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Telecoms & Media 2021

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Lexology Getting The Deal Through is delighted to publish the 22nd edition of *Telecoms & Media*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alexander Brown and David Trapp of Simmons & Simmons LLP, for their continued assistance with this volume.



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COMMUNICATIONS POLICY

Regulatory and institutional structure

- 1 | Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

Nigeria's communications sector is primarily regulated by the Nigerian Communications Act (NCA) and the Wireless Telegraphy Act (WTA). The NCA established the Nigerian Communications Commission (NCC), which is charged with the responsibility of regulating the communications sector. The Minister of Communications and Digital Economy (the Minister) under the NCA is vested with the responsibilities of the formulation, determination and monitoring of the general policy for the communications sector in Nigeria to ensure, among other things:

- the utilisation of the sector as a platform for the economic and social development of Nigeria;
- the negotiation and execution of international communications treaties and agreements, on behalf of Nigeria, between sovereign countries and international organisations and bodies; and
- the representation of Nigeria, in conjunction with the NCC, at proceedings of international organisations and on matters relating to communications.

Under the NCA, the NCC is authorised to make and publish regulations and guidelines insofar as it is necessary to give effect to the full provisions of the NCA, among other reasons. The WTA sets out the framework for regulating the use of wireless telegraphy in Nigeria. Foreign ownership restriction does not apply to the provision of communications services in Nigeria as a company with foreign ownership, as long as it is incorporated in Nigeria, is eligible to apply for a licence to provide communications services. Under the Nigerian Investment Promotion Commission Act, a foreign national can own up to 100 per cent of a business or can invest in any business except those on the negative list. None of the communications service authorised in Nigeria is on the negative list.

Authorisation/licensing regime

- 2 | Describe the authorisation or licensing regime.

Under the NCA, there are two broad licensing frameworks:

- an individual licence, which is a type of authorisation in which the terms, conditions and obligations, scope and limitations are specific to the service being provided. The NCC may issue an individual licence by auction, first-come, first-served, beauty contest or through a standard administrative procedure. Presently, there are 26 licence types in the individual licence category. Some of the activities authorised by an individual licence include internet services, fixed wireless access, unified access services, electronic

directory services, internet exchange, international gateway, international cable infrastructure, landing station services, collocation services and commercial basic radio communications network services; and

- a class licence, which is a type of general authorisation in which the terms and conditions or obligations are common to all licence holders. It requires only registration with the NCC for applicants to commence operation. Some of the services subject to a class licence include sales and the installation of terminal equipment (including mobile phones and HF, VHF or UHF radio, etc), repairs and maintenance of telecoms facilities, cabling services, telecentres, cybercafes and the operation of public payphones.

In terms of issuing a licence by an administrative procedure, an entity intending to carry out a service subject to an individual licence shall apply to the NCC in the prescribed form upon the payment of the processing or administrative fee (usually 5 per cent of the licence fee) and the licence fee, while a person intending to operate under a class licence is to submit a registration notice in the prescribed form and a registration fee of 10,000 naira to the NCC. Under the NCA, a licence applicant must receive a response to the application within 90 days of submitting it. However, an offer letter is normally issued to applicants for a class licence if the application is complete. For individual licences, depending on the service and completeness of the required information, the conclusion of the process can take between four to 12 weeks. The duration of a licence depends on the type of service authorised or spectrum licensed.

The national carrier licence and international gateway licence are valid for 20 years. The unified access service licence is valid for a term of 15 years, while a digital mobile licence (DML) authorising the use of a specified mobile spectrum is valid for a term of 15 years. On the other hand, an internet service, paging, prepaid calling card and special numbering services licence are all valid for a term of five years. The licence fees payable depends on the type of service. Fees payable are fixed by the NCC and published on its website. In addition to licence fees, a prospective licensee is required to pay an administrative charge and, upon grant of the licence, a licensee shall pay an annual operating levy calculated based on net revenue for network operators and gross revenue for non-network operators.

Fixed, mobile and satellite services are regulated and licensed under the NCA and to operate any of these services a licence must be obtained from the NCC. As these services are operator-specific, they fall under the individual licence category. In Nigeria, mobile telecommunications services are differentiated based on whether the operator is authorised by a DML, fixed wireless access licence (FWAL) or unified access service licence. A DML authorises an operator to use appropriate equipment in a designated part of the electromagnetic spectrum and permits it to operate a network for the provision of public telecommunications services. In 2001, the NCC licensed four spectrum packages

in the 900MHz and 1,800MHz bands to Mobile Telecommunications Limited (now ntel), Econet Wireless Nigeria Limited (now Airtel) and MTN Nigeria Communications Limited for use in the provision of digital mobile services. These were later joined by Etisalat and Globacom. A FWAL authorises an operator to use appropriate equipment in a designated part of the electromagnetic spectrum for a term of five years (with renewal for a further five years) and permits it to operate a network for the provision of public telecommunications service. FWALs are granted on a regional basis to reflect the 36 Nigerian states and the federal capital territory, with operators wishing to achieve national coverage required to obtain licences in each of the licensing regions. In 2002, the NCC in authorising FWAL services also offered 42MHz paired in the 3.5GHz band, and a total of 28MHz paired in the 3.5GHz band across the 37 licensing regions of Nigeria to 22 new licensees.

