined from the Communications Act (200). As a result, the regulator is unable to step in and draft UAS targets, in having to administer the USF and enforce same to ensure the regulatory purpose is met. The stakeholders indicated, in Chapter 5 that this situation puts CRAN in a vulnerable situation to administer the USF, but that the USF is yet to be established and administered. This sets the regulator up for failure in meeting the regulatory purpose. The regulator must be given the necessary tools to be able to execute its mandate and be held accountable accordingly. It can therefore be interpreted and concluded by this study that the regulatory framework is therefore not ideally designed and implemented to achieve the regulatory purpose.

6.2 ANALYSIS REGARDING THE PERCEPTIONS ABOUT THE INSTITUTIONAL ENDOWMENT - REGULATORY ANALYTICAL FRAMEWORK

Parliament passed the Communications Act (2009) as per its constitutional powers and in this manner positively impacted the communications regulatory framework, by putting a new and revamped communications law in place, forming the basis to reform Namibia's communications regulatory framework, as per the perception of the stakeholders in Chapter 5. The Legislative and Executive process of introducing the Communications Act (2009) was however bureaucratic and inefficient, as it took over two years for the Communications Act (2009) to be implemented and for the new regulator to be established. Furthermore, in the words of EC2, that the Communications Act (2009) was only passed after the market entry of Leo. EC2 respondent considered this as "putting the horse before the cart". According to Levy and Spiller (1996), successful regulatory frameworks require efficient administration, which efficiency the Namibian administration lacks.

This law adopted and introduced some of the ideal design elements of effective communications regulatory frameworks, e.g. the power to issue licences by the regulator. However, there are various design elements that are not ideal, such as the structural design of the regulator that makes it only partially independent and thereby places a challenge on the exercise of its powers to meet its regulatory purpose, e.g. the approval of the business plan (strategic plan) and budget by the Minister, which is administratively bureaucratic and open to potential political interference, as stated by the majority of respondents, whereas Telco5 and A4 stated to the contrary that this sets a degree of accountability. Regulator5 responded, "CRAN's operations were delayed for a period of 6 months because the budget has not been approved." This is contrary to what the literature recommends to ensure financial and structural independence, as depicted by the ITU (2011) and Montoya and Trillas (2007).

The “On-Net” and “Off-Net” price ruling of the NCC was mired with poor functionality and poor administration (Smuts, 2012). Such ineffective systems do not augur well for regulatory institutions that are meant to have proper administrative processes. The NCC was not effective in administering proper governance in this regard, as per the courts judgment of Smuts (2012).

The Judiciary is considered to be less knowledgeable about the specialised matters than the industry or the regulator, in analysing the perceptions of Telco2 when referring to the MWEB court case. The specialised nature of ICT policy and regulation includes matters such as competition and the reselling of wholesale telecommunication services as tools for competition regulation between private and state-owned ICT companies. An uninformed Judiciary is not able to properly execute its judicial review powers if it does not have a comprehension of the ICT regulatory principles, the Regulatory body interviewees and Expert and Consultants stated. Telco2 stated that the transfer application should not have been granted in the Guinea Fowl Investments versus CRAN court case. Namibia’s Judiciary is yet to create precedents in the communications sector and the court decisions made so far have been questionable such as the Guinea Fowl Investments versus CRAN and MWEB court case, except for the court decision on the “On-Net” and “Off-Net” ruling that ensured consumer welfare by confirming the ruling of the NCC and its powers to regulate pricing (Smuts, 2012). The courts re however perceived as independent and necessary to review the decisions of CRAN.

The majority of the stakeholders prefer alternative dispute resolution mechanisms with the relevant authorities, which have open door policies based on personal relationships. This poses challenges for the regulator if it is to enforce regulations strictly and not allow itself to be lobbied behind closed doors, as doing so may compromise transparent rule-making and decision-making processes. It is however, unrealistic for licensees to expect CRAN to resolve regulatory matters behind closed doors, as this would be

non-transparent. This goes against the spirit of transparency and openness and can simply not be supported (Intven & McCarthy, 2000; Waverman & Koutroumpis, 2011; and Stern & Holder, 1999). In the event the regulator follows this informal approach it would set a bad precedent that can be abused and is ineffective for the regulatory framework. Having unofficial *ex parte* communications with licensees or politicians will undermine the regulatory process and the regulator will not be seen as credible, especially given the norm for political lobbying and intervention, as is prohibited by CRAN's regulations (CRAN, 2010; CRAN, 2011d; CRAN, 2012a; CRAN, 2012m). In the event the regulator gives in to this, it may potentially result in regulatory capture and will not make the regulatory framework effective. It can thus be concluded from the aforementioned that the relationship with the Executive and the licensees must be maintained at an arm's length basis and having informal meetings to address regulatory matters does not amount to an arm's length basis.

If competing interests between consumer welfare and the profit motives of the licensees remain unaddressed the regulatory purpose remain unachievable. Similarly, failure to address licensee disputes, for example infrastructure sharing pricing dispute, results in failure to ensure a competitive regulatory environment. The disputes of operators raised with the regulator should be addressed in an expeditious manner and the regulator must make the regulations required soonest and exercise its powers effectively without delay and CRAN should not be side-tracked in addressing these disputes, as stated by Telco1. This seems generally to be the best way of providing effective but reasonable incentives for efficiency and high productivity (Stern & Cubin, 2005). The measures to resolve disputes must balance disputes arising from tactics to refuse to share infrastructure to maintain dominant positions, as stated by Telco5. It is untenable that infrastructure-sharing regulations are not in place. Leaving this unaddressed does not auger well for competition.

CRAN's licence applications processes are considered slightly time consuming and can be expeditious. Telco4 stated the process takes a lot longer and A2 stated, "things take forever". It does not seem to be the best way of providing effective and reasonable incentives for efficiency and high productivity to the sector, when making a benchmark reference is made to Cubbin and Stern (2005). From this perspective it is not effective management of the regulatory function by CRAN for the growth of the sector (Waverman & Koutroumpis, 2011). CRAN will continue to be blamed for creating bottlenecks until it establishes faster processes to address spectrum and service licence applications, disputes and other regulatory matters within the shortest possible period of time, without compromising on transparency and openness, if it has to aid the sector as opposed to holding it back, to ensure efficient administration to be a successful regulatory framework (Levy & Spiller, 1996).

6.3 ANALYSIS REGARDING THE PERCEPTIONS ABOUT THE INSTITUTIONAL ENDOWMENT AND THE REGULATORY GOVERNANCE PRINCIPLES

The regulatory governance principles as studied by various authors, such as independence, licensing, administration of universal service, role clarity, appointment of the Board and management of the regulator, accountability, transparency and predictability are outlined below and analysed in terms of the perceptions of the stakeholders and the doctrinal analysis.

6.3.1 STRUCTURAL AND FINANCIAL INDEPENDENCE OF THE REGULATOR

Privately owned telecommunications stakeholders licensee interviewees criticised the so-called independence of CRAN, stating that the Minister requesting CRAN to undertake certain activities may create the impression that CRAN is not independent, and is instead an extension of the Ministry of ICT, as stated by Telco5. However, as Melody (2001) states, as long as government policy is implemented without any political influence it does not

compromise CRAN's independence. There needs to be constant interaction and co-operation between CRAN and the MICT to ensure effective communication between the policy and regulatory roles. CRAN is only accountable for the results of such implementation in terms of predetermined performance criteria and not politically at all (Melody, 2001).

The regulator is established and structured as a partially independent body by being classified as an SOE (MICT, 2009d). CRAN is not a commercial enterprise (MICT, 2009d). CRAN is therefore is not correctly classified as an SOE that must submit is budget, business plans and investments policies to the SOEGC and MICT for approval, as required by the Communications Act (2009), the SOEG Act (2006) and the national policies (MICT, 2009a). From the perspective of the majority of the stakeholders as stated in Chapter 5, it can be concluded that the principle of an SOE is incorrectly applied to the regulator.

The Minister of ICT has supervisory and approval powers over the regulator (MICT, 2009d). This creates the potential for political interference and regulatory capture. There is no arm's length relationship between the regulator and the MICT. The role separation may therefore not be at the desired ideal level for regulatory effectiveness, as the Minister has to approve the strategic plan and budget of CRAN. This does not make CRAN financially and structurally independent. It makes CRAN vulnerable to political interference. In approving the budget certain parts of it may be disapproved, which parts may be linked to specific regulatory activities and this may result in under financing of these regulatory activities, making the regulator ineffective. In the event this occurs, the regulator cannot be held accountable for regulatory activities it has planned but was not able to execute due to non-approval of the budget or its strategic plan. This would undermine the principle of holding the regulator accountable for its decisions, if the regulator is not able to make those decisions. This power is vested with MICT whereas

the MICT does not have the adequately skilled employees to scrutinise the budget or strategic plans of the regulator. This creates quite an uncomfortable situation for the regulator considering that CRAN's financial resources are not obtained from government but from levies and licence fees. Respondent A1 stated "If however the state is not funding CRAN then Ministerial approval should not be required because it is not the MICT's money."

The Communications Act (2009) and ICT policies are therefore contradictory by claiming to establish an independent regulator whereas the regulator is not financially or structurally independent. CRAN cannot be said to be operating independently if it cannot make decisions regarding its budget and strategic plan by itself. From the perceptions of the stakeholders it is evident that this is an anomaly that requires to be cleared in the regulatory framework.

If the risk is to hold CRAN accountable, CRAN must be empowered to make its decisions and thereafter be held accountable when it reports in terms of its annual report to Parliament and not to the MICT. The ideal design element for an effective regulatory framework is if the regulator reports to Parliament that consist of a multiple political parties as opposed to reporting to the Executive. The Executive is the Cabinet, comprising of a single political party (Constitution of the Republic of Namibia, 1990).

Despite the aforementioned, the regulator seems empowered to make independent decisions on its daily activities such as service and spectrum licence applications. The regulator, in issuing spectrum to MTC at a time that it considered appropriate despite the Prime Minister of Namibia's attempted political interference demonstrated its independent decision-making, although the decision was considered as delayed by MTC (Namibian, 2012). The regulator will have to ensure that it functions independently to be credible and meet its regulatory objectives, by continuing to follow its regulatory processes, prescribed criteria and prescribe new regulatory strategies as required. This

will surely be a difficult task.

6.3.2 LICENSING OF TELECOMMUNICATIONS, BROADCASTING AND SPECTRUM

The regulatory framework is effective if, due to its statutory power, the regulator issues licences, as opposed to the Ministry issuing such licences, the majority of the interviewees stated in Chapter 5 and as per Montoya and Trillas (2007). It is appropriate that CRAN is awarding service and spectrum licences, as supported by EC4. The applications are however delayed by the rule-making process that requires public comments. A regulator should not be a stumbling block but an enabler and in considering licence applications CRAN should make the process expeditious. CRAN can do this by considering to reduce public comment periods and consult stakeholders on the types of periods they consider reasonable to submit their comments. This will enable faster market entry as opposed to delaying market entry and competition, as is currently perceived to be the case.

Given that government has majority ownership of ICT SOEs, it is prudent that CRAN makes independent licensing decisions, if it is to exercise its regulatory objectives and be held accountable. The SOE licensees want to maintain the *status quo* and can lobby the shareholder Minister not to allow for new market entrants. For this reason some respondents stated that the market is too small for three voice operators. CRAN can therefore exercise this licensing power to introduce plurality in the sector and thereby encourage private investment, in terms of national policy (MICT, 2009a). In licensing private operators, CRAN will promote competition and reduce government's dominance in the sector. CRAN has executed this power so far in licensing new telecommunications and broadcasting entrants whilst the ICT SOEs, such as Telco2, objected that the market size is too small without any support for such claims. Licensing is aimed to spark a wave of entrepreneurs and that will hopefully bring innovation to the sector and diversity to the consumers in meeting the regulatory purpose MICT, 200a). It is also aimed at ensuring

market entry to spur competition (MICT, 2009a and MICT, 2009d).

6.3.3 ADMINISTERING UNIVERSAL SERVICE

The interviewees generally perceived the framework as more effective in having CRAN administering the USF, as stated in Chapter 5, section 5.2.6. This is in line with the Montoya and Trillas's (2007) study, when using it as a benchmark that also rates the framework more effectively for this reason. However, there is a twist from the interviewees. Other interviewees do not feel comfortable that CRAN should solely administer the USF. They prefer public and government involvement. This is an area where there are other competing interests between the regulator and the licensees, because the licensees wish to have a say in the administration of the fund. The rule-making process however provides for mandatory consultations with the licensees in making the regulations and setting UAS rollout targets. It is therefore not necessary for licensees to be represented on the USF committees.

The bigger issue however, is that the USF has not been established in Namibia (MICT, 2009d). No targets have been set and no projects have been rolled out. This situation has made no contribution to the consumer welfare and the high technology coverage is only due to competition between the operators. This dimension is therefore ineffective in achieving the regulatory purpose of ensuring access to underserved areas. Additionally, in the event the fund is established under current laws, it will only address telecommunications services. If the low television broadcast coverage of 40.6%, the 13.4% (RIA, 2012b), low rate of Internet access is to be increased, and the expensive data prices are to be reduced, the USF policy must be implemented. The USF must be established with a mandate over broader electronic communications, CRAN must make the regulations, the licensees must start contributing to the USF and the rollout targets must be set and enforced.

