

Telecoms and Media

Contributing editors

Alexander Brown and Peter Broadhurst



2018

GETTING THE
DEAL THROUGH 

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Alexander Brown and Peter Broadhurst
Simmons & Simmons LLP

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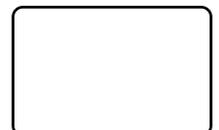


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Preface

Telecoms and Media 2018

Nineteenth edition

Getting the Deal Through is delighted to publish the nineteenth edition of *Telecoms and Media*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

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 **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Cyprus, Kenya and Serbia.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

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.

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 Peter Broadhurst of Simmons & Simmons LLP, for their assistance with this volume.

GETTING THE
DEAL THROUGH 

London
May 2018

Nigeria

Tamuno Atekebo, Otome Okolo and Chukwuyere E Izuogu

Streamsowers & Köhn

Communications policy

1 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 (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 Technology (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, can 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. Communications services are not on the negative list.

2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

Under the NCA, there are two broad licensing frameworks:

- an individual licence, which is operator- and service-specific. 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 generally authorises a whole class of service providers to provide a specific service or operate a particular network. 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.

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 (which has suspended operations), 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 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.

In the broadband ecosystem, 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/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.

Satellite services in Nigeria are normally authorised by a global mobile personal communications by satellite (GMPCS) 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; and provide activation, billing, maintenance and related management services for subscribers to GMPCS services. Licensing of satellite services continues to be by way of a separate licence.

Public Wi-Fi services are authorised under the Regulatory Guidelines for the Use of 2.4GHz 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. In addition, commercial Wi-Fi hotspot operators must hold a licence for the provision of internet services.

3 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 successful approval of the commercial licence.

Radio frequency spectrum is not tradable. A spectrum licence cannot be assigned or transferred to a third party either in whole or in part without the prior approval of the NCC.

At the time of writing, radio frequency spectrum is not tradable. The NCC in 2017 issued the Draft Spectrum Trading Guidelines, which seeks to set out a regulatory framework for trading spectrum on the secondary market such as spectrum transfer, spectrum leasing and spectrum sharing.

4 Ex-ante regulatory obligations

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

The NCA imposes on the NCC the obligation to promote fair competition in the communications industry and to protect communications services and facilities providers from misuse of market power or anti-competitive and unfair practices by other service or facilities providers

or equipment suppliers. The NCA also authorises the NCC to determine whether a licensee is in a dominant position in any aspect of the Nigerian communications market. In April 2013 the NCC undertook a detailed study of the level of competition in the Nigerian communications market and identified the following broad-based markets subject to ex-ante competition regulation:

| Market segment | Sub-segment |
|---------------------|--|
| Voice | <ul style="list-style-type: none"> • Mobile telephony (including messaging); and • fixed-line telephony. |
| Data | <ul style="list-style-type: none"> • Fixed data, retail data transmission services and leased lines; and • mobile data (eg, dongles, data cards, tablets, internet through mobile phone connections, for example, 3G, GPRS, Edge). |
| Upstream segments | <ul style="list-style-type: none"> • Spectrum; • tower sites; • network equipment; • wholesale broadband or internet access; and • wholesale leased lines and transmission capacity. |
| Downstream segments | <ul style="list-style-type: none"> • Handsets/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 fixed location | |
| Service provided as retail by each individual operator to its consumers | | | Retail leased lines | |

This study also 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 this conclusion, the NCC (in exercising its power to remedy 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;
- 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 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 October 2015, the NCC, in a bid to ensure sustainability, growth and development of the data service market, approved the withdrawal of floor price for data services. The NCC stated that it would restore the floor price if any distortion is observed within the Nigerian Communication market.

Regulations 10-12 of the Telecommunications Networks Interconnection Regulations 2007 (the Interconnection Regulations) made by the NCC under its rule-making powers, impose certain obligations on a licensee declared by the NCC to be dominant in one or more communications market relating to interconnection. A dominant licensee is required 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 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;
- 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.

Lastly, 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, so as 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.

As at the time of writing, the NCC has engaged a consultant to undertake a study of the level of competition in the telecoms industry (2010-2015) and where necessary propose regulatory obligations to be imposed on dominant operators in each of the identified telecommunications markets.

5 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 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.

It is also pertinent to mention that under the Investment and Securities Act, where the Security and Exchange Commission (SEC) determines that the business practice of a company substantially prevents or lessens competition, the SEC may in the public interest order the break-up of the company into separate entities in such a way that its operations do not cause a substantial restraint of competition in its line of business or in the market.

6 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 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.