In 2007, the NCC introduced the unified access service licence (UASL) scheme and allocated 40MHz of paired spectrum in the 2GHz band in four equal blocks of 10MHz paired spectrum. On successful allocation of the spectrum, the allottees were issued with a spectrum licence and where necessary, a UASL. The UASL authorises the holder to provide both fixed and mobile services including voice and data, and imposes special conditions requiring its holders to build and operate a telecommunications network to provide voice telephony, video services, multimedia services, web browsing, real-time video streaming, video surveillance, network gaming, email, SMS, file transfer, broadband data and location-based services, and other services that may be authorised, and that the 3G network be built and operated according to certain defined technical standards.

For broadband internet services, a wholesale wireless access service licence (WWASL) authorises the holder to construct, maintain, operate and use a network consisting of a mobile communication system, a fixed wireless access telecommunications system, or a combination of any of these systems comprising radio or satellite or their combination, within Nigeria, deployed for providing point-to-point or switched or unswitched point-to-multipoint communications for the conveyance of voice, data, video or any kind of message. The WWASL also authorises the holder to construct, own, operate and maintain an international gateway, while an infrastructure company licence authorises the holder to provide and operate on a wholesale basis an open access metropolitan fibre network within a designated geographical area in Nigeria in particular, among other things, to construct, maintain and operate fibre optic network facilities.

Commercial satellite services including the operation of space segments and earth stations, satellite gateway services, the sales and installation of satellite terminal equipment and the operation of private network links employing satellite (VSAT) in Nigeria are normally authorised by either global mobile personal communication by satellite (GMPCS) licence or a domestic VSAT network licence. In addition to the general conditions applicable to fixed, mobile and satellite services, a GMPCS licence imposes special conditions requiring the holder to, among other things:

- construct, operate, implement and maintain a GMPCS land earth station for the purposes of establishing, maintaining, validating and controlling command functions and communication with the space segment of a GMPCS system;
- deploy a GMPCS network for the purpose of providing one-way or two point-to-point or point-to-multipoint communications for the conveyance of voice data or video;
- sell telecommunications components and accessories used or intended for use in the installation of GMPCS terminals;
- install GMPCS terminals;
- provide activation, billing, maintenance and related management services for subscribers to GMPCS services, while a domestic VSAT network licence authorises the holder to provide and operate

- VSAT services, whether one-way or two-way, point to point or point to multipoint, including voice, data, vision or any other kind of message for reception within Nigeria or any overseas country;
- operate VSAT services using space segment provided by any satellite organisation approved by NCC; and
- provide a hub or gateway within Nigeria and shall provide hub satellite service to other licensed VSAT operators.

Public Wi-Fi services are authorised under the Regulatory Guidelines for the Use of 2GHz ISM Band for Commercial Telecoms Services. Under these Guidelines, Wi-Fi hotspots shall, inter alia, be deployed in the 2GHz ISM band and must be registered and authorised by the NCC. Also, commercial Wi-Fi hotspot operators must hold a licence for the provision of internet services.

Flexibility in spectrum use

- 3** | Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

Yes, in line with the Frequency Management Policy, an applicant for a commercial frequency licence from the NCC must also hold a commercial operating licence from the NCC (or must have submitted an application for an operating licence to the NCC). The commercial operating licence authorises the provision of a specific service for which the spectrum is intended to be used. An applicant for a frequency licence may also be given a frequency reservation pending the outcome of the processing of his or her commercial operating licence. However, the frequency licence will be subject to the successful approval of the commercial licence.

Under the provision of Spectrum Trading Guidelines issued by the NCC, radio frequency spectrum is tradable, provided such transactions comply with the eligibility criteria set out in the Guidelines

Ex-ante regulatory obligations

- 4** | Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

Historically, NCC has subjected several communications market to ex-ante regulation. For instance, in 2013, the NCC undertook a detailed study of the level of competition in the Nigerian communications market and identified the following communications for ex-ante regulation.

Market segment Sub-segment Voice

- Mobile telephony (including messaging); and
- fixed-line telephony.

Data

- Fixed data, retail data transmission services and leased lines; and
- mobile data (eg, dongles, data cards, tablets, internet through mobile phone connections, eg, 3G, GPRS and Edge).

Upstream segments

- Spectrum;
- tower sites;
- network equipment;
- wholesale broadband or internet access; and
- wholesale leased lines and transmission capacity.

Downstream segments

- Handsets or devices (includes the device operating system); and
- applications/content (includes m-commerce).

The identified markets were further divided into wholesale and retail sub-segment as follows:

- upstream segment;
- voice segment;
- data segment;
- downstream segment;
- services provided as wholesale by an operator to other operators;
- wholesale broadband access;
- wholesale voice termination on voice network;
- services provided as wholesale by an operator to other operators;
- wholesale leased lines and transmission capacity;
- wholesale voice termination on fixed network;
- service provided as retail by each individual operator to its consumers;
- retail voice access on mobile networks;
- retail broadband or internet access on mobile devices;
- supply of applications, content and devices;
- service provided as retail by each individual operator to its consumers;
- retail access on fixed networks;
- retail broadband or internet access on mobile devices at a fixed location;
- service provided as retail by each individual operator to its consumers; and
- retail leased lines.

In this study, the NCC determined that MTN, along with Globacom, collectively held significant market power for the mobile voice and upstream segment respectively. As a result, the NCC (in exercising its power to remedy market failure or prevent anticompetitive practices under the Competition Practice Regulations) imposed on MTN as the operator with significant market power in the mobile voice market, the following obligations:

- accounting separation;
- the collapse of on-net and off-net retail tariff;
- submission of required details to the NCC; and
- a determination of the pricing principle to address the rates charged for on-net and off-net calls for all operators in the mobile voice market.

