



THE UNITED REPUBLIC OF TANZANIA

MINISTRY OF INFORMATION, COMMUNICATION  
AND INFORMATION TECHNOLOGY

TANZANIA COMMUNICATIONS REGULATORY  
AUTHORITY



Ref. No: EB.32/160/01/66

13<sup>th</sup> June, 2023

Chief Executive Officer,  
Habari Node PLC,  
P. O. Box 1215  
**23103 ARUSHA**

### DECISION ON COMPLIANCE ORDER

*(Pursuant to the Compliance Order hearing on 6<sup>th</sup> April 2023 at TCRA Northern Zone Offices, Arusha)*

#### 1. INTRODUCTION

- 1.1 On 15<sup>th</sup> day of April, 2020, Tanzania Communications Regulatory Authority (hereinafter referred to as the “Authority”) issued to **Habari Node PLC** (hereinafter referred to as the “Licensee”), a Regional Application Services Licence for the provision of internet services.
- 1.2 Among the licence conditions, the Licensee is obliged to comply with the relevant provisions of the Acts, Regulations, Authority’s directives and any laws of Tanzania.
- 1.3 Pursuant to section 6(1) of the Electronic and Postal Communications Act, Cap. 306, R. E. 2022) requires any person or a company who wishes to operate any electronic communications system or offer postal communications, electronic communications or content services to apply to the Authority for a licence.
- 1.4 In accordance with Table One of the First Schedule to the Electronic and Postal Communications (Licencing) Regulations 2018 as amended in 2022, building and operating a fiber optic network is within the scope of a Network Facilities Licence.
- 1.5 From December 2022 to January 2023, the Authority carried out audit and assessment of the Licensee’s sites and it was revealed that the Licensee is building and operating fiber optic networks in the Arusha region without having the Network Facilities Licence contrary to section 6(1) of the Electronic and Postal Communications Act (Cap 306).



## **2. COMPLIANCE ORDER**

The Authority issued a Compliance Order requiring the Licensee to submit a written explanation and appear before the Authority **at Northern Zone Office on 6<sup>th</sup> day of April, 2023 at 10:00 am** to show cause as to why Legal and regulatory actions should not been taken against the Licensee for the breach of the Law, Regulations and Licence Conditions.

## **3. COMPLIANCE ORDER HEARING**

The Licensee in compliance with the order, appeared before the Authority on the date and time set for the hearing represented by Mr. Lomayani Laizer, Technical Manager, Mr. Kilusu Mattasia, Business Manager and Magreth Mushi, HR Personnel.

## **4. LICENSEE'S DEFENCE**

- 4.1 In their defence, the Licensee presented a written defence through a letter dated 6<sup>th</sup> April 2023 and made oral submission before the Authority. In addition to the written defence, the Licensee submitted the following documents to support their defence;
- 4.1.1 Letter dated 21<sup>st</sup> February 2006 to TCRA – Application to Migrate from AISP licence to the new Licencing Regime of 2005;
  - 4.1.2 Application Form for Application Services Licence;
  - 4.1.3 Letter dated 5<sup>th</sup> March 2013 to TCRA – Application for renewal of applications service licence;
  - 4.1.4 Monthly Reports submitted to TCRA for Dec. 2022, Nov. 2022 and July 2022, and
  - 4.1.5 Letter of renewal dated 26<sup>th</sup> October 2020 from TCRA to Habari Node.
- 4.2 The Licensee started by giving a brief historical background of the company which started as a registered society, known by the name of Arusha Node Marie (ANM) with its main activities being provision of internet services and Voice over Internet Protocol (VoIP). By 2010, the Licensee changed its status and re – registered the organisation as a limited company with the name Habari Node PLC. The Licensee submitted that Habari Node has therefore been in operation for the past twenty-eight (28) years.
- 4.3 In their letter of defence dated 6<sup>th</sup> April 2023, the Licensee admitted that they have been operating a last mile fiber optic network in Arusha. Their operations have been



mostly around Arusha, particularly in Njiro and Kisongo just after the Arusha airport. The Licensee assured the Committee that none of the laid fibers have gone beyond the District.