6.3.4 ROLE CLARITY

Some interviewees were confused about the differentiation of roles between the MICT and CRAN, as recorded in Chapter 5, paragraph 5.2.7. The interviewees have the impression that CRAN is not independent due to the constant interaction between the MICT and CRAN. The fact that the MICT makes policies requesting CRAN to take certain regulatory steps in terms of government policy, does not make CRAN an extension of the Ministry or not independent, as long as CRAN is not interfered with in implementing the policy, as stated by Melody in benchmarking with his literature (2001), and does not receive instructions in this regard, in benchmarking with their literature (Montoya & Trillas, 2007). This can be attributed to the ignorance of the general public.

The roles between CRAN and the MICT are clearly separated and defined in the Communications Act (2009). The MICT is to provide policy and law and CRAN to regulate within law and policy provided. In terms of the Communications Act (2009) the Minister must issue policy guidelines only after consultation with CRAN and with stakeholders.

Stern and Holder (1999) consider this clear separation of roles as more effective for a regulatory framework. The interviewees are confused despite the fact that the Communications Act (2009) and the policies make clear distinctions, but they do prefer that there be distinct roles for the sake of independence, as agreed to by Montoya and Trillas (2007). In terms of the Communications Act (2009) this interaction will remain and is divided amongst the lines of policy and the making of regulations. The public may need to be educated about the role separation of the MICT and CRAN.

In the Leo transfer court case the court held that CRAN couldn't make a policy decision that TN must be privatised with a minimum of 25%, as it is not the role of the regulator. The regulator is also not empowered to instruct

Parliament to amend a piece of legislation (Ueitele, 2012). The regulator denied the above findings of the court, stating that the court wrongly interpreted CRAN's decision (CRAN, 2012l). This court case creates doubt on the extent of the powers of the regulator and the limitations in interpreting its regulatory statutory powers and implementing it. In doing so it reduced competition and led to concentration of market dominance in ICT SOEs.

The court decided that CRAN does not have the power to set a condition of 25% private shareholding as this power is reserved for the policy maker. The Executive, as the policy maker on the other hand, has already taken the principle decision to divest some of its shares in ICT SOEs such as TN, in its national ICT policies (MICT, 2009a), but the MICT has not implemented these policies to date. This demonstrates the position of conflict the MICT is in, that contradicts the same national policies that promote the divestment of shares in TN and the same laws that encourage private investment.

6.3.5 APPOINTMENT OF THE REGULATORS BOARD, MANAGEMENT AND REMUNERATION

There is greater confidence on the part of the majority of the stakeholders, as stated in paragraph 5.2.8, in Chapter 5, in the effectiveness of the regulatory framework if the Board is appointed by Parliament as opposed to only the Executive. This seems the general view of the stakeholders, although they seem to agree with the current appointments. The stakeholders would however be more satisfied with a public nomination process, as recorded in paragraph 5.2.8. Appointment of the Board by the Minister of ICT, whereas the same Minister of ICT appoints the Board of TN, NP, MTC, NBC and NPTH creates a challenge for regulatory independence. This appointment power cannot be concentrated in the Minister of ICT, who is the same line Minister for regulated ICT SOEs and must exercise shareholder powers (Namibia Prime Minister, 1992). The Board of the regulator is required in turn to sign performance agreements with the Minister, in terms of which their re-

appointments are assessed (MICT, 2009d). This performance assessment may potentially be used for political interference whereas this situation is less likely if appointments and performance agreements are signed with Parliament and in terms of a Parliamentary process. The positive element is that there are minimum criteria for the persons to be appointed as Board members spelled out in the law. This boosts confidence knowing that the discretion of the Minister is limited to appointing persons that possess these minimum skills.

The management of the regulator is appointed by the Board in terms of a transparent recruitment process, as stated by the Regulatory respondents in Chapter 5, paragraph 5.2.8. This instilled confidence in the regulatory framework when the Board recruited individuals with the necessary skills and recruited the necessary number of employees as per its strategic plan. However, the slight concern remains that a Board appointed politically may in turn resort to political management appointments in future.

6.3.6 ACCOUNTABILITY

The NCC and CRAN were both held accountable by the courts with regards to their regulatory decision-making relating to the "On-Net" and "Off-Net" ruling and the Leo transfer. The respondents did not highlight this, but this was evident from the judgment of Smuts (2012). This instills confidence in the regulatory framework if licensees know a regulator's discretionary powers can be reviewed (Stern & Holder, 1999), so that it does not act arbitrarily, the respondents stated in Chapter 5, section 5.2.9. This keeps the regulator alert so that it does not abuse its discretionary powers ensuring that it always considers the regulatory evidence, applies its mind rationally and has to give reasons for its decisions. The value of the court decisions was that administrative process was highlighted as requiring improvement and that correct interpretation is required of the regulator's statutory powers.

However, Telco2 viewed the “On-Net” and “Off-Net” price ruling as guaranteeing the wide powers of the regulator. This view is contrary to the Waverman and Koutroumpis (2011) statement that this sort of accountability assists in instilling investor confidence. The stakeholder did not seem confident at all about this situation. The general view from the other respondents however was that judicial review instills confidence in the sector.

6.3.7 TRANSPARENCY

This dimension is perceived as effective, according to the respondents, as recorded in Chapter 5, paragraph 5.2.10 when B2 stated that the communication flow has been good from CRAN. The regulator is very transparent and this keeps the stakeholders informed. It however seems as if stakeholders want to keep certain matters confidential, but unless such matters are confidential they require to be addressed in a transparent manner that instills confidence and does not create doubt about the exercise of regulatory powers. Having a transparent process as the regulator has implemented, allows for the necessary consultation with stakeholders in terms of which their views are gauged and considered, and this is executed effectively by the regulator. It seems as if stakeholders are suggesting a closed process of consultations, contrary to the traits of an effective framework that is established by openness of its decision-making processes to educe arbitrary decision-making (Intven & McCarthy, 2000).

6.3.8 PREDICTABILITY

The clear, written and consistently applied regulations and the Communications Act (2009) is a strong process guaranteeing predictability in the exercise of regulatory decisions. Changes to the laws, regulations and the regulatory decisions are made in terms of a public consultation in terms of which all parties are invited to comment. Stern and Holder state that predictability assesses whether changes in aspects of regulation have a consistent coherent approach and it appears that the rule-making process as

prescribed by CRAN is aimed to achieve this (CRAN, 2010).

The stakeholders however appear to be confused as to the meaning of predictability. Despite the rule-making regulations that prescribe how changes to regulations must be, stakeholders such as Telco1 stated, “CRAN’s actions are not predictable.” It appears, from the perspectives of the stakeholders that the fact that they do not know what the final decisions of CRAN will be makes the framework unpredictable to them, as recorded in Chapter 5, paragraph 5.2.11. Stakeholders want certainty as an element of predictability. Contrary to the views of stakeholders such as Telco1, as stated by Stern and Holder (1999), a regulatory framework is predictable if changes are made by undertaking appropriate processes. CRAN has prescribed such processes (CRAN, 2010).

The interviewees are of the opinion that the powers are not restricted enough to create necessary incentives for investors in the sector. These powers are not clearly written down and their boundaries clearly demarcated, allowing for some predictability.

6.3.9 CONCLUSION

The regulatory governance dimension of Namibia’s communications regulatory framework contains the some of the ideal elements of an effective regulatory framework as expressed in Chapter 2, by Blackman and Srivastava (2011, p.10), Melody (2001, p. 159), Levy and Spiller (1996, p.14). However, these elements are not holistically applied with the same degree of consistency for the framework to operate optimally and at the necessary pace to address the extensive scope required for sector reform, as outlined in paragraph 6.1 above.

A regulatory structure that allows the Executive to make Board appointments is not designed to ensure regulatory effectiveness as loyalties will remain to

be questioned and are open for potential political abuse. The mechanisms used to restrain the powers of the regulator such as accountability and transparency are however well designed to balance the decision-making of the Board. This will minimise any potential regulatory capture and be a good attempt to keep the relationship between the industry, the Executive and the regulator at arm's length. In this manner discretionary power is limited, as expressed in the court cases where regulatory decisions were reviewed and powers of the regulator either confirmed or denied. To ensure better regulatory governance the judicial systems offers a good system of checks and balances to constrain regulatory power, but require training in ICT policy and regulatory issues.

6.4 ANALYSIS REGARDING THE PERCEPTIONS ABOUT THE INSTITUTIONAL ENDOWMENT AND THE REGULATORY INCENTIVES

The regulatory incentive principles as studied by various authors, such as price regulation, competition and private ownership, interconnection, sharing of infrastructure, rights of way, spectrum management and the resolution of conflict are outlined below and analysed in terms of the perceptions of the stakeholders and the doctrinal analysis.

6.4.1 PRICE REGULATION

The authority of the NCC as regulator to set MTR's was challenged by MTC. Pricing regulation interventions of the MTR's and the "On-Net" and "Off-Net" rates contributed immensely to consumer welfare and in achieving the regulatory purpose of affordable pricing as expressed in Chapter 2, by Blackman and Srivastava (2011, p.10), Melody (2001, p. 159), Levy and Spiller (1996, p.14). However this is only in respect of mobile voice services (RIA, 2012a). As indicated by Stork (2011) fixed and mobile broadband is an area that would require serious prioritisation and regulatory intervention and that has been left unattended. The regulator exercised its power to regulate

pricing for mobile voice and this translated into affordable pricing for the consumers.

6.4.2 COMPETITION AND GOVERNMENT OWNERSHIP

Action needs to be taken practically to enforce competition between majority state-owned and privately owned telecommunications as stakeholders hold the view that not much has been done with regards to regulating competition, as highlighted by Telco1, EC4 and Telco3. The regulator is yet to make determinations of dominance to prevent the abuse of dominance and to enforce the related obligations, e.g. sharing of infrastructure, in respect of dominance even after it has already had the public hearing in this regard. The delay in making the determinations and practically enforcing the obligations is untenable in a market dominated by SOEs and where majority privately owned entities require regulatory support to be able to compete on an equal footing, but this is not efficient but contrary to the tenets of an effective regulator (Levy & Spiller, 1996).

There is serious concern about government's majority ownership of ICT SOEs and its negative impact on competition, according to Telco1, EC4 and Telco3. The respondents stated the Guinea Fowl court case against CRAN was an open-ended attempt to regulate competition, but failed against sole government ownership. This is contrary to the ICT Overarching policy to divest of government shareholding in ICT SOEs in favour of private shareholding and thereby promoting competition (MICT, 2009a). Namibia is not implementing the national policies that advocate divestment of government shareholding in ICT SOEs (MICT, 2009a). Namibia has allowed the only surviving major privately owned telecommunications company Leo to be acquired and transferred to TN, a public company, without balancing the anti-competition impact in terms of pro-competitive conditions. This has led to even greater concentration of power in the hands of government and made government a dominant player in the sector. This calls the national regulator

to task to encourage private investment within these circumstances in a credible manner. The regulator would have to draft measures to incentivise private investment in the sector and the fact that the regulator is yet to address complaints of interconnection and sharing of infrastructure indicates that the regulator is not exercising its regulatory purpose. Dominance by the ICT SOEs in the sector requires deliberate regulatory intervention to ensure competition and so far no deliberate action has been taken to prevent anti-competitive action. As long as the *status quo* remains competition remains a distant dream. As stated by Tenbücken and Schneider (as cited in Jordana and Levi-Faur, 2004, p.245), regulators are mainly tasked with fair competition once an industry is liberalised. Prior to liberalisation, state monopolies exerted market power, which market power the regulator has to control. Government ownership may not serve to incentivise private investors to invest in Namibia as majority government ownership may lead to protectionism for government owned companies, as was the case during the period prior to commencing the Communications Act (2009). This situation is contradictory of government's policy of a "liberal" and "free market", where the state not only owns, but also is the dominant player in the sector, resulting in a state monopoly with no plurality in the interest of competition.

The MICT has failed to implement its own policies that require it to separate its policy development and role regulatory roles from its role to maximise shareholder value (MICT, 2009a). Since 2009 to date, this policy has not been implemented and government is yet to relinquish its shares in TN. The non-implementation by the Executive of its own policies can be directly linked to maintain its dominant role in the sector and its unwillingness and no political will and desire to relinquish its hold on the sector, with disastrous consequences on competition. It is clear that government wishes to maintain its dominance in the sector and this does not instil any confidence in the minds of the stakeholders or incentivise any private investment as there is

always a guarantee that government will seek to protect its turf via its ICT SOEs and will not ensure competition. This situation is untenable if the sector is to grow economically and it regulatory objectives are to be met. From the aforementioned literature and the stakeholders' perceptions, the regulatory framework is therefore not effective with regards to addressing competition. It remains to be seen how CRAN will encourage private investment. The independence of the regulator must be even strongly demonstrated in these circumstances.