In respect of the joint dominance collectively held by Globacom and MTN in the market for the upstream segment, the NCC imposed the following obligations on both operators:

- a price cap for wholesale services and a price floor for retail services as to be determined by the NCC periodically;
- accounting separation; and
- submission of required details to the NCC.

In October 2014, the NCC reviewed its direction requiring MTN to collapse its on-net and off-net retail tariff, by approving a stipulated differential for MTN's on-net and off-net call charges. Also, under Regulations 10 to 12 of the Telecommunications Networks Interconnection Regulations 2007 (the Interconnection Regulations) issued by the NCC, one or more communications market relating to interconnection in which a licensee has been declared dominant by the NCC would trigger the application of ex-ante regulatory obligations. In this regard, the dominant licensee would be obligated to:

- meet all reasonable requests for access to its telecommunications network, in particular, access at any technically feasible points;
- adhere to the principle of non-discrimination concerning interconnection offered to other licensed telecommunications operators, applying similar conditions in similar circumstances to all interconnected licensed operators providing similar services and providing

the same interconnection facilities and information to other operators under the same conditions and quality as it provides for itself and affiliates and partners;

- make available on request to other licensed telecommunication operators considering interconnection with its network, information and specifications necessary to facilitate the conclusion of an agreement for interconnection including changes planned for implementation within the next six months, unless agreed otherwise by the NCC;
- submit to the NCC for approval and publish a reference interconnection offer, describing interconnection offerings, broken down according to market need and associated terms and conditions including tariffs; and
- provide access to the technical standards and specifications of its telecommunications network with which another operator shall be interconnected.

Also, the dominant licensee shall, except where the NCC has determined interconnection rates, set charges for interconnection on objective criteria and observe the principles of transparency and cost orientation. The burden of proof that charges are derived from actual costs lies with the licensed telecommunications operator providing the interconnection service to its facilities. The dominant licensee may set different tariffs, terms and conditions for interconnection of different categories of telecommunications services where such differences can be objectively justified based on the type of interconnection provided. A dominant licensee shall also:

- give written notice of any proposal to change any charges for interconnection services under the procedure set out in the guidelines on interconnection adopted by the NCC and the provisions of the operating licence;
- offer sufficiently unbundled interconnection charges, so that the licensed telecommunications operator requesting the interconnection is not required to pay for any item not strictly related to the service requested;
- maintain a cost accounting system which, in the opinion of the NCC, is suitable to demonstrate that its interconnection charges have been fairly and properly calculated, and provides any information requested by the NCC; and
- make available to any person with a legitimate interest on request, a description of its cost accounting system showing the main categories under which costs are grouped and the rules for the allocation of interconnection costs.

The NCC, or any other competent body independent of the dominant telecommunications operator and approved by the NCC, shall verify compliance of the dominant telecommunications operator with the cost accounting system and the statement concerning compliance shall be published by the NCC annually. Last, if interconnection services are not provided through a structurally separated subsidiary, the dominant licensee shall:

- keep separate accounts as if the telecommunications activities in question were carried out by legally independent companies;
- to identify all elements of cost and revenue with the basis of their calculation and the detailed attribution methods used;
- maintain separate accounts in respect of interconnection services and its core telecommunications services and the accounts shall be submitted for independent audit and thereafter published; and
- supply financial information to the NCC promptly on request and to the level of detail required by the NCC.

It is also pertinent to note that in 2020, the NCC decided to impose mandatory accounting separation obligation on Airtel, EMTS, Globalcom, MTN, Mainone Cable and IHS (four mobile network operators, a submarine

cable operator and a collocation and infrastructure sharing provider respectively). Although this determination did not identify (or define) any particular communications market, however, one of the key objectives of the NCC in imposing the accounting separation is to identify and prevent any undue discrimination or practices that substantially lessens competition such as cross-subsidisation and margin squeezes, etc. This determination took effect from 15 July 2020 and the licensees subject to the determination were to commence the full rollout of accounting separation by 1 January 2021. Also, licensees with an annual turnover in excess of 5 billion naira are subject to an accounting separation obligation under the Guidelines on the Implementation of an Accounting Separation Framework issued by the NCC.

Structural or functional separation

5 | Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

Under the Federal Competition and Consumer Protection Act 2018 (the Competition Act), the Competition Tribunal is empowered upon receipt of a monopoly report from the Competition Commission to order the division of any undertaking by the sale of any part of its shares, assets or otherwise, if the monopoly cannot be adequately remedied under any other provision of the Competition Act or is substantially a repeat by that undertaking of conduct previously found by the Competition Tribunal to be a prohibited practice. Also, under the provisions of the Competition Practice Regulations, the NCC, in issuing a direction to remedy an abuse of a dominant position or an anticompetitive practice, may direct a licensee to make changes in actions or activities including structural separation of services or businesses, as a means of eliminating or reducing the abusive or anticompetitive practice.

Universal service obligations and financing

6 | Outline any universal service obligations. How is provision of these services financed?

The Universal Service Provision (USP) Fund established by the NCA is geared towards promoting the widespread availability of network services and applications services by encouraging the installation of network facilities and the provision of network services, application services and broadband penetration in unserved, underserved areas or for underserved groups within the community.

The USP Fund is financed from:

- monies appropriated to the USP Fund by the National Assembly;
- contributions from the NCC based on a portion of the annual levies paid by licensees; and
- gifts, loans, aids and such other assets that may from time to time specifically accrue to the USP Fund.

In practice, the USP secretariat created by the NCC is responsible for implementing and executing USP programmes and USP projects. The USP board supervises and provides broad policy directions for the management of the USP Fund.

Number allocation and portability

7 | Describe the number allocation scheme and number portability regime in your jurisdiction.