7 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 provides 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 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 operator (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, 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 clearing house 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.

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

The competition provisions of the NCA and the provisions of the Competition Practice Regulations may limit the application of certain customer terms and conditions deemed to be 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.

9 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?

Under the extant regulatory framework, there are no express restrictions or limitations regarding an internet service provider's (ISP) freedom to control or prioritise the type or source of data that it delivers. 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 obligations on the ISP and the holders of these licences. An ISP 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.

The NCC has developed a Draft Internet Industry Code of Practice in Support of Net Neutrality (the Draft Code). With respect to net neutrality, the Draft Code:

- prescribes measures that seek to guarantee the rights of internet users to an open internet;
- imposes specific transparency obligation on Internet Access Service Providers (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; and
- sets out circumstances that warrant the use of reasonable network management practices.

10 Platform regulation

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

There is no specific legislation or regulation in respect of digital platforms.

11 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 category 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 based on per kilometre of fibre and incentives to encourage rapid deployment of non-commercially viable routes are provided. The State Accelerated Broadband Initiative is aimed at stimulating the demand for internet services and to drive 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 financial support will be based on meeting pre-identified targets at certain points in time during the rollout of the broadband infrastructure phase.

12 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 be:

- 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.

Lastly, it is also pertinent to state that recently, there have been indications that NCC intends to enact through administrative rulemaking, a data protection regulation for the telecoms sector because of

the inadequacy of the Consumer Code Regulations (and the General Code) to offer an adequate level of privacy protection to telecoms subscribers. If this regulation is eventually enacted, it will prevail over the privacy protection provisions in the General Code, and may indeed offer a stricter level of protection for the data subject.

13 Cybersecurity

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

Yes. The Cybercrime Act 2015 provides a unified and comprehensive legal framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. The Cybercrime Act 2015 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.

Additionally, the Cybercrime Act 2015 and General Code (applicable in the telecommunications sector) make provision for the application of cybersecurity techniques as it relates to the protection of personal or customer information or when acting as a data controller. In this regard, section 38(5) of the Cybercrime Act requires telecommunication service providers to take appropriate (cybersecurity) measures to safeguard the confidentiality of the data retained, processed or retrieved for the purpose of law enforcement. The General Code in paragraph 35(2) (d), in turn, requires licensees to include in their fair information principles the (cyber)security measures taken to protect customer information, and the enforcement and redress mechanisms that are in place to remedy any failure to observe these measures.

14 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 2015 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 does not use the term 'big data' but 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 that have occurred since the enactment of the Cybercrime Act.

15 Data localisation

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

Yes. The National Information Technology Development Agency (NITDA) Guidelines on Nigerian Content in ICT requires 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 an express approval from NITDA and the Secretary to the government of the Federation.

16 Key trends and expected changes

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

As stated earlier, the NCC has developed a Draft Internet Industry Code of Practice in Support of Net Neutrality. The Draft Code has the following objectives:

- protect the right of internet users to an open internet;

- provide clear guidelines to IASPs on the use of traffic management practices;
- outline the obligations of IASPs in relation to the protection of consumers' personal data;
- outline the obligations of IASPs in the handling of offensive and potentially harmful content, and the protection of minors online;
- ensure adequate safeguards are put in place by IASPs against unsolicited internet communications; and
- establish best practices for internet governance in Nigeria, in line with emerging issues and global trends.

The NCC has requested for stakeholders' comments in respect of the Draft Code.

The NCC in 2017 engaged KMPG and Pricewaterhouse Cooper to respectively develop a framework for determining cost-based pricing for retail broadband, data services and mobile termination rates in Nigeria. It is expected that the outcome of this project will be presented by NCC to stakeholders in 2018.

In 2017, the NCC introduced the Value-Added Service (VAS) Aggregator License Framework. Under this framework, the VAS market is divided into four different segments, which are: the network operators; aggregators; content and application service providers; and developers of content applications and platforms. The framework also introduced a new license category for VAS aggregators.

Following the licensing process for infrastructure companies (InfraCos) for north-east, north-west, south-south, south-east and south-west zones under the open access model commenced by the NCC in 2017, Zinox Technologies and Brinks Integrated Solutions have been issued licences as InfraCos to establish metropolitan fibre-optic infrastructure in the south-east and north-west, respectively.

The process for the acquisition of 9 Mobile, Nigeria's fourth largest MNO, has begun. Teleology Holdings Limited has been announced as the preferred bidder, and Smile Communications as the reserve bidder. 9 Mobile, which was formally operated under the name Etisalat Nigeria, has been undergoing a restructuring since 2017 when its majority shareholder exited the company following default on a syndicated loan facility provided by a consortium of Nigerian and foreign banks.

