

# TELECOMS AND MEDIA

## Nigeria



# Telecoms and Media

Consulting editors

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*Simmons & Simmons*

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Quick reference guide enabling side-by-side comparison of local insights into local regulatory framework, foreign ownership restrictions and licensing requirements; spectrum use considerations; ex ante regulatory obligations; structural / functional separation considerations; universal service obligations; number allocation and portability; customer terms and conditions; net neutrality; platform regulation; next-generation access (NGA) networks; data protection and cybersecurity issues; big data; local storage requirements; foreign programmes and local content requirements; advertising; must-carry obligations; regulation of new media content; digital switchover; media plurality; regulatory agencies, competition law, and appeals; and recent trends.

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Generated 08 August 2023

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## COMMUNICATIONS POLICY

### Regulatory and institutional structure

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 2003 (NCA) and the Wireless Telegraphy Act 1966 (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 with a view to ensuring, 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 services authorised in Nigeria is on the negative list.

*Law stated - 24 April 2023*

### Authorisation/licensing regime

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 through a first come, first served beauty contest or through standard administrative procedure. Presently, there are 26 licence types in the individual licence category. Some of the activities authorised by an individual licence are internet services, fixed wireless access, unified access services, electronic directory services, internet exchange, international gateway, international cable infrastructure and 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 are sales and installation of terminal equipment (including mobile cellular phones and HF, VHF, 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. In accordance with 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 and 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 on the basis of 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 on the basis of 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. An 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 the successful allocation of 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 in Nigeria are regulated under the Commercial Satellite Communications Guidelines 2018 issued by the NCC. Under these Guidelines, there are two broad categories of commercial satellite service authorised:

- space segment operators (SSOs); and
- earth station operators (ESOs).

An SSO is authorised by a landing permit to beam its signal from a named geostationary satellite over the territory of Nigeria. The landing permit does not authorise the SSO to provide any other type of communications services directly to the last-mile user other than wholesale communications services to other communications operators licensed to provide services to last-mile users. The ESOs, on the other hand, are authorised under the applicable operational licence issued by the NCC to provide services to last-mile users in Nigeria.

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

In 2022, NCC a bid to deepen the penetration of communications services in Nigeria issued the License Framework For the Establishment of Mobile Virtual Network Operators (MVNOs) in Nigeria. The MVNO licence is a five-tier classification that has distinctive services to be offered by the players in different tiers and may be implemented in any of the following ways:

- tier 1 virtual operators: these are operators who are able to offer services to their customers without owning any switching or intelligent network infrastructure. They also do not control any numbering resources. They rely on the host licensee to provide wholesale capacity to enable them deliver products and services to customers;
- tier 2 simple facilities virtual operator: these are operators who do not have core switching and interconnect capabilities but can set up their own intelligent network (IN) to provide IN services to customers;
- tier 3 core facilities virtual operator: these are operators who rely on the host licensee to provide radio access capacity at wholesale to deliver products and services to customers. They also own and manage core network elements (switching and interconnections). Revenue generation stems from both outbound and inbound calls that give it full control over its tariff structure;
- tier 4 virtual aggregator or enabler: these are operators who are responsible for purchasing bulk capacity from a licensed network operator, and reselling it to multiple MVNOs, therefore streamlining the process of negotiating capacity agreements with said network operators. In underserved and unserved areas, it is permissible for these operators to provide core telecommunications services to customers by entering into a 'shared rural coverage agreement' with a licensed spectrum owner; and
- tier 5 unified virtual operator: these are operators who are eligible to provide any of the services under tiers 1–4.

Tier 1–4 entrants are expected to pay 5 per cent of the license fee as non-refundable administrative charges, while tier 5 entrants are to pay 50 million naira in non-refundable administrative fees prior to negotiations with the Mobile Network Operators (MNOs). MNOs are not eligible to apply for the MVNO licence.

*Law stated - 24 April 2023*

**Flexibility in spectrum use**

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.

Pursuant to 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.