The Numbering Regulations 2008 (the Numbering Regulations) regulate the allocation (or assignment) of numbers. The Numbering Regulations provide a regulatory framework for the control, planning, administration, management and assignment of numbers, under section 128(1) of

the NCA. Under the Numbering Regulations, the holder of a communications licence may apply in the prescribed form to the NCC to be assigned numbers (in a set of blocks) by stating:

- the name and contact details of the applicant;
- the licence under which the application is made;
- the services intended to use the assignment;
- the geographic areas for completing calls or transmitting messages to the numbers to be included in the assignment;
- the amount of numbers requested for inclusion in the assignment;
- any particular blocks requested for inclusion in the assignment;
- the utilisation of the assignment predicted for 12 months after the grant of the assignment;
- the current utilisations of existing assignments to the applicant for the intended services;
- an indication of which, if any, portions of the application are confidential to the NCC;
- any other information that the applicant considers necessary or appropriate to justify the application; and
- any other information that the NCC may, from time to time, require to assess the application.

In deciding on an application for an assignment, the NCC shall take into account factors including but not limited to:

- any earlier decisions about assignments to the applicant or other licensees for service similar to the intended services;
- any statements in the licence of the applicant about eligibility for providing services or being assigned numbers;
- the usage conditions;
- the digit analysis capabilities of communications networks that are operated in Nigeria;
- the utilisation of the assignment predicted for 12 months after the grant of the assignment over the next three years;
- the current utilisations of existing assignments to the applicant for the intended services; and
- the quantity and fragmentation of blocks that have not been assigned; and whether or not the licensee has failed to fulfil an obligation in the Numbering Regulations or the National Numbering Plan, or any other numbering related obligation under the Act, has committed a contravention of its regulatory obligation.

The Nigerian Mobile Number Portability Business Rules and Port Order Processes (the MNP Business Rules) sets out the regulatory, legal and technical framework for implementing MNP in Nigeria. The NCC has also issued the Mobile Number Portability Regulations 2014 to provide a regulatory framework for the operation of MNP in Nigeria. Under the terms of the MNP Business Rules, MNP is obligatory for all mobile network operators (MNOs) and is currently available across only Global Systems for Mobile (GSM) networks (although number portability is intended to be implemented in phases that will cover Code Division Multiple Access (CDMA), fixed networks and location).

Under the MNP Business Rules, the MNP is recipient led. To initiate a porting request, the recipient operator would receive a porting request from a subscriber to port their number. The recipient operator, number portability clearinghouse and donor operator then exchange messages to validate the porting request. Porting is free and is normally completed within 48 hours.

A port request, however, can be rejected for several reasons including where the number is not included in the Nigerian numbering plan, where the number was ported within the last 90 days, where the number is not registered in the subscriber information database and where the number is already subject to a pending port request.

Customer terms and conditions

8 | Are customer terms and conditions in the communications sector subject to specific rules?

Yes, the NCA requires each licensee to prepare a consumer code for their respective customers and such consumer code shall be subject to prior approval and ratification by the NCC. The individual consumer code governs the provision of services and related consumer practices applicable to the licensee. Where the NCC designates an industry body to be a consumer forum, any consumer code prepared by such industry body shall be subject to prior approval and ratification by the NCC. A consumer code prepared by a consumer forum, the NCC or licensees shall as a minimum contain model procedures for:

- reasonably meeting consumer requirements;
- the handling of customer complaints and disputes including an inexpensive arbitration process other than a court;
- procedures for the compensation of customers in case of a breach of a consumer code; and
- the protection of consumer information.

The Consumer Code of Practice Regulation (the Consumer Code Regulations) also requires that the individual consumer code after its approval by the NCC be published in at least two national newspapers (or as the NCC may direct), and the approved individual consumer code shall become applicable from the date of its publication.

The provisions of the Competition Act, the NCA and the Competition Practice Regulations may limit the application of certain customer terms and conditions deemed to be undermining of consumer rights or anticompetitive in the communications sector. Also, the Regulations on Enforcement Processes require every licensee to submit the contents and representations contained in any promotions of products or services to the NCC for its prior approval. Failure to obtain the required approval shall constitute a contravention under these Regulations.

Net neutrality

9 | Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

The Internet Industry Code of Practice (the Internet Code) issued by the NCC on 26 November 2019 sets out the obligation of an internet access service provider (IASP) regarding the control or prioritisation of the data that it delivers and other obligations regarding net neutrality. In this regard, the Internet Code inter alia:

prescribes measures that seek to guarantee the rights of internet users to an open internet;

imposes specific transparency obligation on IASPs with respect to performance, technical and commercial terms of its internet access service in a manner that is sufficient for consumers and third parties to make informed choices regarding their uses of such services;

- imposes a positive obligation on IASPs when providing internet access service, to treat all traffic equally, without discrimination, restriction or interference, independently of its sender or receiver, content, application or service, or terminal equipment;;
- bars IASPs from blocking lawful content on the internet, unless under condition of reasonable network management;
- bars IASPs from degrading or impairing lawful internet traffic unless under condition of reasonable network management;
- bars IASPs from engaging in paid-prioritisation;
- prescribes the circumstance in which zero-rating is permissible; and
- sets out circumstances that warrant the use of reasonable network management practices.

Also, the Guidelines for the provision of internet service, the licence for the provision of internet service, the UASL and the WWASL do, however, impose some non-discriminatory obligations on an IASP and holders of these licences. In this regard, an IASP and the respective licensees are required not to show (whether in respect of charges or other terms or conditions applied or otherwise) undue preference to or to exercise undue discrimination against any particular person in respect of the provision of a service or the connection of any equipment approved by the NCC.