Regarding the broadcasting sector, the fact that NBC is not regulated by CRAN and is not obliged to share infrastructure (MICT, 2009d) is prejudicial to the sector. This situation is untenable for competition, as stated by respondents B2 and B3 in Chapter 5, paragraph 5.3(b). Respondents B2 and B3 ICT SOEs and private SOEs have been operating under different rules. B2 stated TN and NBC should similarly be regulated in accordance with the Communications Act (2009). The fact that NBC is not regulated, B2 stated is a problem as regulatory objectives cannot be achieved and the situation is discriminatory.

It is untenable for Executive to state in a national policy that the public broadcaster will be governed independently of CRAN (MICT, 2009a), given the aforementioned as it has disastrous consequences for competition in the broadcast sector in respect of sharing broadcast infrastructure The television broadcasting services may remain at a low 40.6% of the population, unless universal service targets are made for the NBC and are funded via the USF.

The MWEB court case demonstrates the different and preferential rules being made for government owned entities and those that are privately owned, due to the public interest element of public corporations (Shivute, 2011). The arrival of the Communications Act (2009) levels the playing field, it requires that all operators be treated equally and TN must share its infrastructure at

equitable pricing.

The transfer of ownership of Leo to TN places the last of the major telecommunications companies under the sole or majority shareholding of government, as demonstrated in Figure 1.1. It complicates the ICT policy role of the Minister of ICT and the shareholder role even more, to the prejudice of the smaller number of privately owned licensees.

As can be seen from the MWEB court case decision, the interconnect rate and the “On-Net” and “Off-Net” price ruling that could not be enforced against TN, because it was not regulated by the NCC. The regulatory framework can however not be said to be perceived as effective because the NBC and NP are not regulated under the same rules as privately owned licensees.

6.4.3 MARKET ENTRY

Given that competition in the communications sector remains a distant dream, as discussed above, this untenable situation does not incentivise new market entry and is perceived as inefficient by the stakeholders. Majority government shareholding and its dominance in the sector discourages market entry by private investors, as highlighted by Telco1, EC4 and Telco3 in paragraph b titled “Competition and Government Ownership” above. Some respondents suggested limitations to the number of licences, contrary to the national ICT policies proposing liberalisation and unhindered market access (MICT, 2009a), on the basis of a so-called small market size. It is however difficult to limit licence classes and number of licences given the service and technology neutral trend, as it may restrict innovation and entrepreneurship, contrary to the regulatory purpose.

The only remaining regulatory governance incentive is that the rules of market entry are clear in respect of telecommunications services and spectrum licensing and new licences have been issued. However, those rules are not

consistently applied to state-owned SOEs such as NBC, as NBC is not regulated by CRAN MICT, 2009d).

If CRAN is to attract new entrants it must handle licence applications in an expeditious manner, to improve on the administrative capabilities and functionality of CRAN, as stated by respondents such as Telco4. CRAN will have to revisit its timelines to handle applications and shorten the time periods otherwise CRAN will remain administratively bureaucratic. Bureaucratic delays do not make for efficient regulators. Addressing this will aid in respect of the ease of doing business in Namibia.

Namibia's regulatory framework limits foreign ownership to 49% (MICT, 2009d). Telecommunications is a capital-intensive industry and there is doubt as to whether the necessary start up capital for 51% shareholding can be found in Namibia. This requirement is therefore a barrier to entry, as it does not incentivise foreign direct investment in the circumstances. It may be that the Minister can allow an exemption. However, what this does, is that it leaves investors vulnerable to political influence, as that process of applying for exemption is not clearly defined and does not provide for any measures of accountability, transparency and predictability of the decision in the Communications Act (2009). The regulatory framework is considered weak as a result, as it does not encourage foreign direct private investment, which is the very regulatory purpose of Namibia's policy regulatory framework MICT, 2009d).

Leo entered the market without the basic rules to safeguard competition with state-owned licensees Leo as the only private operator, at the time. CRAN preliminarily estimates TN and MTC to be dominant over Leo by only having a market share of 4.6%, whereas the MTC's market share is estimated at 52.3% and TN's share at 41.8%, after six years of market entry (CRAN, 2012d). Contrary to the regulatory role of preventing market failure, it appears

that this regulatory purpose is not being met and the dominant position of TN and MTC is not being addressed for potentially being abused.

The MWEB court case also demonstrates the different rules that were applicable between government owned entities and private entities, prior to May 2011, in terms of licensing requirements that are made at statutory level (Shivute, 2011). Prior to the Communications Act (2009), TN was not obliged to resell its wholesale ADSL services and MWEB had no right to demand such resell in the interest of fair competition (Shivute, 2011). In a liberalised sector and with the regulatory aim to ensure competition, the rules must be the same for all, irrespective of government ownership. This fair environment is being put in place in respect of the telecommunications sector by the Communications Act (2009) and CRAN's licence conditions, subsequent to the supreme court decision, that are open and equally applicable to all, as has been demonstrated during the licence transitional period of converting old licences to a new service and technology neutral regime.

6.4.4 INTERCONNECTION

The MTR's rate ruling by the NCC allowed for greater competition amongst licensees and had a positive impact on the regulatory framework (RIA, 2010a). Respondent CR1 stated that this decision made the regulatory framework effective, as of translated into cheaper voice services for consumers. The MTR rate decision led to the positive growth for MTC with regards to its EBITDA (RIA, 2010a). In the event there was no regulatory intervention such achievements would not have been made. However, the issuing interconnection guidelines and addressing complaints by licensees about possibly reducing the rate further requires further regulatory intervention. The failure to investigate the possibility of reducing interconnection rates even further does not auger well for competition in the sector and must be addressed by the regulator expeditiously. This creates the perception that the framework is effective, leaving stakeholders frustrated and

indirectly allowing the dominance of ICT SOEs at the expense of other licensees.

6.4.5 SHARING OF INFRASTRUCTURE

Interviewees Telco2 and Telco3 stated, “regulation can step up a bit” with regards to sharing of infrastructure regulation. Interviewees Telco2 and Telco3 stated that the costs of leased lines and wholesale prices should be proportional and fair, but instead is too expensive. The current experience is that operators give various parties different rates and discounts and this affects the profitability of the operators Telco1 stated. This is contrary to the national ICT policies that restrict anti-competitive action and promote the sharing of infrastructure (MICT, 2009a). PS1 stated there are no economies of scale to rollout own infrastructure.

The sharing of infrastructure does not seem to have yielded any positive results, as stated by EC1. Licensees such as Telco2 are complaining that the rates are astronomical. The result of the regulatory failure to address these complaints has left the regulatory framework ineffective.

The high rates that the other licensees are complaining about indicate that infrastructure is not shared at fair and equitable rates but at discriminatory rates, contrary to the Communications Act (2009) and national ICT policies.

6.4.6 RIGHTS OF WAY

The way in which rights of way has been practically addressed has been bureaucratic and inefficient, as stated by Telco2, in Chapter 5, paragraph 5.3 (f). There is no coherent and consistent policy addressing this incentive to negotiate rights of way with local authorities, prior to CRAN mediating any disputes with various local authorities and other role players in the country (Namibian, 2012a). The process therefore hampers the rollout of necessary infrastructure and the latest technologies thereby negatively impacting the

regulatory purpose.

Respondent EC1 stated:

> Legislation can be cleaned, improved and certain areas need to be fundamentally amended regarding rights of way. It's a free for all, what needs to be set out is that it allows licensees a certain amount of rights that balances the rights of landowners. This paradigm of thinking should change as many licensees come into the market, as that could be an untenable situation. CRAN strength is important, given the right political support to meet the expectations.

The right political support means intervention from the Ministry of Local Government to adopt a national policy for addressing rights of way nationally to incentivise the rollout of the latest technologies in an efficient manner.

Servitudes are important to operators to ensure the timely rollout of its services, failing which it has a negative impact on the regulatory objectives. Local authorities exploit this opportunity to diversify revenue and without a national policy to ensure consistent rules and processes.

6.4.7 SPECTRUM MANAGEMENT AND LICENSING

For CRAN to be regarded as effective, CRAN should expeditiously handle spectrum applications within set out short periods of time, as Telco4 stated "It is ridiculous to wait for six to nine months for a licence as it delays the rollout of infrastructure." To respond quicker CRAN can consider conducting real-time spectrum management and acquire the necessary systems. CRAN's application process is bureaucratic, although it allows for public comments. No real time spectrum monitoring is conducted because the MICT still owns and possess the monitoring vehicles, equipment and the sites, respondent B2 recommended. This makes this incentive inefficiently managed, although some respondents were satisfied that CRAN's spectrum managing has

improved compared to the NCC's. Interviewee B4 stated CRAN is doing a good job, contrary to the perception of Telco4. The above analysis is evident from the 4G spectrum application of MTC, that was delayed in terms of which CRAN firstly had to complete the spectrum audit process and get the records up to date due to the legacy of poor administration it inherited from its predecessor (New Era, 6 February 2012b; Namibian, 2 March, 2012 and Namibian, 6 March 2012).

The failure of CRAN to have a national band plan and by not conducting spectrum monitoring and investigations undermines the role of CRAN to control, manage, administer and licence spectrum in an efficient manner, according to the stakeholders. It is therefore a major handicap and CRAN must conduct its spectrum hearing and issue the spectrum band plan, respondent B2 stated.

The band plan and monitoring systems are tools every effective regulator should possess and use in its daily operations. The absence thereof undermines its functionality.

6.4.8 RESOLUTION OF DISPUTES

Administrative delays are also evident in the manner in which CRAN is failing to deal with disputes, as stated by Telco 1. Disputes are taking too long to address and resolve with the negative result that the alleged harm continues unabated as opposed to being addressed within the shortest possible time. The stakeholders are discouraged to lodge complaints against each other and prefer an informal dispute resolution process. Respondent EC4 stated that operators are very shy to take issues to court. EC4 stated, "Courts not very productive. CRAN is to find a way to minimise courts and litigation without compromising its mandate." CRAN is yet to finalise the regulations on licence complaints after it published it for public comment in December 2012 (CRAN, 2012m). In the meantime, this dimension is not perceived as being

addressed effectively.

To ensure proper corporate governance CRAN would be at risk to entertain informal attempts to address disputes and is not a route that is recommended for a framework that aims to be effective.

6.4.9 CONCLUSION

In reviewing the regulatory incentives dimension of the communications regulatory framework it is evident that the way in which this dimension is implemented, as discussed in Chapter One, has not incentivised consumer welfare, promoted innovation or encouraged competition. Namibia's regulatory framework therefore does not achieve a good fit between its incentive structure and its institutional endowment that encourages utility performance. The incentive structure does not strike an adequate balance to achieve operator performance within the given institutional realities in Namibia. The framework does not attract private investment, as can be seen from the recent attempts to sell Leo. Leo was instead acquired by TN, which in turn does not encourage private investment. The basic foundations of a clear and effective regulatory framework to address competition were not in place when Leo entered the market and this resulted in the current situation Leo finds itself in. The research shows that not much has changed since the 2009 TRE conducted by Sherbourne and Stork.

After conducting the TRE Sherbourne and Stork (RIA, 2010b, p.23) concluded that CRAN needs to establish credibility in the market, enforce licences and laws consistently and transparently, balance consumer interest and return on investments. CRAN and MICT should practically enforce the policies, laws and the regulations and make new regulations as required. There are regulations missing that will improve on the regulatory incentives of the framework. The slow and bureaucratic manner of addressing regulatory incentives will have to cease but it must be implemented with haste.

In 2009 the TRE reported that Namibia's regulatory framework still requires improvement in order to be evaluated as efficient. After having assessed the stakeholder perceptions and the doctrinal analysis in 2012, three years after the TRE, it is evident that Namibia's regulatory framework still requires improvement in order to be evaluated as efficient. If this is the continuing trend Namibia's regulatory framework will fail to ensure a global and regional competitiveness for Namibia. This trend must be broken as a matter of urgency in all earnest and by deliberate action to be taken by the MICT and CRAN by practically implementing the policies and laws and making the necessary legal changes that will make the framework efficient. The communications regulatory framework therefore still continues to be perceived as ineffective, by its stakeholders.

CHAPTER SEVEN: ACCELERATE IMPLEMENTATION OF COMMUNICATIONS REGULATORY FRAMEWORK TO GAIN COMPETITIVE ADVANTAGE

This chapter makes conclusions and recommendations about the study. It is structured as follows: section 7.1 concludes on the value of perception studies; section 7.2 concludes on the various sub-units of analysis of the institutional endowment (the regulatory analytical framework), the regulatory governance principles, the regulatory incentives, the regulatory purpose and overall about the effectiveness of the communications regulatory framework; and section 7.3 makes recommendations on the on the various sub-units of analysis of the institutional endowment (the regulatory analytical framework), the regulatory governance principles, the regulatory incentives, the regulatory purpose and overall about the effectiveness of the communications regulatory framework. In sections 7.2 and 7.3 every dimension is assessed is addressed individually and an overall high-level conclusion is made.