*Law stated - 24 April 2023*

**Ex-ante regulatory obligations**

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

Historically, the NCC has subjected several communications markets 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 markets for the purpose of ex-ante regulation:

Market segment	Sub-segment
Voice	<ul style="list-style-type: none"> <li>mobile telephony (including messaging); and</li> <li>fixed-line telephony</li> </ul>
Data	<ul style="list-style-type: none"> <li>fixed data, retail data transmission services and leased lines; and</li> <li>mobile data (eg, dongles, data cards, tablets, internet through mobile phone connections, eg, 3G, GPRS, Edge)</li> </ul>
Upstream segments	<ul style="list-style-type: none"> <li>spectrum;</li> <li>tower sites;</li> <li>network equipment;</li> <li>wholesale broadband, internet access; and</li> <li>wholesale leased lines and transmission capacity</li> </ul>
Downstream segments	<ul style="list-style-type: none"> <li>handsets, devices (including the device operating system); and</li> <li>applications, content (Includes m-commerce)</li> </ul>

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, 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, internet access on mobile devices at fixed location	
Service provided as retail by each individual operator to its consumers			Retail leased lines	

In that study, the NCC determined that MTN held, and Globacom and MTN collectively held significant market power for the mobile voice and upstream segment respectively. As a result of which, the NCC (in exercising its power to remedy market failure and (or) prevent anti-competitive 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 tariffs;
- 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 on a periodic basis;
- 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.

In addition, pursuant to Regulations 10 –12 of the Telecommunications Networks Interconnection Regulations 2007 issued by the NCC, one or more communications markets 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 with regard to 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.

In addition, 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 on the basis of the type of interconnection provided.

A dominant licensee shall also:

- give written notice of any proposal to change any charges for interconnection services in accordance with the procedure set out in the guidelines on interconnection adopted by the NCC and the provisions of the operating licence;
- offer sufficiently unbundled charges for interconnection, 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 charges for interconnection 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 costs to interconnection. 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 in fact carried out by legally independent companies, to identify all elements of cost and revenue on 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 made a determination to impose mandatory accounting separation obligations on Airtel, EMTS, Globacom, 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, margin squeezes, etc. This determination took effect on 15 July 2020 and the licensees subject to the determination are to commence the full rollout of accounting separation by 1 January 2021. In addition, licensees with an annual turnover in excess of 5 billion naira are also subject to an accounting separation obligation pursuant to the Guidelines on the Implementation of an Accounting Separation Framework issued by the NCC.

*Law stated - 24 April 2023*

### **Structural or functional separation**

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 Federal Competition and Consumer Protection Tribunal is empowered, upon receipt of a monopoly report from the Federal Competition and Consumer Protection 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. In addition, pursuant to 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 anti-competitive practice.

Last, both the FCCPC and NCC have powers under the Merger Review Regulations 2020 and the Competition Practice Regulations respectively, to impose structural or functional separation between an operator's network and service activities in reviewing mergers that have been identified to present competition concerns within an identified relevant telecommunications market. As of the time of this writing, this power is yet to be exercised with respect to a telecommunications market.

*Law stated - 24 April 2023*

## Universal service obligations and financing

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 are 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.

*Law stated - 24 April 2023*

## Number allocation and portability

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

The Numbering Regulations 2008 (the Numbering Regulations) regulates the allocation (or assignment) of numbers. In this regard, the Numbering Regulations provide a regulatory framework for the control, planning, administration, management and assignment of numbers, pursuant to 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 quantity 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 making a decision 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 services 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 NCA, 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 and is currently available across only global systems for mobile networks (although number portability is intended to be implemented in phases that will cover code division multiple access, fixed networks and location).

Under the MNP Business Rules, 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 a number of 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.

*Law stated - 24 April 2023*

## Customer terms and conditions

### 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 the case of a breach of a consumer code; and
- the protection of consumer information.

The Consumer Code of Practice Regulation 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 Consumer Code Regulations are under review by the NCC, and may be amended by the Draft Consumer Code of Practice Regulations 2018 if eventually approved.

The provisions of the Competition Act, the NCA and (or) the Competition Practice Regulations may limit the application

of certain customer terms and conditions deemed to be undermining consumer rights or anticompetitive in the communications sector. Also, the Enforcement Processes Regulations 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.

*Law stated - 24 April 2023*

## **Net neutrality**

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 and (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 obligations 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 the condition of reasonable network management;
- bars IASPs from degrading or impairing lawful internet traffic unless under the 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.

In addition, 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.

*Law stated - 24 April 2023*

## **Platform regulation**

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 that provide guidance on 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 has indicated an intention to develop a framework for regulating over-the-top services and platforms.

*Law stated - 24 April 2023*

### **Next-Generation-Access (NGA) networks**

**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, there shall be 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.

*Law stated - 24 April 2023*

### **Data protection**

**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 comply with the following principles:

- fairly and lawfully collected and processed;
- processed for limited and identified purposes;
- relevant and not excessive;

- accurate;
- not kept longer than necessary;
- processed in accordance with 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.