4.4 However, further to their defence, the Licensee claimed that to their understanding, fiber optic last mile operations fall under the Application Service Licence. The Licensee cited three main grounds which underpinned their belief:

4.4.1 One, their query on the type of licence they required. In their initial application dated 21<sup>st</sup> February 2006, the Licensee applied for Application Services Licence but made it clear to the Authority that they were not sure with the changes that were implemented on licensing framework, as to which particular type of licence they were supposed to apply for. In their written defence, the Licensee claimed that their query was never given a response or explanation by the Authority and instead proceeded to grant an Application Services Licence without any further directives or conditions. Hence the Licensee's believed that they were given and so operating within and/or under the correct license.

4.4.2 Two, submission of roll out plans to the Authority. In 2013, the Licensee vide a renewal application letter dated 5<sup>th</sup> March 2013 for Application Services Licence submitted a rollout plan as part of the application. The said roll out plan indicated clearly the kind of services that the Licensee was going to provide, which included "high bandwidth internet access through fiber optic – GPON ...". Furthermore, on 26<sup>th</sup> October 2020, the Authority informed the Licensee by a letter about the successful outcome of their application for the National Application Services Licence on the condition that the Licensee submits, among other things, "a roll out plan". The Licensee submitted that there has been no objection or directive to the Licensee's roll out plan or the need to have an additional and/or a separate license, and,

4.4.3 Three, monthly compliance statistical reports submitted to the Authority. The Licensee submitted that they have been submitting monthly reports to the Authority indicating the number of their subscribers who are on fiber optic last mile links. A copy of the July, November and December 2022 reports were submitted to the Committee as proof of this ascertain.



4.5 The Licensee further pleaded before the committee to be pardoned as, despite being in operation for the past twenty-eight years, they have never been in breach of any law or their license conditions and if they were not sure of anything, they always consult the Authority as they did when applying for their license. Licensee further claimed to have not, at any point intended to disguise what they do something which can be seen on their monthly submissions to the Authority which discloses the existence of customers who are served using fibre optic. It was licensee's assertion that, had this been done maliciously, they wouldn't have been disclosing this to the Authority.

4.6 In conclusion, the Licensee expressed their readiness and willingness to receive guidance from the Authority as to what other licenses do they need to obtain so that they can fully be in compliance with the law.

## **5 CONSIDERATION OF LICENSEE'S DEFENCE**

In consideration of Habari Node Limited's defence, the Authority made the following observations: -

5.1 The Licensee has admitted to having constructed and operated fiber optic cables in the Arusha area, more specifically in Njiro and Kisongo. They have further indicated their plans to expand to Kilimanjaro and Mwanza as per their rollout plan submitted to the Authority under their letter of 5<sup>th</sup> March 2013.

5.2 The Authority has noted from the Licensee's defence that the Licensee has on numerous occasions, informed the Authority by way of letters and applications for renewals, monthly compliance statistical reports and rollout plans hi intentions and practice of providing services to his customers using fiber optic. The documents presented were also verified and cross checked in the Authority's Electronic Document Management System (EDMS) and found to have been received.

5.3 The Authority has confirmed that the Licensee's operation has been beyond the scope of its Regional Application Services License.

5.4 It is also taking into consideration the Licensee's defense to the wrongdoing and his readiness and willingness to comply. It is the duty of a Regulator to provide guidance when the same is sought by the regulated entities. It is clear from the evidence brought before the Authority that the licensee sought from the Regulator information



as to the type of license he needed considering the type of business and mode of delivering his service to customers. In consideration of this and all of the above, the Authority decides as hereunder:

## 6 DECISION

6.1 **NOWHEREFORE**, after considerations of the licensee's defence, the Authority, by virtue of Section 114 of the Electronic and Postal Communications Act (Cap 306 R.E. 2022) and section 48 (3) of the Tanzania Communications Regulatory Authority Act [Cap 172], the Authority hereby issues orders to Habari Node PLC as follows:

6.1.1 To immediately stop further deployment of fibre optic cable as this is beyond the scope of his Application Service License; and,

6.1.2 To take necessary and immediate actions required to comply with the law by making an application for a Network Facilities Licence within Thirty (30) days from the date of this order.

6.2 Upon failure by Habari Node PLC to implement the above orders, further legal and regulatory action will be taken without further notice.

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Dr. Jabiri K. Bakari  
**DIRECTOR GENERAL**

Order served upon and received by **Habari Node PLC** on this.....<sup>13<sup>th</sup></sup>.....day of.....June.....2023.

Name: Kabaza Runyeta.....

Signature: .....

Designation: General manager.....



*(This Order is issued in duplicate. Sign both copies and retain your copy while the other copy is to be returned to the Authority to authenticate due service of the Order.)*