In every section, tables represent the conclusions and recommendations, from Tables 7.1 to 7.3. The tables are colour coded with green, amber and red, using the analogy of a traffic light. For traffic lights, the colour green indicates that traffic may proceed the colour amber indicates that traffic may proceed, but only if you have already crossed the stop line, the colour red indicates that traffic must stop (Government Digital Services, 2012).

Using this analogy the green colour denotes that the unit of analysis of the regulatory framework may continue to be dealt with as it has been addressed because the framework is perceived as effective.

The amber colour denotes that the unit of analysis of the regulatory framework is perceived as partially ineffective, but the unit of analysis may continue to be addressed as it has been addressed but with caution, and

action must be taken to prevent that the regulatory framework become ineffective. At the same time, direct action must be taken to ensure the framework is perceived as effective.

The red colour denotes that the unit of analysis of the regulatory framework is perceived as ineffective, and the manner in which the unit of analysis was dealt with must be brought to a halt with immediate effect.

The traffic light analogy is used to metaphorically indicate whether the particular unit of analysis and the sub-units are perceived as effective (green), partially effective (amber) or as ineffective (red), by the stakeholders.

The colour code system was devised to categorise the conclusions and recommendations of the study after having assessed the value of the perceptions of the informed stakeholders against the practical implementation of the various dimensions of regulatory effectiveness as corroborated by the doctrinal analysis and the literature reviewed.

7.1 THE VALUE OF PERCEPTION STUDIES

The value of perception studies, as one of the instruments to assess regulatory effectiveness has been clearly demonstrated by the TRE survey, and buttressed by the perception studies conducted by Stern and Holder (1999) and Montoya and Trillas (2007) and RIA (2010b). Sherbourne and Stork (RIA, 2010b) comment in the Namibian 2009 TRE, as a perception study by stating that the TRE "can be used by regulators and policy makers to assess their own performance and identify areas for improvement, and for investors to assess regulatory risks in a country" (RIA, 2010b, p.21). This perception study offers the exact same value to the Namibian regulator, policy makers and stakeholders.

This study has not merely recorded perceptions and reported on them. This study assessed the value of the perceptions of the informed stakeholders against the practical implementation of the various dimensions of regulatory effectiveness, the doctrinal analysis and offered valuable academic insight about the effectiveness of Namibia's communications regulatory framework. In implementing regulatory frameworks, stakeholder responses and reactions should be taken into consideration and perception studies allow researchers that opportunity, as they form an intrinsic piece of the regulatory puzzle. This study was valuable by being an instrument of stakeholder participation as required by regulatory governance.

7.2 A COMMUNICATIONS REGULATORY FRAMEWORK THAT IS ONLY THEORETICALY FIT FOR REGIONAL COMPETITIVENESS

This perception study revealed that the Namibian communications policies, laws and regulations largely contain the best practice elements, which are generally regarded by the authors studied as requisites for an effective regulatory framework. However, this perception study further revealed that for stakeholders to perceive the communications regulatory framework as effective, the policies, laws and regulations require practical implementation. The framework comprise the theoretical principles to enable it to be effective, however it is the practical implementation of those principles that are lacking, such as rules for interconnection and enforcing interconnection as highlighted by Telco1. Assessing the practical effectiveness of Namibia's communications regulatory framework is an area for future research.

7.2.1 THE INSTITUTIONAL ENDOWMENT

As represented by the colour red and the acronym "L&E" (the Legislative and Executive), in the table below, the introduction of the Communications Act (2009) and the relevant ICT policies by Parliament and the Executive respectively, were perceived as a positive development in establishing an effective communications regulatory framework. However, these policies are

not implemented with efficiency, as stated by the Academic stakeholders and the legislation is contradicting the provisions of the policies. A good example is the Overarching ICT policy of 2009 that states that government will divest shareholding in ICT SOEs (MICT, 2009a). However, to date no action has been taken in this regard and government still retains complete control over such shareholding (Namibia Prime Minister, 1992).

The institutional endowment is tarnished by the lack of consistent application of the policies and the legal provisions. The Executive plays a major shareholder role in respect of regulated SOEs such as TN and SOEs not regulated by CRAN such as NBC (Namibia Prime Minister, 1992; MTC, 2011, CRAN, 2011i). Additionally, the Executive executes a conflicting policy role via the same Ministry. Parliament does not play any oversight role as the multi-party democracy organ of state, as stated by EC4. As a result this dimension is perceived as ineffective.

As represented by the colour amber and the acronym “J”, the Judiciary exercises the crucial checks and balances role but has to obtain the necessary ICT policy and regulatory skills to be able to review the decisions of the regulator independently, as recommended by EC4. The stakeholders perceive this dimension only as partially effective due to the criticism of the MWEB court case and the Guinea Fowl Leo transfer court case. However, the independent and credible judicial system and the independent decision-making powers of the regulator allows for sufficient multiple layers of independent authority necessary to ensure credible restraints of power, as propounded by Stern and Holder (1999).

As represented by the colour amber and acronym “C&N” (Customs and Norms), Namibia has the culture of informal settlement of disputes, which may compromise regulatory integrity if followed by CRAN. This unit of analysis is perceived as partially effective, because the custom of informal

meetings, and attempts of political interference as demonstrated by the Prime Minister regarding the MTC 4G spectrum application, may be preferred but, considering governance, may not be the best practice, and stakeholders may have to start adapting to more formal procedures to have matters addressed and resolved.

There are unaddressed competing social and economic interests between the consumer welfare role of the regulator and the profit motives of the licensees. There are also competing interests amongst the licensees as competitors that require regulation by CRAN. For example, the NBC is not regulated, the USF legal provisions are not operational, dominant operators charge inequitable rates for sharing infrastructure and Board appointments by the Minister creates an impression of bias. All these interests have for the large part remained unaddressed and created the perception of ineffectiveness as represented by the colour red and the acronym “CCI” (Character of Competing Interest).

As represented by the colour red and the acronym “AC” (Administrative Capabilities), the administrative capabilities of the country are perceived as poor, inefficient and bureaucratic. The regulatory and policymaking processes of CRAN and the MICT are perceived as necessary but bureaucratic and inefficient. The poor handling of rights of way, time-consuming licence application adds to this situation.

As represented in Table 7.1 below, the elements “the Legislative and Executive”, “Judiciary”, “Customs and Norms”, “Character of Competing Interests” and “Administrative Capabilities” are sub-units of analysis of the “Institutional Endowment” element. The colour amber and the acronym “IE”, indicating that Namibia’s communications regulatory framework has to operate in an environment that is dominated by political involvement in regulatory matters and government shareholding in dominant ICT SOEs,

represent the “Institutional Endowment”. This creates the risk of regulatory capture for the partially independent regulator as it is structured in such a fashion that it can be unduly influenced by the Executive in terms of its financial plans and strategic activities as this requires approval from the Executive. The independent Judiciary however is a credible support to ensure effectiveness but it has the challenge of not being sufficiently knowledgeable about the specialised ICT policy and regulatory framework. The regulator has the expertise and is at least guaranteed to make regulatory decisions independent from the industry and the Executive. This myriad of challenges presents the opportunity for the regulator to strengthen itself and exert its position against the odds, despite some of its less than perfect administrative capabilities that can be made expeditious. To assess the actual effectiveness of the communications regulatory framework is therefore an area for future research to measure outcomes of the communications regulatory framework within these circumstances.

Table 7.1: Perceptions of Effectiveness of the "Institutional Endowment"

Institutional Endowment (IE)				
Legislative and Executive (L&E)	Judiciary (J)	Customs and Norms (C&N)	Character Of Competing Interests (CCI)	Administrative Capabilities (AC)

7.2.2 THE REGULATORY GOVERNANCE PRINCIPLES

CRAN is not structurally created as an independent regulator as it is classified as an SOE, reporting to the SOEGC and the MICT and not to Parliament. The regulator is perceived as partially independent because of its classification as a state-owned enterprise in terms of the Communications Act (2009) and the SOEGC Act (2006). This is a contradictory structure, considering the doctrinal analysis that the Communications Act (2009) aims to establish an independent regulatory Authority. It is not ideal that CRAN is classified as a state-owned enterprise. Government owns the majority of the major licensees such as MTC and TN. TN owns and controls Leo. Figure 1.1 demonstrates this. This creates a governance conflict of interest for the Minister of ICT as the line shareholding Minister for these SOEs, against its ICT policy role. This places CRAN in a compromising situation in regulating the sector, although it has demonstrated taking independent decisions, such as the Guinea Fowl Leo transfer decision. The ownership structure depicted in Figure 1.1 is anti-competitive. It places government in a dominant position of the sector and fails to meet the objective of encouraging private investment. This does not make the regulator structurally independent or effective as demonstrated by the acronyms “SI” (Structural Independence) coded red, in Table 7.2 below.

The Minister of ICT has supervisory and approval powers over the budget and strategic plan of the regulator (MICT, 2009d). The role separation may therefore not be at the desired ideal level for regulatory effectiveness. This creates the potential for political interference and regulatory capture. This does not make the regulator financially independent or effective, especially if the regulator is not funded by government, then government should not have to approve the budget as stated by respondent A1. This is demonstrated by the acronym “FI” (Financial Independence), colour coded red.

CRAN has taken independent decisions in handling licence applications and

awarding such licences for service and spectrum licences, despite attempted political interference from the Namibia Prime Minister regarding MTC's 4G-spectrum application. It is appropriate that CRAN is awarding service and spectrum licences, as supported by respondent EC4. CRAN continues to award licences in terms of national policies for liberalisation of the sector (MICT, 2009a and CRAN, 2011f). Considering the above, the dimension demonstrated by the acronyms "LTBS" (Licensing of Telecommunications, Broadcasting and Spectrum) is implemented effectively as depicted by the colour green in Table 7.2 below.

The separation of the roles and responsibilities between the regulator and the Minister is clearly defined in the Communications Act (2009) and the national ICT policies. However, the stakeholders are confused about the role separation and have the perception that the roles are not clearly defined and that this negatively impacts on the effectiveness of the regulatory framework. As a result this dimension of "Role Clarity" is perceived as partially effective, as represented by the colour amber and acronym "RC" in Table 7.2 below.

The management of the regulator is appointed by the Board, which Board is in turn appointed by the Executive, with job stability and in terms of a credible transparent recruitment process, as indicated by the Regulatory body respondents, however subject to the SOEGC guidelines (SOEGC, 2010). The Board of the regulator is however appointed by the government and not by Parliament and ratified by Cabinet (Namibian, 2010), who in turn appoints the management, creating the perception amongst the stakeholders that the regulator's independence is compromised, as stated by respondent PS1, and therefore this dimension is classified as ineffective, due to the perception of the stakeholders as represented by the red colour and acronym "ARBM" (Appointment of the Regulators Board and Management) in Table 7.2 below. Montoya and Trillas (2007), rates Board appointments higher when Parliament participates in the process.

The Judiciary reviews the decisions of the regulator in terms of the Communications Act (2009) and the stakeholders perceive this as an effective mechanism for the regulatory framework, as recorded in Chapter 5.1.2. The regulator must give reasons for its decisions and in this manner accountability is instilled that makes the regulatory framework to be perceived as effective, by the stakeholders, from a governance perspective. This is represented by the colour green and the acronym “A” for “Accountability”.

The regulatory framework is perceived to be transparent as the regulator is required to and publishes notices for proposed regulations and invites stakeholder comments. The regulator consults the stakeholders and the stakeholders therefore perceive this dimension as effective as recorded in Chapter 5, paragraph 5.2.10 when B2 stated that the communication flow has been good from CRAN. This is demonstrated by the colour green and the acronym “T” for “Transparency”.

According to Stern and Holder (1999), the regulatory framework may be regarded as predictable due to its transparent manner of communicating proposed regulations and the written Communications Act (2009) that outlines a strong process guaranteeing predictability in the exercise of regulatory decisions. However, despite the rule-making regulations that prescribe how changes to regulations must be, stakeholders such as Telco1 stated, “CRAN’s actions are not predictable” and that the final decisions are uncertain. Considering the perceptions of the stakeholders, this element classified as ineffective and is represented by the colour red and acronym “P”, for “Predictability”.

As represented by the colour red and the acronym “AUAS”, universal service is administered by CRAN, but to date the USF provisions in the legislation have not commenced and the policy has not been finalised (MICT, 2009d), therefore the regulatory framework cannot be said to have implemented this

dimension at all as stated in Chapter 5, section 5.2.6. This dimension is not effective and is not geared to help attain the regulatory purpose of CRAN, although CRAN may have the theoretic power to administer the USF.

A regulatory framework is to be properly governed to properly restrain the arbitrary use of power. The design of Namibia's communications regulatory framework does not properly prevent potential abuse of power. On the contrary, it is designed and implemented in such a manner that the abuse can be justified and this does not align with best practice for regulatory effectiveness. Overall, as represented by the colour red and the acronym "RG" (Regulatory Governance) in Table 7.2 below, regarding the regulatory governance dimension, Namibia's communications regulatory framework is perceived as ineffective, as the majority of its sub-units are perceived as ineffective.