In addition, 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 with regard to 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.

In addition, the National Information Technology Development Agency Data Protection Regulations, issued by NITDA, is a set of regulations that specifies the condition in which personal data may be processed. Among other things, the NITDA Data Protection Regulations sets 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.

*Law stated - 24 April 2023*

## Cybersecurity

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.

In addition, 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 forensics, which are:

- categorisation of information;
- minimum security requirements;
- intrusion detection and protection;
- protection of object-identifiable information;

- securing public web servers;
- system firewall; and
- cyber forensic.

The Framework goes on to further recommend best practice guidelines for public- and private-sector organisations for instituting measures for enshrining cybersecurity culture and entronement of cyber-resiliency in Nigeria.

*Law stated - 24 April 2023*

## Big data

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. Although, the Cybercrime Act does not use the term 'big data' but instead 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 a number of 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 by means of 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.

*Law stated - 24 April 2023*

## Data localisation

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

Yes. The Guidelines on Nigerian Content in ICT issued by NITDA require information and communications technology 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 provide 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.

*Law stated - 24 April 2023*

## Key trends and expected changes

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

The Federal Government through the Ministry of Communications and Digital Economy and the NCC have implemented several frameworks to harness and deploy Fifth Generation (5G) technologies for the national good. One of these is the award of 3.5GHz spectrum licence to MTN Communications Nigeria Plc and Mafab Communications Limited. To this end, both awardees have commercially launched 5G services in Nigeria. To consolidate on this, NCC has issued another information memorandum for a proposed auction of the remaining two lots of 100MHz in the GHz spectrum band to support the deployment of 5G in Nigeria. To be eligible to bid at this auction, the applicant does not have to be

a licensed network operator in Nigeria, as a UASL will be issued to the successful bidder. The reserve price, which is the minimum price for one lot of 100MHz time division duplex for a 10-year licence tenure fixed at US\$273,600,000 or its equivalent in naira at the prevailing Central Bank of Nigeria rates at the time of the auction. As of the time of this writing, the NCC is yet to set a date for this auction but we expect that this would be happening within the second quarter of 2023.

*Law stated - 24 April 2023*

## **MEDIA**

### **Regulatory and institutional structure**

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 NBC, which is responsible for regulating the broadcasting industry. There is also the Nigeria Broadcasting Code (BC), which was issued by NBC in the exercise of its power under the NBC Act. The BC represents the minimum standard for broadcasting in Nigeria.

*Law stated - 24 April 2023*

### **Ownership restrictions**

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.

*Law stated - 24 April 2023*

### **Licensing requirements**

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 would be required to purchase the application form at the cost of 50,000 naira and submit the completed application form 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 a 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 the President for the grant of a licence.

The licence fee for an initial term of five years is as follows:

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

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

*Law stated - 24 April 2023*

### Foreign programmes and local content requirements

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. In addition, with the exception of 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 amendment to the 6th edition of the BC (the amendment) 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.

In addition, it goes on to provide that:

- 75 per cent of the leading authors and major supporting cast, including voice actors, or on-screen presenters appearing in the programme are 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 amendment 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.

*Law stated - 24 April 2023*

## Advertising

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 and the Advertising Regulatory Council Act 2022 (the ARCON Act). Under the ARCON Act, an advertisement in any medium directed at or targeting the Nigerian market must be submitted for approval by the Advertising Standards Panel before exposure.

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.

*Law stated - 24 April 2023*

## Must-carry obligations

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) in relation to 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.

*Law stated - 24 April 2023*

### **Regulation of new media content**

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 NBC. In practice, most of the internet radio stations operating in Nigeria already have a radio (or another broadcast) licence issued by 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 in relation to other forms of broadcasting or broadcast licence are also applicable to internet broadcasting.

*Law stated - 24 April 2023*

### **Digital switchover**

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 switchover (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. Although the third and final phase of the DSO was supposed to commence in December 2021 and concluded by 8 December 2022, there have been technical hitches that pushed back the implementation of the final phase of the DSO.

The Nigerian Communications Commission (NCC) is proposing that the radio frequencies freed up should be reallocated to mobile broadband.

*Law stated - 24 April 2023*

### **Digital formats**

Does regulation restrict how broadcasters can use their spectrum?

Yes. Broadcasters are required to use the spectrum assigned to them in accordance with the technical specifications contained in the licence conditions.

*Law stated - 24 April 2023*

## Media plurality

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 are 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. In addition, 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.