The National Broadband Plan 2013–2018, which has the objectives of promoting broadband deployment and availability of broadband services at affordable prices, comes up for review in 2018.

Media

17 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 the National Broadcasting Commission (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.

18 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.

19 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 complete the application form 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 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 | Radio | 20 million |
| | Open TV | 15 million |
| | Cable TV | 10 million |
| Category B | Radio | 15 million |
| | Open TV | 11.25 million |
| | Cable TV | 7.5 million |
| Direct broadcast satellite (single channel) | 10 million | |
| Direct-to-home (multi-channel) | 25 million | |

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

20 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. Foreign content is permissible provided it is essential and relevant to the entertainment, education and information of Nigerians. The BC stipulates that a broadcaster relaying foreign content shall ensure the proper acquisition of broadcasting rights to such content. In addition, with the exception of special religious and sports programmes or events of national importance, Nigerian broadcasters shall not link up live to foreign programmes.

A licensee is required to adhere to a minimum of 60 per cent local content for open television and 80 per cent local content for radio. The cable and satellite retransmission stations are mandated to reflect a minimum of 20 per cent local content in their programming. In addition, the NBC issued a regulation on local content in February 2009, which requires all terrestrial television stations operating in the country to air only Nigerian local content during peak family viewing hours, between seven o'clock and ten o'clock in the evening.

There are no specific regulations on broadcast of foreign programmes to mobile devices.

21 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, 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.

By the provisions of the BC, all regulations governing broadcasting including the rules on programmes and advertising shall apply to internet broadcasting.

22 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?**

Yes, under the BC a terrestrial subscription service is required to carry a free-to-air terrestrial public broadcasting station in its area of coverage free of charge. A satellite subscription service is also required by the BC to carry a free-to-air national public broadcasting station free of charge.

At present, there is no mechanism for financing these obligations in Nigeria.

23 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 the NBC. In practice, most of the internet radio stations operating in Nigeria already have a radio (or other broadcast) licence issued by the NBC. The BC also requires the local content for this category of licence to be 80 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.

24 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?**

In 2016, the federal government proposed 20 June 2017 as the new date when Nigeria will switch over from analogue to digital broadcasting. As at the time of writing, the digital switchover has commenced in phases in parts of Nigeria, and is still ongoing.

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

25 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 and conditions specified in their licence.

26 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?**

There are no express provisions respecting media plurality under the NBC Act. However, the BC does incorporate some provisions that appear to support media pluralism. For instance, the BC provides that panellists in discussion programmes are expected to reflect various viewpoints, and for political broadcasts equal airtime shall be provided to all political parties or views, with particular regard to the duration

and the particular time within which such programmes can be broadcast during political campaign periods.

27 Key trends and expected changes**Provide a summary of key emerging trends and hot topics in media regulation in your country.**

The NBC, following the commencement of the digital switchover, has indicated that by the end of 2017, at least 12 states would have completed the digital switchover process. However, the major challenge remains the availability of set-top boxes required to meet the local demand for the digital switchover transition. To drive the local production of set-top boxes, the federal government in October 2017 commissioned the largest West African set-top box manufacturer in Nigeria, which is expected to produce set-top boxes required for the digital switchover transition.

Regulatory agencies and competition law**28 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?**

As stated earlier (in questions 1 and 17) the NCC and the NBC respectively regulate the communications and broadcast sectors. In Nigeria there is no competition law of general application, thus the NCC and NBC individually regulate competition in their respective sectors. However, mergers occurring in both the communications and broadcast sectors are also subject to a review by the SEC in accordance with the ISA. At present, there is no mechanism in place to avoid conflicting jurisdiction of the communications and broadcast sector regulators and the SEC over merger reviews occurring in these sectors.

29 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 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.

30 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.**

In June 2017, the Senate passed the Federal Competition and Consumer Protection Bill 2017 (SB 257). SB 257, which seeks to provide for the establishment of the Federal Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal, and for the promotion of competition in the Nigerian markets at all levels by eliminating monopolies, prohibiting abuse of a dominant market positions and penalising other restrictive trade and business practices. As at the time of writing, SB 257 is awaiting concurrence at the House

of Representatives and subsequently, assent by the President. Both the Executive and the Legislature have indicated a desire to see that SB 257 is enacted into law.

If SB 257 is enacted in its present form, its provisions in respect of competition regulation shall have precedence over the provisions of any other law in existence in Nigeria, including both the NCA and the NBC Act.

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Renewable Energy
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