Table 7.2: Perceptions of Effectiveness of "Institutional Endowment and Regulatory Governance"

Regulatory Governance (RG)								
Structural Independence (SI)	Licensing of Telecommunications, Broadcasting and Spectrum (LTBS)	Financial Independence (FI)	Administering Universal Service (AUAS)	Role Clarity (RC)	Appointment of the Regulators Board and Management (ARBM)	Accountability (A)	Transparency (T)	Predictability (P)

7.2.3 THE REGULATORY INCENTIVES

In order to make investments in the communications sector effective regulatory frameworks are designed to contain incentives to encourage private investment, in an era that was dominated by state monopolies and is now meant to be liberalised.

As represented by the colour amber and the acronym "PR" (Price Regulation) in Table 7.3 below, pricing regulation has been effectively enforced in respect

of mobile voice service due to the pricing regulation interventions of the MTR's and the "On-Net" and "Off-Net" rates (Stork, 2011) as the proper authority of the regulator in terms of the literature. As indicated by Stork (2011) fixed and mobile broadband is an area that would require serious prioritisation and regulatory intervention. This dimension is perceived as partially effective.

As represented by the colour red and the acronym "CGO", (Competition and Government Ownership) is ineffectively regulated and government controls the major part of the sector. Namibia is not implementing the national policies that advocate divestment of government shareholding in ICT SOEs (MICT, 2009a). The NBC is not regulated by CRAN and is not legally obliged to share infrastructure (MICT, 2009d). Sharing of infrastructure needs to be introduced and determinations regarding dominance are yet to be finalised. Government is the sole or majority owner of dominant ICT SOEs and this puts CRAN under pressure to enforce competition while reporting to the same Minister of ICT, which is perceived as a conflict of interest situation.

As represented by the colour amber and the acronym "ME" (Market Entry) in Table 7.3 below, market entry is only efficiently addressed by the existence of consistent licensing rules and various new service and technology neutral licences have been issued to spur competition, but slow process. The limitation on mergers and acquisitions of foreign owned companies does not encourage market entry to encourage competition in turn, coupled with majority or sole government ownership as the transfer of ownership of Leo to TN places the last of the major telecommunications companies under the sole or majority shareholding of government, as demonstrated in Figure 1.1. Furthermore, stakeholders expect limitations to be placed on the number of new entrants as they claim the market is flooded.

As represented by the colour amber and the acronym "I" (Interconnection),

the MTR's rate ruling by the NCC allowed for greater competition amongst licensees and had a positive impact on the regulatory framework by allowing cheaper consumer voice services (RIA, 2010a). However, the issuing interconnection guidelines and addressing complaints by licensees about possibly reducing the rate further requires further regulatory intervention, as stated be Telco1. As a result the stakeholders only perceive this dimension as partially effective.

As represented by the colour red and the acronym "SoI" (Sharing of Infrastructure), the sharing of infrastructure is encouraged but not practically enforced. The regulatory framework is not perceived as being effective in this regard. The pricing to share infrastructure, contrary to legislative provisions of the Communications Act (2009) is deemed too high and requires regulatory intervention. Licensees such as Telco2 are complaining that the rates for sharing infrastructure and wholesale pricing are astronomical and discriminatory. The result of the regulatory failure to address these complaints has left the regulatory framework ineffective.

As represented by the colour red and the acronym "RoW" (Rights of Way), rights of way are not adequately addressed and are mired with bureaucracy and unclear bureaucratic processes as indicated by respondent Telco2. This is not perceived as effective by the stakeholders and EC1 recommended CRAN's direct involvement and political intervention to address this situation. This undermines the "right of way" incentive.

As represented by the colour red and the acronym "SML" (Spectrum Management and Licensing), spectrum is managed by CRAN, but the licensing process is perceived as slow, despite the fact that it allows for public comment and is not perceived as effective, as stated by Telco4. The licensing period can be made more expeditious, the final band plan is yet to be published and complaints of illegal spectrum use are still to be investigated

and addressed.

As represented by the colour red and the acronym “RD” (Resolution of Disputes), disputes between the stakeholders are underreported. Disputes that are reported are not timeously resolved as stated by Telco1. The necessary regulations are not made as CRAN is still consulting (CRAN, 2012m). This dimension is not perceived as effective.

The communications regulatory frameworks institutional design is however not one that encourages liberalisation contrary to the policies and the laws promoting it, as evidenced by state domination of the sector. It is instances such as these that extra effort is required to incentivise private investment. It is unfortunately evident that the implementation of Namibia’s regulatory incentives leaves much to be desired, as the resulting effect is that it discourages private investment contrary to its regulatory purpose. Overall, the regulatory incentives dimension is not perceived as effective as demonstrated in Table 7.3 below by the code “RI” (Regulatory Incentives) in the colour red. In fact, the stakeholders perceive none of the sub-units of this dimension as effective, and the majority are perceived as ineffective. Given the tough institutional endowment within which the Namibian regulatory framework has to operate, this dimension demonstrates that the regulator has got its work cut out and has to “hit the ground running”.

Table 7.3: Perceptions of Effectiveness of Institutional Endowment and Regulatory Incentives"

Regulatory Incentives							
Price Regulation (PR)	Competition and Government Ownership (CGO)	Market Entry (ME)	Interconnection (I)	Sharing of Infrastructure (SoI)	Rights of Way (RoW)	Spectrum Management and Licensing (SML)	Resolution of Disputes (RD)

7.2.4 THE REGULATORY PURPOSE

Working towards and actually achieving the regulatory purpose is the *raison d'etre* of communications regulatory frameworks.

Namibia is perceived as having achieved lower pricing for mobile voice services for the consumers, due to its mobile termination rate caps and the "Off-Net" and "On-Net" tariff reductions (Stork, 2011). This is worthwhile effort towards attaining the regulatory objectives.

Affordable pricing of mobile services address consumer welfare partially. These objectives cannot be achieved because the universal service fund has not yet been established (MICT, 2009d).

Government's majority ownership of ICT SOEs instils public dominance over the sector, as opposed to encouraging private investment, as depicted in Figure 1.1. Market entry rules are clear, but determinations on dominance require to be made, the sharing of infrastructure needs to be regulated and pricing for wholesale services and sharing of infrastructure requires to be addressed to ensure competition between public and private operators alike, with public operators such as NBC and NP yet to be regulated by CRAN. The perception is that no competition exists in Namibia's communications regulatory framework because of the government's dominance of the sector and no protection being afforded to smaller licensees by the regulator. In

other words, the institutional design, the regulatory governance and the regulatory incentives have not led to Namibia achieving its *raison d'etre.*

7.2.5 CONCLUSION ABOUT THE EFFECTIVENESS OF NAMIBIA'S COMMUNICATIONS REGULATORY FRAMEWORK

In answering the research question, given that Namibia's communications regulatory framework is perceived as having an institutional endowment that is posing numerous challenges to the regulator to overcome; given that the regulatory governance dimension is perceived as ineffective; given further that the regulatory incentives are perceived as ineffective, it is the perception of the stakeholders that Namibia's communications regulatory framework is ineffective.

The stakeholders consider the implementation of the regulatory framework as ineffective with challenges to be addressed. The implementation is not on the right track. There seems to be no stakeholder buy-in regarding the implementation. The perceptions of the stakeholders about the effectiveness of the communications regulatory environment in Namibia is that the environment is poorly administered, with risks of political intervention and independence of the regulator that is threatened due to how it is structured. Enforcement of policies and regulations or the making of necessary regulations is lacking and this does not instil confidence amongst stakeholders. The framework leaves a lot to be desired with regards to its implementation, although theoretically, it seems to contain the tenets of regulatory effectiveness.

CRAN is at risk of compromising its integrity if it does not continue to persist to make independent decisions given the fact that the Executive, via the MICT, exercises shareholding powers and is the policy Ministry for ICT, whose policies CRAN must implement as part of its regulatory function.

The stakeholders see the framework as being poorly implemented and not expeditiously enough that would give them the perception that Namibia's communications regulatory framework may be effective. The research question has been answered by this study revealing the perceptions of stakeholders and making recommendations on how to improve the framework. This gives CRAN and MICT the valuable information to improve on the framework as it continues to implement the framework.

The paragraphs 5.1 to 5.3 in Chapter 5, paragraphs 6.1 to 6.4 in Chapter 6 and paragraph 7.2 in Chapter 7 record, interpret and analyse the various perceptions of the stakeholders regarding Namibia's communications regulatory framework. The stakeholders perceive Namibia's regulatory governance and regulatory incentives, as ineffective, based on its institutional endowment, as can be viewed from the latest regulatory events. The stakeholders explained their perceptions and recommendations, whether directly or interpreted, as captured in paragraphs 5.1 to 5.3 in Chapter 5, paragraphs 6.1 to 6.4 in Chapter 6 and paragraph 7.2 in Chapter 7. The above analysis and conclusions were done along with the doctrinal analysis in Chapter 4.

The stakeholders perceptions indicate that the implementation of Namibia's communications regulatory framework resulted in poor to no or rather incorrect application of the various principles that, if applied correctly and consistently, would result in an effective communications regulatory framework for Namibia. These principles are as outlined in the literature in Chapter 2 and doctrinal analysis in Chapter 4. Namibia's communications regulatory framework is being implemented *ad hoc* and does not appear to have any strategic direction resulting in disjointed application of measures that require synchronous and timeous practical application to be perceived as effective.

7.3 GEARING TOWARDS AN EFFECTIVE COMMUNICATIONS REGULATORY FRAMEWORK

In an effort to make Namibia's communications regulatory framework effective and position Namibia as a global competitor, the following recommendations regarding Namibia's regulatory analytical framework, the governance principles and the regulatory incentives are to be considered, and if adopted implemented.

7.3.1 THE INSTITUTIONAL ENDOWMENT

To improve the administrative capability of the country, reduce bureaucracy and enhance efficiency, the MICT and CRAN alike, should develop clear business, policy and regulatory processes and manuals, to be communicated to stakeholders and ensure that the regulator is adequately staffed to implement these administrative functions. These processes should contain expeditious timelines that are shorter than the current timelines in licensing regulations for service and spectrum.

CRAN should make and practically enforce regulations outlining the dispute resolution processes between licensee stakeholders to address disputes regarding sharing of infrastructure, pricing, interconnection, competition and competing interests efficiently.

CRAN should make a recommendation to the Judicial Service Commission, the MICT personnel and the Parliamentary Standing Committee on ICT to facilitate training for judges, civil servants and parliamentarians in ICT policy and regulatory matters, to ensure the competent and independent review of regulatory actions and the correct application of ICT policies.

CRAN should invite stakeholders to open and transparent consultations that are recorded to address various unique regulatory matters and craft practical ways of addressing these matters, and not follow informal dispute settlement processes and compromise regulatory integrity.

There are conflicting provisions in the Communications Act (2009) and national ICT policies. To cure this disharmony, the Communications Act (2009) should be amended to ensure that it is in sync with the ICT policies, as the policies are more progressive than the Communications Act (2009). The policies should be practically implemented by the MICT by designing a matrix of implementation and reviewing such implementation regularly.

7.3.2 THE REGULATORY GOVERNANCE PRINCIPLES

CRAN is not structurally independent and should be de-classified as an SOE, because it is a regulatory body and should report annually directly to Parliament and the Board should be appointed by Parliament and not by the Minister of ICT.

The MICT should relinquish its conflicting role, as per its ICT policies, and divest some of its shares in MTC and TN, in terms of the national ICT policies that propose partial private investment.

To ensure predictability, transparency, consultation and accountability, CRAN should consult about and publish a schedule of planned regulatory interventions for the information of its stakeholders. CRAN may need to indicate its possible decisions and request comments on such proposed decisions for certainty to the stakeholder.

Government should delegate the shareholder powers over TN, MTC, NP and NBC to another government Ministry, such as the Ministry of Trade. Legislative amendments should be to the establishment statutes of TN, MTC, NP and NBC in this regard.

The USF provisions in the Communications Act (2009) should be put into operation to enable the implementation of the regulatory objectives of socio-economic welfare.

CRAN should not obtain budgetary approval from the MICT. The Board should approve the budget of CRAN and the Board must be held accountable in terms of its performance agreements and annual report to Parliament. The necessary legislative amendments should be made to the establishment statute of CRAN in this regard.

The proposed separation of roles to attain improved regulatory governance, regulatory independence and regulatory incentives, will be structured as demonstrated below in Table 7.4 below. In terms of this structure CRAN will be structurally and financially independent in terms of the regulatory governance dimension. The Judiciary will ensure the checks and balances. Parliament will hold the regulator accountable. This role can be delegated to a standing committee of Parliament.

CRAN will also be independent in its regulatory decision-making, in terms of its powers regarding the regulatory incentives such as competition, because the conflicting role of the MICT would have been removed even if government shareholding remains, but it would be diffused by private shareholding, if the above recommendations are adopted and implemented. With this structure CRAN stands a better opportunity to minimise or avoid regulatory capture and political interference and to achieve its regulatory purpose.

This proposal will guarantee clearer role definitions to stakeholders, CRAN and MICT alike and must be communicated to ensure it is well understood.

