

No. 12587

**SWEDEN
and
KENYA, UGANDA and UNITED REPUBLIC
OF TANZANIA**

**Development Credit Agreement—*Second East African
Telecommunications Project* (with annex). Signed at
Washington on 25 May 1970**

Authentic text: English.

Registered by Sweden on 14 June 1973.

**SUÈDE
et
KENYA, OUGANDA et RÉPUBLIQUE-UNIE
DE TANZANIE**

**Contrat de crédit de développement — *Deuxième projet
est-africain relatif aux télécommunications* (avec an-
nexe). Signé à Washington le 25 mai 1970**

Texte authentique : anglais.

Enregistré par la Suède le 14 juin 1973.

DEVELOPMENT CREDIT AGREEMENT¹*(SECOND EAST AFRICAN TELECOMMUNICATIONS PROJECT)*

BETWEEN THE KINGDOM OF SWEDEN, ON THE ONE HAND
AND THE REPUBLIC OF KENYA, THE UNITED REPUBLIC OF TANZANIA
AND THE REPUBLIC OF UGANDA, ON THE OTHER HAND
(HEREINAFTER CALLED THE AGREEMENT)

WHEREAS the Kingdom of Sweden, the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda, desiring to strengthen the cooperation and cordial relations between them, have agreed that as a contribution to the economic and social development of East Africa, the Kingdom of Sweden (hereinafter called the Lender) shall extend to the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda (hereinafter called the Borrowers) a development credit (hereinafter called the Swedish Credit) to assist in the financing of a telecommunications project (hereinafter called the Project), consisting of the 1969-1972 telecommunications development program of the East African Telecommunications Corporation (hereinafter called the Corporation);

WHEREAS the Corporation has entered into a loan agreement of even date² (hereinafter called the Bank Agreement) with the International Bank for Reconstruction and Development (hereinafter called the Bank with regard to further assistance towards the financing of the Project;

WHEREAS the Borrowers have also entered into separate guarantee agreements of even date³ (hereinafter called the Guarantee Agreements) with the Bank guaranteeing the obligations of the Corporation according to the Bank Agreement; and

WHEREAS the Lender, the Borrowers, the East African Community, the Bank and the Corporation have also entered into an agreement of even date⁴ (hereinafter called the Joint Financing Agreement) in respect of the allocation, withdrawal and use of the proceeds of financing under the aforementioned agreements and the execution of the Project, as well as other matters;

NOW THEREFORE the Lender and the Borrowers agree as follows:

Article I. THE SWEDISH CREDIT

1. The Lender shall make available to the Borrowers a development credit in an amount of twenty-seven million Swedish Kronor (SKr 27,000,000) subject to the provisions of the Agreement, of which the attached annex forms an integral part, and to such other provisions as may be agreed upon between the Parties.

2. The Swedish Credit shall be available for withdrawal in an amount of SKr 6,000,000 from the entry into force of the Agreement, in a further amount of SKr 10,000,000 from July 15, 1970 and in its entirety from July 15, 1971.

¹ Came into force on 25 May 1970 by signature, with effect from 9 November 1970, the date when the related Loan Agreement of 25 May 1970 between the International Bank for Reconstruction and Development and the East African Posts and Telecommunications Corporation (see foot-note 2 below) became effective, in accordance with article VII (1).

² See foot-note 3, p. 48 of this volume.

³ See pp. 47, 67 and 57 of this volume, respectively.

⁴ See p. 77 of this volume.

Article II. USE OF THE PROCEEDS OF THE SWEDISH CREDIT

The Borrowers shall cause the proceeds of the Swedish Credit to be used by the Corporation in accordance with the Agreement and the Joint Financing Agreement, to assist jointly with the loan provided for under the Bank Agreement in financing the Project. To that end, the Borrowers shall relend the proceeds of the Swedish Credit to the Corporation on the same terms and conditions with respect to interest and amortizations as apply according to the Bank Agreement. Funds paid by the Corporation to the Borrowers as interest or amortization in respect of the proceeds under the relending, which are not currently required by the Borrowers to service the Swedish Credit shall, for a period of ten years from the date of this Agreement, be used by the East African Community for such projects and in such manner as shall be agreed from time to time between the East African Community and the Swedish International Development Authority acting on behalf of the Lender.

Article III. THE SPECIAL ACCOUNT

The amount to be made available in accordance with article I shall be paid by the Lender, as required to meet requests by the Borrowers for withdrawals, to the credit of an account in Swedish Kronor opened in the books of the Sveriges Riksbank, Stockholm, acting as agent for the Lender. The account shall be denominated "East African Posts and Telecommunications Corporation on behalf of the Governments of Kenya, Tanzania and Uganda, Special Account No. 1" (hereinafter called the Special Account).