Platform regulation

10 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives relating to digital platforms?

Except for the Framework and Guidelines for the Use of Social Media Platforms in Public Institutions, which guides the use of social media within a public institution's communications' environment issued by the National Information Technology Development Agency (NITDA) in January 2019, there is no specific legislation or regulation in respect of digital platforms. However, the NCC, in its Strategic Management Plan for 2020 – 2024 (SMP 2020 – 2024), has indicated an intention to develop a framework for regulating over-the-top (OTT) services and platforms.

Next-Generation-Access (NGA) networks

11 | Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

Yes, in addition to the application of regulatory obligations ordinarily applicable to other categories of communications licensees, the holder of the WWASL will be required by the licence to, among other obligations, roll out services at least as follows:

- three state capitals in year one;
- four additional state capitals in year two;
- six additional state capitals in year three;
- 12 additional state capitals in year four;
- 12 additional state capitals in year five; and
- two-thirds of all local government headquarters in the remaining licence period.

Also, a WWASL requires the holder to supply customer premises equipment adapted in such a way as to reasonably accommodate the needs of hearing-impaired individuals.

Notwithstanding the application of the USP fund for the facilitation of broadband penetration in Nigeria, there are other NCC-initiated projects such as the Wire Nigeria project aimed at facilitating the rollout of fibre optic cable infrastructure in which subsidies are based on per kilometre of fibre and incentives to encourage the rapid deployment of non-commercially viable routes are provided. The State Accelerated Broadband Initiative is aimed at stimulating the demand for internet services and driving affordable home broadband prices where subsidies on terminal equipment based on broadband infrastructure deployed in state capitals and urban and semi-urban centres are provided to operators. Also, under the ongoing Open Access Model for Next Generation Fibre Optic Broadband Network (Open Access Model), there shall be a one-off government financial support to facilitate the rollout of the infrastructure companies. This 65 billion naira financial support will be based on meeting pre-identified targets at certain points in time during the rollout of the broadband infrastructure phase.

Data protection

12 | Is there a specific data protection regime applicable to the communications sector?

Part VI of the General Code (in appendix I of the Consumer Code Regulations) sets out the responsibilities of a licensee in the protection of individual consumer information. These responsibilities stipulate that a licensee may collect and maintain information on individual consumers reasonably required for its business purposes and that the collection and maintenance of such information on individual consumers shall be:

- fairly and lawfully collected and processed;
- processed for limited and identified purposes;
- relevant and not excessive;
- accurate;
- not kept longer than necessary;
- processed under the consumer's other rights;
- protected against improper or accidental disclosure; and
- not transferred to any party except as permitted by any terms and conditions agreed with the consumer, as permitted by any permission or approval of the NCC, or as otherwise permitted or required by other applicable laws or regulations.

Licensees are required by the Consumer Code Regulations to adopt similar provisions guaranteeing the same level of protection (or higher) in the production of their own individual consumer codes.

Also, licensees are required by these responsibilities to meet generally accepted fair information principles including:

- providing notice as to what individual consumer information they collect, and its use or disclosure;
- the choices consumers have concerning the collection, use and disclosure of that information;
- the access consumers have to that information, including to ensure its accuracy;
- the security measures taken to protect the information; and
- the enforcement and redress mechanisms that are in place to remedy any failure to observe these measures.

Also, the NITDA Data Protection Regulations 2019, enacted by the NITDA, specify the conditions in which personal data may be processed. The NITDA Data Protection Regulations set out the lawful basis for processing personal data, the rights of the data subject, obligations of data controllers and conditions under which the cross-border transfer of personal data is permissible. NITDA Data Protection Regulations apply to all sectors of Nigeria's economy, including the communications sector.

Cybersecurity

13 | Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

Yes. The Cybercrime Act 2015 (the Cybercrime Act) provides a unified and comprehensive legal framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. The Cybercrime Act also ensures the protection of critical national information infrastructure and promotes cybersecurity and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights. Also, the National Information Systems and Network Security Standards and Guidelines 2013 and the Nigerian Cybersecurity Framework 2019 issued by NITDA prescribe mandatory minimum standards on seven primary areas of network security and cyber forensic, namely:

- categorisation of information;
- minimum security requirements;

- intrusion detection and protection;
- protection of object identifiable information;
- securing public web servers;
- system firewalls; and
- cyber forensic, and further recommended best practice guidance for public and private sector organisations for instituting measures for enshrining cybersecurity culture and entrenchment of cyber-resiliency in Nigeria.

Big data

14 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

There is no specific legislation on big data. However, the Cybercrime Act has as one of its objectives the promotion of cybersecurity and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights. The Cybercrime Act uses the term 'data', which it defines as 'representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer'. The Cybercrime Act imposes several obligations relating to the retention and confidentiality of data on any public or private entity that provides to users of its services the ability to communicate through a computer system, electronic communication devices, mobile networks and entities that process or store computer data on behalf of such communication service or users of such service. We are unaware of any enforcement initiatives in this regard, that have occurred since the enactment of the Cybercrime Act.

Data localisation

15 | Are there any laws or regulations that require data to be stored locally in the jurisdiction?

Yes. The Guidelines on Nigerian Content in information and communications technology (ICT) issued by the NITDA require ICT companies and data and information management firms in Nigeria to host, respectively, all subscriber and consumer data and government data locally within the country and further provides that they shall not, for any reason, host any government data outside the country without express approval from NITDA and the Secretary to the government of the Federation.