Table 7.4: Proposed Role Separation

CRAN (Regulatory Independence and Incentives)	Parliament (Regulatory Governance)	Judiciary (Regulatory Governance)
- Budget - Financial Investments - Business Plan - Management Appointment - Price Regulation - Competition - Licensing - Spectrum Management - Interconnection - Sharing of Infrastructure - Resolution of Conflict - Administering USF	- Receipt of CRAN Annual Report - Receipt of USF Annual Report - Board Appointment and Remuneration	- Judicial Review

The above proposal is supported by Gutierrez and Berg (2000, p.870) when they state:

> The presence of a regulatory institution insulated from short-term political pressure has the elect of reducing investors' risks and increasing their confidence in a nation's governance (Gutierrez & Berg, 2000, p.870).

This places CRAN in position structured to effectively minimise or avoid regulatory capture and ward off possible political interference.

Figure 7.1 below demonstrates the proposed government shareholding structure. This structure demonstrates that the ICT policy role will remain the domain of the MICT. There would therefore not be any conflict of interests, as the Ministry of Trade would exercise the shareholding powers over the ICT

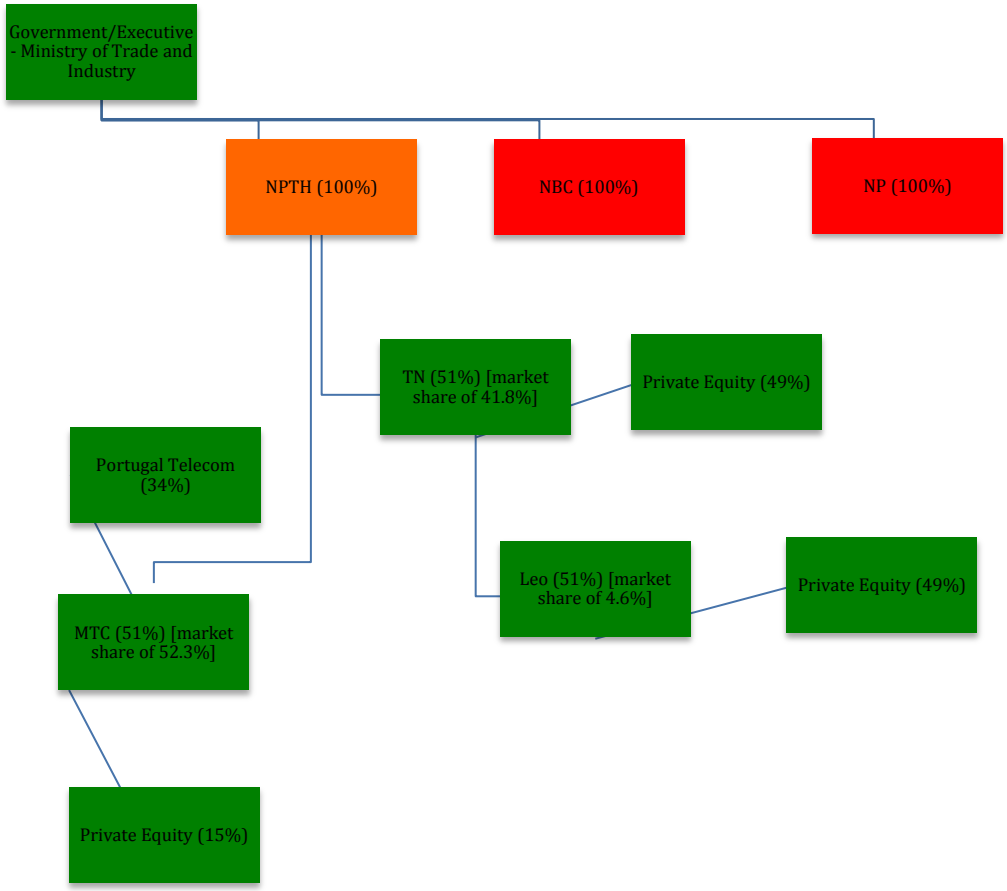
SOEs. This structure emphasises that the policy role and the shareholding roles are distinct and mutually exclusive and cannot be held by a single Executive body of the state without any checks and balances.

Furthermore, the proposed structure indicates that TN will be 51% owned by government and 49% privately owned, to ensure competition in the sector and to encourage private investment. In addition, Leo would be 51% owned by TN and 49% owned by a private shareholder. This proposed structure is likely to ensure an effective regulatory framework by introducing a better regulatory governance framework and allowing for better regulatory incentives, i.e. competition will be better addressed if government dominance of the ICT sector is reduced by introducing private ownership, possibly resulting in greater business efficiencies, technological and innovation.

This proposal is in line with suggestions of EC2, if the Executive is to follow clear economic policy, because, according to this respondent, as long as the current practice continues there cannot be proper competition until all the players are on the same level.

For the purpose of this Figure 7.1, the green indicates a public private partnership shareholding structure between NPTH, which is wholly government owned and Portugal Telecom, with regards to MTC. The green colour indicates shareholding that is favourable for an effective regulatory framework. This is more favourable for competition and private investment. The amber colour indicates that the sole shareholding is likely to be risky for private investment and competition, but not as risky as the shareholding that is coded red. The red colour indicates shareholding that is not favourable for an effective regulatory framework.

Figure 7.1: Proposed Government Ownership Structure and Role Separation of MICT



7.3.3 THE REGULATORY INCENTIVES

Pricing regulation should be investigated for the sharing of infrastructure. CRAN should consider introducing regulations for costs-based tariffing and cost accounting procedures to ensure fair and also equitable pricing in terms of the Communications Act (2009). The regulator must address the possibility of reducing interconnection rates in the sector expeditiously.

To ensure competition, government should divest portions of its shares in TN

and MTC and allow for more private investment. The MICT should make the necessary legislative amendments to implement this recommendation. This would minimise the impact of the government dominant position and reduce any potential abuse of dominance towards private competitors.

To encourage greater market entry, the 51% Namibian ownership requirement should be reduced. The Communications Act (2009) should be amended in that regard, so that potential investors would not require political exemptions from the Minister of ICT for higher foreign shareholding.

Rights of way are to be addressed, with a political intervention, as recommended by EC1. The Ministry of Local Authorities and MICT are to draft and publish a national policy and legislation, to nationally regulate the process of applying for servitudes. This will standardise the process and make it efficient, transparent, predictable and ensure quicker technology rollouts on public land.

Detailed business process and shortened application periods will ensure that spectrum is managed efficiently. CRAN should publish the final spectrum band plan.

Sharing of infrastructure should be practically enforced and the necessary guidelines should be made. The costs of sharing infrastructure should be investigated and regulatory interventions should be made.

Dispute resolution regulations should be made and allow for an efficient process of addressing and resolving disputes between licensees regarding the sharing of infrastructure and interconnection.

7.4 AREAS FOR FUTURE RESEARCH AND LIMITATIONS OF CURRENT STUDY

Although the research was carefully prepared, in conducting the research a few shortcomings arose. Firstly, the questionnaire was intense and long. It

could have been structured shorter and to keep the research focussed on the questions that would elicit responses to the research question. Secondly, with open-ended and semi structured questionnaires respondents tend to dwell on issues, requiring the researcher to draw focus to the core issues at times. This made the interviews a little longer than anticipated. Thirdly, the research data collected to be analysed was a significant amount. Fourthly, in validating the perceptions of the stakeholders in certain instances, e.g. the stakeholders perception regarding predictability, the stakeholders views were contrary to the literature of Stern and Holder (1999). In that case, the perceptions of the stakeholders still required mentioning and impacted on the outcome of the research making the "Predictability" element to be perceived as ineffective. This demonstrated that self-reported data from interviewees contains a level of bias subject to personal knowledge. Fifthly, the literature was limited to some extent. For example, Levy and Spiller (1996), are the originators of the regulatory analytical framework and in sourcing literature, limitations arose to conduct a review, as limited sources could be found that have also written on the subject, to indicate the writings of other authors. Sixthly, there were limited perception studies that were conducted on regulatory effectiveness, which in turn limited the literature. Seventhly, a further limitation of this study was that the researcher is an employee of the regulator, and there is possibly a degree of subjectivity in the research. A neutral party can conduct a similar perception study to determine of different results may be obtained.

A definite area for future research is to assess the perceptions of the stakeholders regarding the principle of "regulatory purpose" and what perceptions they hold in this regard. Not including this question in the research limited the data collected and the analysis.

Further research can also be conducted to explore how the regulatory framework impacts on Namibia's global competitiveness. This study was limited in this regard, and was not able to assess this aspect, although the study did make reference to Namibia's GCI ranking to demonstrate it as part of the background to the study and set the context.

7.5 RECOMMENDATIONS ABOUT THE EFFECTIVENESS OF NAMIBIA'S COMMUNICATIONS REGULATORY FRAMEWORK

In conclusion, Namibia's 83rd GCI ranking makes it the 6th competitive country in the African region. Namibia is therefore not considered as competitive on the global stage. Namibia's communications regulatory framework contains most of the tenets of an effective regulatory framework, at least in theory, as contained in the enabling legislation, regulations and policies. To make the regulatory framework effective, the theoretical elements require practical implementation within the shortest possible period of time. Structural and legislative changes in the regulatory frameworks design are required at Ministerial and government shareholding level that will ensure a more effective regulatory framework that is comparable to global trends. In other words, the national policies must be practically implemented and the necessary regulations must be made and applied to addressing the issues within the communications sector in terms of those policies and regulations in a pro-active and deliberate manner.

REFERENCES

Babbie, E & Mouton, J. (2004). *The Practice of Social Research*. OUP. Cape Town.

Blackman C, & Srivastava L. (2011). *Telecommunications Regulation Handbook*. 10th Anniversary Edition. The World Bank, infoDev, International Finance Corporation and ITU.

Burk, R. A. & Rossi, P. H. (1990). *Evaluation research (Social action programs); Utilization*. Sage Publications. California.

Burnard, P. (2004). *Writing a qualitative research report.* Elsevier Ltd. Downloaded from www.elsevierhealth.com/journals/aaen on 4 April 2012.

Clarke, E & Dawson, R (2000). *Evaluation Research. An Introduction to Principles, Methods and Practice.* Sage Publications. London.

Communications Act of 2009. Government Gazette, Vol. 4378, No. 226. (2009)

Constitution of the Republic of Namibia. 1990. Downloaded from http://www.servat.unibe.ch/law/icl/wa00000_.html on 16 September 2012.

Cohen, L., Manion, L. & Morrison, K. (2000). *Research Methods in Education (5th ed).* London: Routledge / Falmer Press.

CRAN (2010, December, 17). *Regulations regarding rulemaking procedures.* Windhoek. Namibia. (Government Gazette, Vol. 4630, No.334).

CRAN (2011a, May, 18). *Regulations Setting out Broadcasting and Telecommunications Service Licence Categories*. Windhoek. Namibia. (Government Gazette, Vol. 4714, No.124).

CRAN (2011b, May, 18). *Regulations Regarding Transitional Procedures for*

Telecommunications and Broadcasting Service Licences and Spectrum Use Licences. Windhoek. Namibia. (Government Gazette, Vol. 4714, No.125).

CRAN (2011c, May, 18). *Regulations Regarding the Submission of Interconnection Agreements and Tariffs.* Windhoek. Namibia. (Government Gazette, Vol. 4714, No.126).

CRAN (2011d, May, 18). *Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences.* Windhoek. Namibia. (Government Gazette, Vol. 4714, No.127).

CRAN (2011e, May, 18). *Regulations Regarding Consumer Complaints.* Windhoek. Namibia. (Government Gazette, Vol. 4714, No.128).

CRAN (2011f, July, 15). *Notice in terms of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences Regulations Regarding Consumer Complaints.* Windhoek. Namibia. (Government Gazette, Vol. 4756, No.217).

CRAN (2011g, October, 14). *Notice of intention to make regulations regarding the Frequency Band Plan.* Windhoek. Namibia. (Government Gazette, Vol. 4807, No.322).

CRAN (2011h, October, 21). *Notice of intention to make regulations regarding Broadcasting License Conditions.* Windhoek. Namibia. (Government Gazette, Vol. 4814, No.331).

CRAN (2011i, November, 25). *Notice of intention to make regulations regarding application and licence fees for service licences.* Windhoek. Namibia. (Government Gazette, Vol. 4839, No.394).

CRAN (2011j, December, 21). *Regulations Regarding Transitional Procedures for Telecommunications and Broadcasting Service Licences and*

Spectrum Use Licences. Windhoek. Namibia. (Government Gazette, Vol. 4855, No.407).

CRAN (2012a, February, 1). *Notice in terms of the regulations regarding licensing procedures for Telecommunications and Broadcasting Service Licenses and Spectrum Use Licences.* Windhoek. Namibia. (Government Gazette, Vol. 4876, No.28).

CRAN (2012b) *Media Release*. 6 February 2012.

CRAN (2012c, March, 20). *Notice in terms of the regulations regarding licensing procedures for Telecommunications and Broadcasting Service Licenses and Spectrum Use Licences.* Windhoek. Namibia. (Government Gazette, Vol. 4899, No.58).