*Law stated - 24 April 2023*

## Key trends and expected changes

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

ARCON, the advertising communications regulator in Nigeria issued a directive on 22 August 2022 banning the use of foreign models and voice-over artists on all forms of Nigerian advertising mediums. While the ARCON Act does not expressly provide that a violation of the directive is an offence, however, section 9(p)–(q) empowers ARCON to sanction and prosecute any person or organisation that violates or infringes any provision of a proclamation issued by ARCON that relates to advertising, advertisement and marketing communications in Nigeria. However, at the time of this writing, no steps have been taken by ARCON to enforce the directive, and as such no specific penalties have been set for any violation.

*Law stated - 24 April 2023*

## REGULATORY AGENCIES AND COMPETITION LAW

### Regulatory agencies

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 NBC respectively regulate the communications and broadcast sectors, while the Federal Competition and Consumer Protection Commission (FCCPC), created by the Federal Competition and Consumer Protection Act 2018 (the Competition Act) is the lead antitrust regulator in Nigeria, and is a separate institution from the NCC and NBC. The FCCPC 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, it is pertinent to note that although the Competition Act establishes a concurrent jurisdiction between the FCCPC, and both the NCC and NBC in matters of competition enforcement, the FCCPC will have precedence over both the NCC and 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 NBC shall in the first instance be heard and determined by the

Competition Commission before such appeals can proceed to the Federal Competition and Consumer Protection Tribunal (FCCPT) established under the Competition Act.

*Law stated - 24 April 2023*

## Appeal procedure

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 National Communications Act, 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.

With respect to the FCCPC, the Competition Act provides that an appeal against the decision of the Commission shall lie with the FCCPT.

*Law stated - 24 April 2023*

## Competition law developments

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.

One of the objectives of the amendment is to ensure the maintenance and promotion of efficient market conduct and effective competition in the broadcasting industry. In particular, the amendment seeks to eliminate or prevent an abuse of a dominant position or any form of anti-competitive conduct by broadcasters or licensees or facility providers or equipment suppliers in the broadcasting industry. Accordingly, the amendment, among other things, imposes an obligation on broadcasters to offer at the wholesale level all sports and news content, to ensure the widest possible distribution and viewership of content considered critical to the success and sustainability of new entrants in the pay-TV industry in Nigeria. In *Metro Digital Limited v Multichoice Nigeria Limited & 2 Others* CA/PH/188/2021 (unreported), an appeal against the decision of the Federal High Court that held that Multichoice, a pay-TV provider in Nigeria with exclusive rights to premium contents such as the English Premier League (EPL), news and entertainment, was not legally obligated by the amendment to sub-license rights to any content to Metro Digital Limited (MDL) because the rights were acquired under an existing contract that predates the amendment and in which Multichoice is a sub-licensee with no power and authority to sub-license the contents. On appeal to the Court of Appeal, the court held that Multichoice had failed to establish the existence of any contract, which made it impossible for it to sub-license the requested contents to MDL. The court also made an order that NBC issues a directive to Multichoice to offer the requested contents to MDL. This judgment from the Court of Appeal is notable in that it has confirmed the validity of the amendment, particularly the provision that mandates a broadcaster to offer sports and news programmes and (or) channels to other broadcasters, for retail to residential subscribers in Nigeria upon a reasonable request in writing.

*Law stated - 24 April 2023*

## Jurisdictions

	<b>Australia</b>	Quay Law Partners
	<b>Brazil</b>	Azevedo Sette Advogados
	<b>Bulgaria</b>	Djingov, Gouginski, Kyutchukov & Velichkov
	<b>Egypt</b>	Soliman, Hashish & Partners
	<b>European Union</b>	Simmons & Simmons
	<b>Greece</b>	Nikolinakos & Partners Law Firm
	<b>Ireland</b>	Matheson LLP
	<b>Italy</b>	Simmons & Simmons
	<b>Japan</b>	TMI Associates
	<b>Malta</b>	GVZH Advocates
	<b>Mexico</b>	Nader Hayaux & Goebel
	<b>Nigeria</b>	Streamsowers & Köhn
	<b>Singapore</b>	Drew & Napier LLC
	<b>South Korea</b>	Bae, Kim & Lee LLC
	<b>Switzerland</b>	CORE Attorneys Ltd
	<b>Taiwan</b>	Yangming Partners
	<b>Thailand</b>	Formichella & Sritawat Attorneys at Law
	<b>United Arab Emirates</b>	Simmons & Simmons
	<b>United Kingdom</b>	Simmons & Simmons