Key trends and expected changes

16 | Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

Some of the ongoing issues and key changes that have occurred in the past year include:

- The Federal Government of Nigeria and the World Bank have entered into an agreement in which the World Bank will extend some credit facilities to Nigeria to support the Nigeria Digital Identification for Development Project. This project seeks to reform the identity ecosystem in Nigeria by among other things increasing the number of persons with a national identification (ID) number, issued by a robust and inclusive foundational ID system, that facilitates their access to services. One of the safeguards for the successful implementation of this project is for Nigeria to enact comprehensive data protection legislation. To this end, a draft of the Data Protection Bill sponsored by the Minister has been put out for public consultation, after which a final version of the draft is to be formally presented as an executive Bill, to the National Assembly for their consideration.

- In the last quarter of 2020, the NCC constituted a committee to review the framework for the licensing of Infrastructure Companies (InfraCo) and to recommend sustainable funding options for the effective implementation of the proposed national fibre project. The constitution of the committee is under the requirements of the National Broadband Plan issued in the first quarter of 2020, and reports of relevant committees set up by the Federal Executive Council (FEC), which includes the Inter-Ministerial Review Committee on Multiple Taxation on Telecommunications Operators over Right-of-Way (RoW) and the Technical Sub-Committee on Right-of-Way for Deepening Broadband Penetration in Nigeria. To date, the committee has met with all the six licensed InfraCos in Nigeria and is considering the challenges facing the InfraCo project, the need for accelerated deployment of fibre infrastructure, means of mitigating the exorbitant RoW charges, among others.
 - The Minister, under the requirement of the National Broadband Plan, has constituted the Broadband Implementation Steering Committee. The Broadband Implementation Steering Committee is charged with the overall responsibility for ensuring the implementation of the National Broadband Plan.
 - Recognising the benefits of 5G in Nigeria, the NCC issued a consultation document on the deployment of 5G technology in Nigeria. Accordingly, the document outlines the strategy that will enable the deployment of 5G Technology in such a manner that will be most beneficial to Nigeria and end users.
 - The NCC decided to impose accounting separation on four MNOs, a submarine cable operator and a collocation and infrastructure sharing provider, and thereafter determined that licensees with an annual turnover in excess of 5 Billion naira are also subject to an accounting separation obligation under the Guidelines on the Implementation of an Accounting Separation Framework issued by the NCC.
 - The NCC is considering the implementation of full national roaming in Nigeria and has issued the following draft regulatory guidelines for public consultation:
 - the Guidelines on National Roaming;
 - the Amended Guidelines on Collocation and Infrastructure Sharing and AIS Business Rules; and
 - the Mobile Virtual Network Operator (MVNO) Licence Framework. As at the time of this writing, this process is yet to be concluded.
 - The NCC has released its SMP 2020 – 2024, which comprises five pillars:
 - Regulatory Excellence, in which the NCC aims to develop adaptive and sustainable regulation to ensure efficient regulatory service to all stakeholders;
 - Universal Broadband Access, in which NCC aims to achieve pervasive and inclusive broadband access by providing incentives for broadband deployment in Nigeria;
 - Promote Development of Digital Economy, in which NCC will provide the necessary regulations and initiatives for the achievement of the Digital Economy policy thrust of the Government;
 - Market Development, in which the NCC, through its policies and directions, will ensure a dynamic market that drives innovation necessary for economic growth; and
 - Strategic Partnering, in which the NCC aims at mutually sustainable collaboration with relevant stakeholders.
- review the Spectrum Trading Guidelines;
 - review and roll out minimum financial health requirements for licensed operators;
 - facilitate the passage of critical national infrastructure bill;
 - expedite the rollout of infrastructure companies; and
 - the revision and expansion of licensing category.

MEDIA

Regulatory and institutional structure

- 17 Summarise the regulatory framework for the media sector in your jurisdiction.

The National Broadcasting Commission Act (the NBC Act) regulates the broadcasting sector in Nigeria. The NBC Act also established the NBC, which is responsible for regulating the broadcasting industry. There is also the Broadcasting Code (BC), which was made by the NBC under the NBC Act. The BC represents the minimum standard for broadcasting in Nigeria.

Ownership restrictions

- 18 Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

Yes, the ownership of broadcasting networks is restricted. The NBC Act requires the NBC to satisfy itself when granting a broadcasting licence that the applicant can demonstrate to the satisfaction of the NBC that he or she is not applying on behalf of any foreign interest. The NBC is also prohibited from granting a licence to either a religious organisation or a political party. Foreign investors can therefore participate in broadcasting activities, provided that the majority of shares in a broadcasting company are held by Nigerians.

In terms of cross-ownership in the broadcasting industry, the NBC Act provides that a person is prohibited from having 'controlling shares in more than two of each of the broadcast sectors of transmission'. Apart from the provisions in the NBC Act, there are no regulations regarding cross-ownership of media companies.