CRAN (2012d, March, 20). *Notice in terms of section 78 of the Communications Act No.8 of 2009.* Windhoek. Namibia. (Government Gazette, Vol. 4905, No.62).

CRAN (2012e, April, 27). *Notice in terms of section 78 of the Communications Act No.8 of 2009.* Windhoek. Namibia. (Government Gazette, Vol. 4938, No.109).

CRAN (2012f, April, 27). *Notice of Intention to make regulations.* Windhoek. Namibia. (Government Gazette, Vol. 4938, No.110).

CRAN (2012g, April, 27). *Regulations Regarding Transitional Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences.* Windhoek. Namibia. (Government Gazette, Vol. 4938, No.111).

CRAN (2012h, April, 27). *Regulations Regarding Transitional Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences.* Windhoek. Namibia. (Government Gazette, Vol. 4938, No.112).

CRAN (2012i, May, 15). *Notice in terms of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences.* Windhoek. Namibia. (Government Gazette, Vol. 4946, No.122).

CRAN (2012j, September, 13). *Regulations regarding licence conditions for telecommunications service licences.* Windhoek. Namibia. (Government Gazette, Vol. 5037, No.308).

CRAN (2012k, September, 13). *Regulations regarding licence conditions for broadcasting service licences.* Windhoek. Namibia. (Government Gazette, Vol. 5037, No.309).

CRAN (2012l, November, 28). *Transfer of control over Powercom (Pty) Ltd ('Powercom') trading as Leo to Telecom Namibia Limited ('Telecom').*

CRAN (2012m, December, 12). *Intention to make regulations in respect of regulations regarding licensee disputes.* Windhoek. Namibia. (Government Gazette, Vol. 5092, No.432).

Cubbin, J & Stern J. (2005). *Regulatory Effectiveness and the Empirical Impact of Variations in Regulatory Governance Electricity Industry Capacity and Efficiency In Developing Countries.* City University and London Business School.

DoC (2006a, April, 18). *Electronic Communications Act.* Cape Town. South Africa (Government Gazette, Vol. 28743, No.364).

DoC (2006b, June, 22). *ICASA Amendment Act.* Cape Town. South Africa (Government Gazette, Vol. 28945, No.620).

ECTA (2009). *Regulatory Scorecard 2009.* SPC Network. Jones Day. Downloaded from http://www.ectaportal.com/en/upload/Scorecards/Regulatory_Scorecard_2009/ECTA_Regulatory_Scorecard_2009_Executive_Summary.pdf on 16 February 2012.

Flick, U. (1998). *An introduction to qualitative research*. Thousand Oaks. CA: Sage.

Galpaya, H & Samarajiva, R (2009). *Measuring Effectiveness of Telecom Regulation Using Perception Surveys.* LIRNEasia. Downloaded from http://lirneasia.net/wp-content/uploads/2009/10/GalpayaSamarajiva_TRE_ITS2009_v5.pdf on 16 January 2013.

Government Digital Services (2012). *Traffic Signals*. United Kingdom. Downloaded from http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/@motor/documents/digitalasset/dg_191933.pdf on 6 September 2013

Gutierrez, L. & Berg, S. (2000). *Telecommunications liberalization and regulatory governance: lessons from Latin America*. Telecommunications Policy 24 (2000) 865 – 884.

Gutierrez, L. (2003). *Regulatory governance in the Latin American telecommunications sector.* Utilities Policy 11 (2003) 225–240.

Hammersley, M. (1992). *What's Wrong with Ethnography?* Routledge, London as cited in Long T., & Johnson M., (2000). *Rigour, reliability and*

validity in qualitative research. Clinical Effectiveness in Nursing 4, p. 30–37. Harcourt Publishers Ltd. London. Downloaded from http://0-ac.els-cdn.com.innopac.wits.ac.za/S1361900400901067/1-s2.0-S1361900400901067-main.pdf?_tid=863def92-66dd-11e2-95c0-00000aab0f6b&acdnat=1359111420_185ae058aa05f259d2a371f1f8f51f12 on 25 January 2013.

Henisz, W. (2000). *The institutional environment for economic growth. Economics and Politics*, 12(1), 1–31.

Henisz, W. (2002). *The institutional environment for infrastructure investmen*t. Industrial and Corporate Change, 11(2), 355–389.

Henisz, W. & Zelner, B. (2001). *The institutional environment for telecommunications investment.* Journal of Economics and Management Strategy, 10(1), 123–147.

Hollway, W. & Jefferson, T. (2000). *Doing Qualitative Research Differently.* Free Association, Narrative and the Interview Method. Sage Publications. London.

Intven, H. & McCarthy, T. (2000). *Telecommunications Regulation Handbook.* InfoDev. Washington DC. USA.

ITU (2011a). *Measuring the Information Society.* Geneva. Switzerland. Downloaded from http://www.itu.int/net/pressoffice/backgrounders/general/pdf/5.pdf on 14 February 2012.

ITU (2011b). *ICT Regulation Toolkit.* Geneva. Switzerland. Downloaded from http://www.ictregulationtoolkit.org/en/Section.2093.html on 14 February 2012.

ITU (2012). *Measuring the Information Society.* Geneva. Switzerland.

Downloaded from http://www.itu.int/net/pressoffice/backgrounders/general/pdf/5.pdf on 17 August 2012.

Jordana, J. & Levi-Faur, D. (2004). *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance.* Edward Elgar, Cheltenham.

Kaapanda, J. *ICT as a Catalyst for Economic Growth*. Paper Presented at the Namibia International Investment Forum 2011. 29 - 30 November 2011. Safari Hotel. Windhoek. Namibia.

Laffont, J. (2003). *Design of Regulatory Institutions in Developing Countries*, in Laffont, J (2003) *Regulation and Development,* Cambridge University Press, Cambridge.

Leedy, P. D. & Ormord, J. E. (2005). *Practical Research: Planning and design (8th ed,).* Pearson Educational International and Prentice Hall: New Jersey.

Levy, B & Spiller, P., (1996). *A framework for resolving the regulatory problem*, in Levy, B & Spiller, P (eds) (1996) *Regulations, Institutions, and Commitment: Comparative Studies of Telecommunications,* Cambridge University Press, Cambridge.

Malik, P. (2008). *Telecom Regulatory and Policy Environment in India: Results and Analysis of the 2008 TRE Survey.* University of Delhi. Delhi.

Melody, W. (2001). *Telecom Reform: Principles, Policies and Regulatory Practices.* Technical University of Denmark. Denmark.

MIB (2007, November 30). *Amendment to Regulations Promulgated Under the Namibian Communications Commission Act, 1992.* Windhoek. Namibia (Government Gazette, Vol. 3942, No.212).

MICT (2009a, February, 18). *Overarching Information Communications Technology (ICT) Policy for the Republic of Namibia 2009*. Windhoek. Namibia

MICT (2009b, February, 18). *Telecommunications Policy for the Republic of Namibia 2009.* Windhoek. Namibia

MICT (2009c, February, 18). *Broadcasting Policy for the Republic of Namibia 2009*. Windhoek. Namibia

MICT (2009d, November, 16*). Communications Act.* Windhoek. Namibia (Government Gazette, Vol. 4378, No.226).

MICT (2010, July, 1). *Notice of Appointment of Persons as Members of the Board of Communications Regulatory Authority of Namibia: State-Owned Enterprises Governance Act, 2006.* Windhoek. Namibia (Government Gazette, Vol. 4514, No.131).

MICT (2011a, May, 18). *Commencement of Communications Act.* Windhoek. Namibia (Government Gazette, Vol. 4714, No.64).

MICT (2011b, November, 15). *Draft Policy on Universal Access and Service in Electronic Communications. Promoting Socio-Economic Progress in the Republic of Namibia.* Windhoek. Namibia.

MICT (2012, May). *Draft Draft Universal Access and Service Policy for Information and Communications Technologies.* Windhoek. Namibia. (unpublished)

Montoya, M. & Trillas, F. (2007). *The measurement of the independence of telecommunications regulatory agencies in Latin America and the Caribbean.* Utilities Policy 15 (2007) 182 - 190.

MTC (2011) *Annual Report 2010/2011.* Downloaded from

http://www.mtc.com.na/annual_reports/2011/annual_report_2011.pdf on 10 April 2012.

Mustafa A,. (2002). *Benchmarking Regulators. Making Telecom Regulators More Effective in the Middle East.* The World Bank Group.

NaCC (2003, April, 24). *Competition Act*. Windhoek. Namibia (Government Gazette, Vol. 2964, No.92).

Namibia Economist (2011, June 24). *Shanapinda at the helm of CRAN.* Downloaded from http://www.economist.com.na/index.php?option=com_content&view=article&id=23593:shanapinda-at-the-helm-of-cran&catid=593:general-news&Itemid=0 on 10 July 2011.

Namibia Economist (2012, August 3). *Namibia: Protest Against Construction of MTC Masts.* Downloaded from http://allafrica.com/stories/201208031234.html on 13 February 2013.

Namibia Prime Minister of Namibia (1991, September, 14). *Namibian Broadcasting Act No. 9 of 1991.* Windhoek. Namibia (Government Gazette, Vol. 223, No.70).

Namibia Prime Minister (1992, July, 31). *Post and Telecommunications Companies Establishment Act 17 of 1992.* Windhoek. Namibia (Government Gazette, Vol. 447, No.91).

Namibia Prime Minister (2006, September, 14). *State-owned Enterprises Governance Act No. 2 of 2006*. Windhoek. Namibia (Government Gazette, Vol. 3698, No.149).

Namibian (2011, February, 28). *MTC Attacks Caps On Cell Call Costs*. Downloaded on 5 February 2012 from

http://allafrica.com/stories/201103040396.html

Namibian (2012a, January 26). *Still no resolution for Bowker Hill*. Downloaded from http://www.namibian.com.na/index.php?id=28&tx_ttnews[tt_news]=92681&no_cache=1 on 13 February 2013.

Namibian (2012b, March 2). *More delays for 4G.* Downloaded from http://www.namibian.com.na/index.php?id=28&tx_ttnews[tt_news]=94301&no_cache=1 on 13 February 2013.

Namibian (2012c, March 6). *4G to come soon, Cran.* Downloaded from http://www.namibian.com.na/index.php?id=28&tx_ttnews%5Btt_news%5D=94415&no_cache=1 on 7 May 2012.

NCC (1992, April, 1992). *Namibian Communications Commission Act.* Windhoek. Namibia (Government Gazette, Vol. 384, No.33).

NCC (2006, August, 11). *Granting of a Telecommunications Licence.* Windhoek. Namibia (Government Gazette, Vol. 3676, No.234).

NCC (2009, August, 14). *Amendment of the national cellular telecommunications licences issued to MTC and Cell One under the Namibian Communications Commission Act, 1992 (Act No. 4 of 1992), the Namibian Communications Commission Amendment Act, 1995 (Act No. 1 of 1995) and the Namibian Communications Commission Amendment Act, 2004 (Act No. 4 of 2004)*. Windhoek. Namibia (Government Gazette, Vol. 4321, No.180).

NCC (2010, March, 15). *Amendment of tariffs of mobile operators*. Windhoek. Namibia (Government Gazette, Vol. 4669, No.56).

NEPRU (2007). *Policy Brief No. 18.* NEPRU. Windhoek. Namibia.

Neuman, W. (2011). *Social Research Methods. Qualitative and Quantitative Approaches, 6th edition.* Pearson International Edition. Pearson Education, Inc.

New Era (2012a, February 6). *Telecom buys Leo.* Downloaded on 5 February 2012 from www.newera.com.na/article.php?articleid=42113 on 13 February 2013.

New Era (2012b, February 6). *PM tongue-lashes CRAN.* Downloaded on 5 February 2012 from http://www.newera.com.na/article.php?articleid=42674&title=KIA%20PTA%20tennis%20series%20ranks%20players on 6 June 2012.

NPC (2012, April). *Census 2011 Final Report.* Downloaded from http://www.npc.gov.na/publications/census_data/Final_Report_Namibia.pdf on 10 April 2012.

OSISA (2011). *Public Broadcasting in Africa: Namibia*. Downloaded from http://www.afrimap.org/english/images/report/Namibia_Broadcasting_Survey_Web.pdf

RIA (2010a). *Mobile Termination Benchmarking: The Case of Namibia. Towards Evidence-based ICT Policy and Regulation.* Volume TWO Policy Paper 3. Stork, C. Cape Town.

RIA (2010b). *Namibian Telecommunication Sector Performance Review. Towards Evidence-based ICT Policy and Regulation*. Volume Two Policy Paper 7. Sherbourne, R & Stork, C. Cape Town.

RIA (2012a). *Research ICT Africa Policy Brief No. 1 of 2012. Africa Prepaid Mobile Price Index 2012: South Africa.* Calandro, E, Gillwald A, & Stork, C. Cape Town.

RIA (2012b, June). *Namibia: laying the foundation for change through ICT's.* 25 June 2012. Stork, C. Cape Town.