Article IV. WITHDRAWAL FROM THE SPECIAL ACCOUNT

1. The Corporation, on behalf of the Borrowers shall be entitled, subject to the provisions of the Agreement and the Joint Financing Agreement, to withdraw from the Special Account such proportion of the reasonable cost of goods and services required for the Project and to be financed by the Lender and the Bank as agreed in accordance with the terms of the Joint Financing Agreement.

2. The closing date for withdrawals shall be June 30, 1974, or such other date as may be agreed upon between the Parties.

Article V. SERVICE OF THE SWEDISH CREDIT

1. The Borrowers shall be obligated, jointly and severally, to pay to the Lender service charge at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Swedish Credit withdrawn from the Special Account and outstanding from time to time. The service charge shall be payable semi-annually on March 15 and September 15 each year. The first payment shall, however, be made not before March 15, 1971. The service charge shall be computed on the basis of a 360-day year of twelve 30-day months.

2. The Borrowers shall be obligated, jointly and severally, to repay to the Lender the principal of the Swedish Credit withdrawn from the Special Account in semi-annual installments payable on March 15 and September 15 commencing September 15, 1980 and ending, March 15, 2020, each installment to and including the installment payable on March 15, 1990 to be one-half per cent ($\frac{1}{2}$ %) of such principal amount and each installment thereafter to be one and one-half per cent ($1\frac{1}{2}$ %) of such principal amount. The Borrowers shall have the right to repay in advance of maturity all or any part of the principal amount of one or more maturities of the Swedish Credit specified by the Borrowers.

3. The principal of and service charge on the Swedish Credit shall be paid by the Borrowers in Swedish Kronor to the Sveriges Riksbank in favor of the Lender.

4. The Borrowers may jointly request the Sveriges Riksbank to allocate in certain portions between them any amount due in payment of principal and service charge on the Swedish Credit. Any such allocation, however, shall not impair or restrict the joint and several obligations of the Borrowers referred to in sections 1 and 2 of this article.

5. During a period of ten years after the date of this Agreement, the Borrowers shall cause the East African Community to pay the service charge to the Lender on behalf of the Borrowers.

6. The principal of and service charge on the Swedish Credit shall be paid without deduction for, and free from, any taxes and charges and free from all restrictions imposed under the laws of the Borrowers or laws in effect in their territories.

Article VI. MISCELLANEOUS

1. The Borrowers shall take all necessary steps within their power to enable the Corporation to perform, and shall not take any action which would prevent the Corporation from performing the covenants, agreements and obligations of the Corporation under the Joint Financing Agreement.

2. The Borrowers shall furnish to the Lender evidence of the authority of the person or persons who will, on behalf of the Borrowers, take any action or execute any document under the Agreement.

3. Any notice or request under the Agreement and any agreement between the Parties contemplated by the Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when delivered through diplomatic channels.

Article VII. EFFECTIVE DATE; TERMINATION

1. The Agreement shall become effective after it has been signed by duly authorized representatives of the Parties and concurrently with the Bank Agreement becoming effective.

2. The Agreement and all obligations of the Parties hereunder, except those set forth in article V and in the annex, shall terminate on a date 25 years after the date of the Agreement or the date upon which the Parties shall have fulfilled all obligations, including those set forth in article V, arising from the Agreement, whichever shall be the earlier.

IN WITNESS WHEREOF, the Kingdom of Sweden, the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda, acting through their representatives thereunto duly authorized, have caused the Agreement to be signed.

DONE in the District of Columbia, United States of America, on the 25th day of May, 1970, in four original copies in English.

For the Kingdom
of Sweden:

[Signed]

By HUBERT DE BESCHE

For the Republic
of Kenya:

[Signed]

By L. O. KIBINGE

For the United Republic
of Tanzania:

[Signed]

By G. M. RUTABANZIBWA

For the Republic
of Uganda:

[Signed]

By E. O. ALLIMADI

ANNEX

The following provisions shall govern the rights and obligations under the Agreement, of which they are considered an integral part with the same force and effect as if they were fully set forth therein.

Paragraph 1. Cancellation and Suspension

1.1. The Borrowers may by notice to the Lender cancel any amount of the Swedish Credit which the Borrowers shall not have withdrawn, or with respect to which the Lender shall not be bound through a special commitment entered into by the Bank pursuant to the Joint Financing Agreement, prior to the giving of such notice.

1.2. If any of the following events shall have happened and be continuing, the Lender may by notice to the Borrowers suspend, in whole or in part, the right of the Borrowers to make withdrawals from the Special Account:

- (a) A default shall have occurred in the payment of principal or service charge under the Agreement.
- (b) The Borrowers, the East African Community or the Corporation shall have failed to meet any other obligation under the Agreement or the Joint Financing Agreement and shall not have rectified such failure after notice by the Lender.
- (c) An extraordinary situation shall have arisen which shall make it improbable that the Borrowers will be able to perform their obligations under the Agreement.
- (d) The right of the Corporation to withdraw the proceeds of the Loan provided for in the Bank Agreement shall have been suspended or terminated, in whole or in part.
- (e) The outstanding principal of the Loan provided for in the Bank Agreement shall have been declared, or become, due and payable in advance of the agreed maturity thereof.
- (f) The Corporation shall have cancelled any part of the Loan provided for in the Bank Agreement without the Borrowers' having cancelled a corresponding proportion of the Swedish Credit.
- (g) A material change shall have been made in the Treaty for East African Co-operation dated June 6, 1967 so as to affect the ability of the Corporation to carry out its obligations under the Joint Financing Agreement, or a material change shall have been made in the East African

Posts and Telecommunications Corporation Act, 1967, without the prior agreement between the Borrowers and the Lender.