Licensing requirements

- 19 What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

To operate a radio, sound, television, cable or satellite station in Nigeria, an application in the prescribed form is addressed to the Director-General (DG) of the NBC requesting approval to purchase a set of application forms indicating the licence category and proposed location. If granted, the applicant must purchase the application form (50,000 nairas), complete and submit it to the DG. The form is accompanied by a certificate of incorporation, a certified copy of the company's memorandum and articles of association, an engineering design of systems including feasibility study, a letter of undertaking to abide by the terms of the licence and a letter of reference from the company's bankers. Section 9(1) of the NBC Act sets out the criteria used by the NBC in the grant of a broadcast licence and these require the applicant to be a corporate body registered in Nigeria or a broadcasting station owned, established or operated by the federal, state or local government. The NBC is also required to satisfy itself that the applicant is not applying on behalf of any foreign interest. If the NBC is satisfied with the application, it will make a recommendation through the Minister of Information to

Among the initiatives sought to be undertaken by the NCC under the SMP 2020 – 2024 are to:

- develop a framework for regulating OTT services;
- determine the rollout incentives for broadband infrastructure;

the President for the grant of a licence. The licence fee for an initial term of five years is as follows:

- Type Fee, Category A (Any location in the Federal Capital Territory, Lagos and Rivers States):
 - Radio, 20 million nairas;
 - Open TV, 15 million nairas; or
 - Cable TV 10 million nairas; and
- Type Fee, Category B (Any location in all other states):
 - Radio, 15 million nairas;
 - Open TV, 11.25 million nairas;
 - Cable TV, 7.5 million nairas;
 - Public Stations, 5 million nairas for 5 years or 1 million nairas per television or radio channel per annum for 5 years
 - Direct broadcast satellite (single channel), 10 million nairas;
 - Direct-to-home (multi-channel), 25 million nairas;
 - Dealer (wholesale), 120 million nairas per annum;
 - Importer (wholesaler), 120 million nairas per annum; and
 - Retailer, 30 million nairas per annum.

There is no specific timescale for the grant of a licence.

Foreign programmes and local content requirements

20 Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

The NBC Act and the BC regulate the broadcasting of programmes and the minimum local and foreign programme content. Under the BC, foreign content is permissible provided it conveys intrinsic relevance to the education, information and entertainment of the Nigerian citizenry. The BC stipulates that a broadcaster shall ensure that the selection of foreign programmes reflects the development needs of the Nigerian nation and ensure respect for Nigerian cultural sensibilities. Also, except for special religious and sports programmes or events of national importance, Nigerian broadcasters shall not relay foreign broadcasts live on terrestrial platforms. In terms of characterising how a broadcasting programme may qualify as local content, the Addendum to the 6th Edition of the BC (the Addendum) issued by the NBC in 2020 provides that:

- the producer of the programme must be Nigerian, residing in Nigeria;
- the directors of the programme are Nigerian; or
- the authors of the programme are Nigerian.

Also:

- 75 per cent of the leading authors and major supporting cast, including voice actors or on-screen presenters appearing in the programme, must be Nigerian;
- a minimum of 75 per cent of programme expenses and 75 per cent of post-production expenses are paid-for-services provided by Nigerians or Nigerian companies, which may be obtained from programme commission, licensing, advertising-funded programming grants, co-funding arrangements, commercial sponsorship and financing initiatives, all of which must not be subject to 'foreign ownership or arbitrary interference'; and
- where the production is a collaboration with a foreign entity, the producer shall ensure that Nigeria production locations, talents, skills, sets, etc, constitute at least 75 per cent of the entire production.

The Broadcaster is required by the BC to ensure that all productions targeted at the Nigerian market must meet a minimum of 60 per cent local content requirement. The local content requirement applies to all

categories of programming including but not limited to fiction, series, serials, films, documentaries, arts and educational programmes, news, sports events, games, advertising, teleshopping or teletext services. Last, a broadcaster is required by the local content rules in the Addendum to source its local content from independent producers where it is not a direct production of the broadcaster. Failure to comply with the local content rules is a Class B breach under the BC and will attract sanctions.

Advertising

21 How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

Broadcast media advertising is regulated by the NBC Act, the BC, the Advertising Practitioners Council of Nigeria Act (the APCON Act), the Nigerian Code of Advertising Practice and Sales Promotion and the APCON Vetting Guidelines (the Vetting Guidelines). Under the Vetting Guidelines, any broadcast media advertising material must be submitted for approval by the Advertising Standards Panel before it is aired. Online broadcasting is subject to the BC to the extent that it is transmitted by an online or web broadcaster operating in Nigeria, and it shall additionally conform to the provisions of the BC on programming standards.

Must-carry obligations

22 Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

Beyond the local content obligations mandated by the BC, there are no other obligations that specify the basic package of programmes, and/or concerning must-carry. At present, there is no mechanism for financing local content obligations in Nigeria. However, there is a local content development fund into which a subscription broadcaster shall make a mandatory payment, where it fails to comply with its local content obligations regarding its subscription service.

Regulation of new media content

23 Is new media content and its delivery regulated differently from traditional broadcast media? How?

Internet radio and broadcasting streaming signals from and into Nigeria requires a licence from the NBC. In practice, most of the internet radio stations operating in Nigeria already have a radio (or another broadcast) licence issued by the NBC. The BC also requires the local content for this category of licence to be 60 per cent. The regulations and conditions governing news, programmes, advertising and sponsorship concerning other forms of broadcasting or broadcast licence are also applicable to internet broadcasting.

Digital switchover

24 When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

The first phase of the Digital Switch Over (DSO) was successfully launched in five states and the Federal Capital Territory in Nigeria between April 2016 and February 2018. According to the timeline released by the NBC in March 2021, the second phase of the DSO will commence in Lagos State on 29 April 2021 and be extended to four other states by 12 August 2021. The third and final phase of the DSO will commence in December 2021 and is expected to be concluded by 8 December 2022.

The NCC is proposing that the radio frequencies freed up should be reallocated to mobile broadband.

Digital formats

25 | Does regulation restrict how broadcasters can use their spectrum?

Yes. Broadcasters are required to use the spectrum assigned to them under the technical specifications and conditions specified in their licence.