Shehadi S, K. (2002).
C*hallenges to Telecommunications Regulation in the MENA Region.* Connexus Consulting. OECD Global Conference on Telecommunications Policy for the Digital Economy. Dubai, UAE, January 21-23, 2002.

Shivute (CJ)., (2011). *MWEB Namibia Limited v Telecom Namibia Limited and others case no. SA2/2008.* Shivute CJ (unreported) 22 August 2011.

SOEGC (2010, August, 12). *Directives in relation to remuneration levels for chief executive officers and senior managers of State-owned enterprises and annual fees and sitting allowances for Board members: State-owned Enterprises Governance Act, 2006.* Windhoek. Namibia (Government Gazette, Vol. 4538, No.174).

Smith, W. (1997). *Utility Regulators—The Independence Debate.* Public Policy for the Private Sector. Note No. 127.

Smuts, J. (2012). *Mobile Telecommunications Ltd v Namibia Communications Commission and others case no. A26/2011.* Smuts J (unreported) 3 April 2012.

Stern, J. & Holder S. (1999). *Regulatory governance: criteria for assessing the performance of regulatory systems. An application to infrastructure industries in the developing countries of Asia.* Utilities Policy 8 (1999) 33–50. London Business School, London, UK. Downloaded from http://0-pdn.sciencedirect.com.innopac.wits.ac.za/science?_ob=MiamiImageURL&_cid=271922&_user=1378557&_pii=S0957178799000089&_check=y&_origin=search&_zone=rslt_list_item&_coverDate=1999-03-31&wchp=dGLbVlt-zSkWb&md5=cf65f211dcd58e829dbf1b45161baf87/1-s2.0-

S0957178799000089-main.pdf on 27 February 2012.)

Stork, C. (2011). *Universal Service Baseline Study*. Unpublished.

cken, M. & V. Schneider (2004). *Divergent Convergence: Structures and Functions of National Regulatory Authorities in the Telecommunications Sector.* In J. Jordana and D. Levi-Faur, eds, *The Politics of Regulation: Examining Regulatory Institutions and Instruments in the Age of Governance.* Cheltenham: Elgar, pp. 245-72.

TN (2011). *Annual Report 2010/2011.* Downloaded from http://www.telecom.na/downloads/reports/2010-11/Annual_Report_2010_2011.pdf 28 January 2013.

Thompson, C B & Walker, B L (1998). *Basics of Research (Part 12): Qualitative Research* University of Utah, College of Nursing. Salt Lake City. UT.

Ueitele (J). (2012). *Guinea Fowl Investments Two v Communications Regulatory Authority of Namibia and others case no. A 158/2012*. Ueitele J (unreported) 24 September 2012.

Varoudakis, A. & Rossotto, C. (2004). *Regulatory reform and performance in telecommunications: unrealized potential in the MENA countries.* Telecommunications Policy 28 (2004) 59–78.

Wallace, M. & Kinahan, J. (2011). *A History of Namibia.* Jacana. Cape Town.

Waverman, L. & Koutroumpis, P. (2011). *Benchmarking telecoms regulation – The Telecommunications Regulatory Governance Index (TRGI).* Elsevier Ltd.

World Bank (2007). *Training on Trade in Information and Communication Services World Bank -COMESA –WTO*. Geneva, 23-27 April 2007

downloaded from http://siteresources.worldbank.org/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/Resources/282822-1181923772167/S5-LTuthill1.pdf

WEF (2011a). *The Global Competitiveness Report 2011-2012.* Klaus Schwab.

WEF (2011b). *The Africa Competitiveness Report 2011-2012*. World Bank and the African Development Bank.

Wood, L J., (1970). *Perception Studies in Geography.* Blackwell Publishing. University of Dundee.

WTO *GATS.* Downloaded from http://www.wto.org/english/docs_e/legal_e/26-gats.pdf on 17 January 2013.

APPENDIX A: Information Sheet, Consent Form and Interview Questions

MASTER OF MANAGEMENT IN ICT POLICY AND REGULATION

GRADUATE SCHOOL OF PUBLIC AND DEVELOPMENT MANAGEMENT, UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG, SOUTH AFRICA

Study Title: Assessing the Perceptions of Effectiveness of Namibia's Communications Regulatory Framework

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1.INFORMATION SHEET .....

1.1. BACKGROUND AND OVERVIEW OF THE STUDY.....
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1.4. RESEARCH ETHICS .....

2.CONSENT FORM.....

3.INTERVIEW QUESTIONS.....

1. Information Sheet

Dear Valued Participant,

My name is Stanley Shanapinda, student number 402009. I am a master's student at the Graduate School of Public and Development Management, University of the Witwatersrand.

In order to complete my studies I am conducting research based on the effectiveness of Namibia's communications regulatory framework.

Herewith my invitation to you to take part in this academic study. Participation in this study is absolutely voluntary. It would be appreciated if you agree to take part therein. The purpose and background to the study is outlined below to enable you to make an informed decision to participate.

The research is premised on the below mentioned objectives.

1.1. Background and Overview of the Study

Talks regarding the review of the regulatory framework for the communications sector in Namibia have been ongoing for a number of years, prior to the introduction of the Communications Act in 2011. A few regulatory events took place prior to this as well, making substantial changes to the regulatory landscape. This study thus aims to explore the perceptions of various stakeholders regarding the effectiveness of Namibia's regulatory framework, is it continues to be implemented, while it is still in its infancy.

The views and perceptions of stakeholders such as yourself are vital in reviewing the regulatory activities, especially during its early stages, in order for the policy makers to take note and consider any possible proposal for changes and improvements as the framework continues to be implemented. This study aims to assess the regulatory impact from an academic perspective and will make proposals for improvement. Your participation will thus make this possible and will allow you an opportunity to be consulted and your views duly considered.

1.2. Voluntary Participation

Your participation is absolutely at free will. In the likely event you agree to participate, which I hope you do, please sign the attached consent form, after reading this information form. You may decide to withdraw from the study at any stage during the interview or refuse to answer any questions you are uncomfortable to answer, without having to provide any reasons, unless you opt to do so. You may ask any questions prior to the commencement of the interview.

There are no risks and prejudices attached for participating or refusing to participate in this study. Thank you in advance for taking time in your busy schedule to participate in this study for no payment of any kind.

I trust that you will find the study beneficial for yourself and your organisation, when you do take part, as the study explores themes and topics ranging from regulatory governance, regulatory accountability, transparency, predictability of the decisions of the regulator, the independence of the regulator and to what extent stakeholders such as yourself are consulted in the regulatory decision-making process. In this regard, the final research report, with recommendations will be made available to you and your organisation.

1.3. Confidentiality

All information gathered from this study, including any personal, private and confidential information will be treated as such, and will not be used for any other purpose. You may designate any information as such during the course of the interview. Such designated information will be kept out of the research report.

1.4. Research Ethics

In the unlikely event you have any concerns about the research purpose, confidentiality, the associated risks and definite benefits, or generally about your rights as a willing participant, please do not hesitate to contact Ms. Lucienne Abrahams, Researcher Director, LINK Centre University of the Witwatersrand Johannesburg, South Africa, luciennesa@gmail.com.

2. Consent Form

ASSESSING PERCEPTIONS OF EFFECTIVENESS OF NAMIBIA'S COMMUNICATIONS REGULATORY FRAMEWORK

1. I confirm that I have read and understand the information sheet for the above study and had the opportunity to ask questions.

2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reasons.

3. I understand that the researcher will not identify me by name and will only use the information solely for the purpose of this study, and that my confidentiality as a participant will remain secure.

4. I agree to the use of anonymised quotes in publications.

5. I agree that my data gathered in this study may be stored (after it has been anonymised) in a specialist data centre and may be used for future research.

Please tick ☑ the appropriate box:

Yes	No

Name of Participant:

Date:

Signature:

Name of Researcher:

Date:

Signature:

3. Interview Questions

FOCUS GROUPS SEMI-STRUCTURED INTERVIEW GUIDE

RESEARCH TITLE: ASSESSING PERCEPTIONS OF EFFECTIVENESS OF NAMIBIA'S COMMUNICATIONS REGULATORY FRAMEWORK

1. BIOGRAPHICAL DETAILS OF INTERVIEW PARTICIPANTS

1.1. Participating Organisation:

_____

1.2. Name, Surname and Designation and Role at Organisation:

NO.	SURNAME	DESIGNATION AND ROLE AT ORGANISATION	TITLE
1.			
2.			
3.			
4.			
5.			

2. THE REGULATORY ANALYTICAL FAMEWORK

a. How has parliament and cabinet (Ministers) practically affected the effectiveness of the communications regulatory framework?
b. How have the courts practically affected the effectiveness of the communications regulatory framework?

c. What are those unwritten truths and the informal practices about the way of doing things in Namibia, that affect the powers and actions of parliament, cabinet, courts, individuals or institutions in the communications regulatory framework?
d. What are those social and other conflicting interests between various stakeholders in the communications regulatory framework?
e. What is the amount of bureaucracy experienced with regards to parliamentary, cabinet, ministerial, court and/or regulatory administration processes that impact on regulatory effectiveness?
f. How is CRAN affected in its roles as regulator, by the aforementioned?
g. How can the aforementioned be practically improved?

3. INSTITUTIONAL ENDOWMENT AND THE REGULATORY GOVERNANCE PRINCIPLES

3.1. INDEPENDENCE OF THE REGULATOR

a. Do you think CRAN is created as an independent entity from the industry and government and how does that affect the effectiveness of the framework?
b. CRAN has been in operation since 18 May 2011. How has CRAN operated during this period? Explain your answer.
c. How, do you think, does the 100% shareholding of NPTH (Gov.) in TN, 66% in MTC and 100% in NBC impact on the regulation of TN, MTC and NBC by CRAN?
d. How do you think, does the power of CRAN to issue new licenses, as opposed to the Minister for example, affect the effectiveness of the regulatory framework?
e. How do you think, does the power of CRAN to issue spectrum, as opposed to the Minister, affect the effectiveness of the regulatory framework?
f. How do you think, does the power of CRAN to administer the universal service agency, as opposed to the Minister, affect the effectiveness of the regulatory framework?
g. How do you think, does the requirement that the Ministers of ICT and Finance must approve CRAN's budget affect the effectiveness of the regulatory framework?
h. How do you think, does the way in which the Ministry of ICT and CRAN relate to each other in terms of exercising their roles, impact on the effectiveness of the regulatory framework? Are these roles clearly

defined and how does that impact on the effectiveness of the regulatory framework?

i. How do you think, does the term of appointment and possibility of renewal of the Board and management in terms of the State-owned Enterprise Governance Council, impact on the effectiveness of the regulatory framework?
j. How does the number of employees of CRAN impact on effectiveness of the regulatory framework?
k. How does the way in which stakeholders are consulted by CRAN and/or MICT allow for effectiveness of the regulatory framework?

3.2 APPOINTMENT OF THE REGULATORS BOARD AND REMUNERATION

How do you think, does the way in which the Board of CRAN is appointed, remunerated and dismissed, in terms of the State-owned Enterprise Governance Council, affect the effectiveness of the regulatory framework?

3.3 APPOINTMENT OF THE REGULATORS MANAGEMENT AND REMUNERATION

How do you think, does the way in which the management of CRAN is appointed in terms of the State-owned Enterprise Governance Council, impact the effectiveness of the regulatory framework?

3.4 ACCOUNTABILITY OF THE REGULATOR

How do you think, does the way in which CRAN is held accountable affect the effectiveness of the regulatory framework?

3.5 TRANSPARENCY OF THE REGULATOR

How do you think, does the way in which CRAN is transparent affect the effectiveness of the regulatory framework?

3.6 PREDICTABILITY

How do you think, is CRAN's actions predictable and how does that affect the effectiveness of the regulatory framework?

3.7 GENERAL

How can the aforementioned be improved?

3.8 THE INSTITUTIONAL ENDOWMENT AND REGULATORY INCENTIVES

a. RULES GOVERNING PRICING

How do you think, does the power of CRAN to set tariffs, as opposed to the Minister or the licensees having free reign for example, impact on the effectiveness of the regulatory framework?

b. COMPETITION

How do you think, does the way in which CRAN regulates competition affect the effectiveness of the regulatory framework?

c. MARKET ENTRY

How do you think, has the regulation of market entry affected the effectiveness of the regulatory framework?

d. INTERCONNECTION

How do you think, has the regulation of interconnection affected the effectiveness of the regulatory framework?

e. SHARING OF INFRASTRUCTURE

How do you think, has the regulation of interconnection affected the effectiveness of the regulatory framework?

f. RIGHTS OF WAY

How do you think, has the regulation of rights of way affected the effectiveness of the regulatory framework?

g. SPECTRUM

How do you think, has the regulation of spectrum affected the effectiveness of the regulatory framework?

h. MOBILE NUMBER PORTABILITY

How do you think, will the regulation of mobile number portability affect the effectiveness of the regulatory framework?

i. RESOLUTION OF CONFLICTS

How do you think, does the manner of dealing with conflict affect the effectiveness of the regulatory framework?

4. GENERAL

How can the communications regulatory framework be improved to make it effective?

THANK YOU FOR YOUR TIME AND CO-OPERATION!