(h) One or more of the Borrowers shall have withdrawn from the East African Community or shall have defaulted in any obligation under the Treaty for East African Co-operation dated June 6, 1967 so as to affect adversely the ability of the Borrowers to carry out their obligations under this Agreement or under the Joint Financing Agreement.

1.3. The right of the Borrowers to make withdrawals from the Special Account shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist or until the Lender shall have notified the Borrowers that the right to make withdrawals has been restored, whichever is the earlier, provided, however, that in the case of any such notice of restoration, the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any rights, power or remedy of the Lender in respect of any other or subsequent event described in this paragraph.

1.4. If (a) the right of the Borrowers to make withdrawals from the Special Account shall have been suspended with respect to any amount of the Swedish Credit for a continuous period of thirty days, or (b) by the date specified in article IV, section 2, of the Agreement as the closing date an amount of the Swedish Credit shall remain unwithdrawn from the Special Account, the Lender may by notice to the Borrowers terminate the right of the Borrowers to make withdrawals with respect to such amount. Upon the giving of such notice such amount of the Swedish Credit shall be cancelled.

1.5. No cancellation or suspension by the Lender shall apply to amounts with respect to which the Lender shall be bound through a special commitment entered into by the Bank pursuant to the Joint Financing Agreement.

1.6. Notwithstanding any cancellation or suspension all the provisions of the Agreement shall continue in full force and effect except as in this paragraph specifically provided.

Paragraph 2. Remedies of the Lender

If any event specified in sub-paragraphs 1.2 (a), (d) or (f) of paragraph 1 shall occur and shall continue for a period of thirty days, or if any event specified in sub-paragraphs 1.2 (b), (c), (g) or (h) of paragraph 1 shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Lender to the Borrowers, or if the event specified in sub-paragraph 1.2 (e) of paragraph 1 shall occur, then at any subsequent time the Lender, at his option, may declare the principal of the Swedish Credit then outstanding to be due and payable immediately, and upon any such declarations such principal shall become due and payable immediately, anything in the Agreement to the contrary notwithstanding.

Paragraph 3. Failure to Exercise Rights

No delay in exercising, or omission to exercise any right, power or remedy accruing to either Party under the Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such Party in respect of any default or any acquiescence in any default, affect or impair any right, power or remedy of such Party in respect of any other or subsequent default.

Paragraph 4. Arbitration

(a) Any controversy between the Parties to the Agreement and any claim by either Party against the other arising under the Agreement which cannot be settled in a satisfactory manner through diplomatic channels, within six months, will at the request of either Party submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The Parties to such arbitration shall be the Lender and the Borrowers.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Lender; a second arbitrator shall be appointed by the Borrowers; and the third arbitrator (hereinafter called the presiding arbitrator) shall be appointed by agreement of the

Parties or, if they shall not agree, by the President of the International Court of Justice or failing appointment by him, by the Secretary-General of the United Nations. If either of the Parties shall fail to appoint an arbitrator, such arbitrator shall be appointed by the presiding arbitrator. In case any arbitrator appointed in accordance with this paragraph shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) Arbitration proceedings may be instituted under this paragraph upon notice by the Party instituting such proceeding to the other Party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought, and the name of the arbitrator appointed by the Party instituting such proceeding. Within thirty days after the giving of such notice, the adverse Party shall notify the Party instituting the proceeding of the name of the arbitrator appointed by such adverse Party.

(e) If, within sixty days after the giving of such notice instituting the arbitration proceeding, the Parties shall not have agreed upon a presiding arbitrator, either Party may request the appointment of a presiding arbitrator as provided in sub-paragraph (c) of this paragraph.

(f) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the presiding arbitrator. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) Subject to the provisions of this paragraph and except as the Parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by a majority vote.

(h) The Arbitral Tribunal shall afford to the Parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each Party. Any such award rendered in accordance with the provisions of this paragraph shall be final and binding upon the Parties to the Agreement. Each Party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this paragraph.

(i) The provisions for arbitration set forth in this paragraph shall be in lieu of any other procedure for the determination of controversies between the Parties to the Agreement and any claims by either Party against the other Party arising thereunder.

(j) Service of any notice or process in connection with any proceeding under this paragraph or in connection with any proceeding to enforce any award rendered pursuant to this paragraph shall be made through diplomatic channels.