Media plurality

26 | Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

The BC incorporate some provisions that are consistent with media pluralism. Some of these provisions include that the BC requires broadcasters to ensure that all sides to any issue of public interest are equitably presented for fairness and balance and be above inherent biases, prejudices and subjective mindsets. Also, the BC provides that panellists in discussion programmes are expected to reflect various viewpoints, and for political broadcasts, broadcasters are to accord equal airtime to all political parties or views, with particular regard to the duration and the particular time within which such programmes can be broadcasted during political campaign periods.

Key trends and expected changes

27 | Provide a summary of key emerging trends and hot topics in media regulation in your country.

Beyond the ongoing DSO in Nigeria, the other significant development that happened in the media broadcasting sector in 2020 is the introduction of the Addendum by the NBC. The Addendum introduced new provisions, repealed or renumbered certain provisions of the BC. Stations within the meaning of the NBC Act are statutorily obligated to comply with the provisions of the BC and by extension the Addendum. Some of the new changes brought by the Addendum include:

- the requirement of web or online broadcasters to register with the NBC;
- the characterisation of local content in broadcasting;
- prescribing standards for unconventional reportage and user-generated content and how certain types of sports rights may be acquired;
- the production of advertising for local goods and services;
- the prohibition of anti-competitive practices; and
- rules governing wholesale offers.

Failure to comply with these provisions would be deemed as a breach of the BC and will attract sanctions from the NBC.

REGULATORY AGENCIES AND COMPETITION LAW

Regulatory agencies

28 | Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

The Nigerian Communications Commission (NCC) and the Nigerian Broadcasting Commission (NBC) respectively regulate the communications and broadcast sectors, while the Competition Commission created by the Competition Act is the lead antitrust regulator in Nigeria

and is a separate institution from the NCC and NBC. The Competition Commission is charged with the administration and enforcement of the provisions of the Competition Act including the approval of mergers and the protection and promotion of consumer interests.

However, although the Competition Act establishes a concurrent jurisdiction between the Competition Commission and both the NCC and the NBC in matters of competition enforcement, the Competition Commission has precedence over both the NCC and the NBC and, according to the provision of the Competition Act, all appeals or request for review of the exercise of the competition power of the NCC and the NBC shall in the first instance be heard and determined by the Competition Commission before such appeals can proceed to the Competition Tribunal established under the Competition Act.

Appeal procedure

29 | How can decisions of the regulators be challenged and on what bases?

Decisions of federal regulatory and administrative bodies such as the NCC and the NBC are subject to judicial review by the Federal High Court (FHC) and can be litigated up to the Supreme Court. Decisions can be challenged on the grounds of lack of authority, breach of the rules of natural justice, error of law on the face of the record and that the decision has been obtained by fraud. Under the NCA, a person dissatisfied or whose interest is adversely affected by any decision of the NCC must comply with a two-stage process within the stipulated time frame, before proceeding to the FHC for a review of the decision of the NCC. A person who is dissatisfied with the decision of the NCC will request that the NCC provide a statement giving the reason for the decision. Upon receipt of the NCC statement of reasons, the person may ask the NCC in writing for a review of its decision specifying the reason and basis for its request. The NCC, upon receipt of the written submission, shall meet to review its decision, taking into consideration the submission of the dissatisfied person. It is only after the person has exhausted this two-stage process that he or she can proceed to court for a review of the NCC's decision.

Concerning the Competition Commission, the Competition Act provides that an appeal against the decision of the Commission shall lie to the Competition Tribunal.

Competition law developments

30 | Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

In the communications sector, the NCC decided to impose mandatory accounting separation obligation on four mobile network operators (MNOs), a submarine cable operator and a collocation and infrastructure sharing provider respectively to, among other things, identify and prevent any undue discrimination or practices that substantially lessens competition such as cross-subsidisation, margin squeezes, etc. This determination took effect from 15 July 2020 and the licensees subject to the determination are to commence the full rollout of accounting separation by 1 January 2021.

In the broadcast media sector, the Competition Commission on 1 September 2020 commenced an inquiry into the activities of pay-TV providers to determine if there is any violation of the Competition Act. The scope of this inquiry includes whether any particular pay-TV provider has entered into any form of restrictive agreement and/or has abused (or is abusing) its dominant position in the TV broadcasting industry, conducts which are both anti-competitive and prohibited under the Competition Act. To date, this inquiry remains ongoing.

Coronavirus

31 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Several regulatory and policy measures were taken in the telecoms and media sectors in response to the covid-19 pandemic, namely:

- Designation of communications and broadcasting services: Under the COVID-19 Regulations issued by the President, communications and broadcasting services were designated as essential services. This meant that individuals working in the communications and broadcasting sector could continue to work and travel for work during the period when the lockdown was in force.
- Infrastructure sharing and colocation: the NCC approved the sharing of resources by operators throughout the initial period of the covid-19 outbreak and subsequent lockdown. These included fibre-optic cables and other resources in the event of cable cuts and other unforeseen developments during the initial period of the coronavirus outbreak.
- Thee NCC has temporarily relaxed the do-not-disturb directive that prohibited the sending of unsolicited communications to subscribers who have opted out of such communications, to allow MNOs to disseminate public health information concerning the covid-19 pandemic originating from the National Centre for Disease Control (NCDC).
- Through the efforts of the NCC, the NCDC and the Federal Ministry of Health (FMH) partnered with several MNOs to zero rate access to the official website of NCDC and FMH for subscribers on their network.
- In line with social distancing protocols, the relevant departments within the NCC developed e-platforms where all licensing requests, consumer complaints and base transceiver station investigation requests could be channelled and also provided designated email addresses to be used for such requests throughout the pandemic period.

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