Telecommunications Law and Practice in Nigeria

Presented By

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Presentation Outline

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Prior to reform, telecommunications and postal services were combined and provided by the same government owned entity, operating under a government department or Ministry – PTTs.

Government took on the roles of operator, regulator and policy maker e.g. the defunct NITEL. There was no accounting/structural separation between the postal and telecommunications activities.

Government-owned operator enjoyed monopoly of the industry (fixed telephony).

The govt. owned incumbents were usually subject to no or minimal, service obligations, resulting in low fixed-line penetration, poor quality of service, long queues, inaccurate and late billing; and limited range of services.
The 1997 WTO’s Basic Agreement for Telecommunications Services secured commitments from countries to reform their industries:

- Monopoly
- Liberalization (Privatisation)
- Towards Fully Competitive Market
Global Reforms Contd.

- **Liberalization policies:**
  - Privatisation of the govt. owned incumbent operator
  - Establishment of independent National Regulatory Authority
  - Separation of operator from regulator and policy maker
  - Opening of the markets to new entrants
History of Telecoms Law and Regulation in Nigeria

- **1960:** The department of Post and Telecommunications (P&T) under the Ministry of Communications regulated network operation and service provisioning.

- **Pre-1992:**
  - Commercialization of Telecom Services
  - NITEL, govt. owned operator
  - Wireless Telegraphy Act

- **1992:** Government initiated partial liberalization reforms.
  - NCC Decree 75 of 1992
  - Establishment of NCC
  - NITEL continued to retain monopoly over voice telephony services
History of Telecoms Law and Regulation in Nigeria

- **1999**: New civilian government opted for full reform of the industry - improve services, eliminate misuse of monopoly power, increase sector efficiency through competition, encourage innovation and introduce advanced services; attract local and foreign investment, extend services to underserved and served areas.

- **2000**: National Telecommunications Policy was officially launched – blueprint for full liberalization of the market.

- In its bid to implement the Policy, the government encouraged foreign investment and inflow of capital and equipment via:
  - Elimination of restriction level of foreign equity participation.
  - Reduction in level of import duties on telecom equipment from 25% to 5% in August 2001 for two years.
History of Telecoms Law and Regulation in Nigeria

- Abridged procedures for importation of telecommunications equipment and development of related software.
- Granted pioneer status to qualified investors.
- Fiscal incentives to encourage local manufacture.

- **2001:**
  - Licenses granted to three Digital Mobile Operators – MTN, EWL, MTEL
  - Licensing of incumbent operator, NITEL as national carrier
  - Licensing of Fixed Wireless Access Operators
  - Attempt to privatize NITEL failed

- **2002:**
  - DML/ Second National Carrier License granted to Globacom
2003: The Nigerian Communications Act (NCA)

- Repealed the Nigerian Communications Commission Act 1992
- Re-established an independent NCC with increased regulatory powers
- Development of new Spectrum Plan for Nigeria; Commercial Spectrum Management transferred to the NCC
- Landmark Resolution of Interconnect Disputes; Settlement of interconnection Rates
- Development of other Regulations and Guidelines e.g. Consumer Protection, Universal Access and Services; Dispute resolutions etc
- Establishment of Consumer Affair Bureau/Parliament
- Establishment of Universal Service Provision Fund (USPF)
- Exclusive jurisdiction vested in the Federal High Court
Dividends of Full Liberalization

- Powers and independence of NRA guaranteed by NCA.

- Universal Access Provisions:
  - Pilot Projects identified for underserved and unserved areas e.g. WIN, SABI
  - Spread market – students, taxi drivers, market women own phones
  - Access to service greatly enhanced i.e. explosion of call centres/cybercafes in all nooks and crannies

- Reduction in Acquisition Costs of New Lines/SIM:
  - In 1999, fixed telephone lines were sold for an average of N100,000.00; today – low end fixed lines are cheaper than N6,000.00.
  - In 1999, SIM cards were sold for N60,000; today they cost less than N500.00

- Employment Generation: Over 20,000 persons are directly employed by the GSM operators; It is estimated that over 1,000,000 persons are indirectly employed e.g. recharge card hawkers, resellers, ‘umbrella’ people.
Case Law

- The bulk of the law suits involving telecom companies centre on recoveries of interconnection debts – akin to any recovery claim. The proper Court to entertain matters arising out of the NCA is the Federal High Court.


- **Blue-Chip v NCC [CA/A/108/2004]** – Currently on appeal, the Suit was instituted in the lower Court challenging NCC’s refusal to grant the Plaintiff a 3G License during the 5 year exclusivity period granted the four DML operators.

- **Registered Trustees of ALTON & Ors v LASG & Ors [FHC/L/CS/517/2006]**
An attempt to usurp the regulatory functions of the NCC by the Lagos State Infrastructure Maintenance and Regulatory Law 2004 was declared illegal, null and void. The State Law purported to regulate the erecting/installation/maintenance of telecoms masts/equipment.

- No significant body of consumer disputes in the Court. Competition rules the market and service providers are more responsive to customer demands and resolve issues faster and
and better than the monopoly days of NITEL where services were provided on a take-it-leave-it basis. NCC has a very active customer-complaint desk that trouble shoots most of the problems by prevailing on service providers to resolve matters. Between June – July 2007, NCC issued directions to MTN, Celtel and Glo to comply with quality of service parameters.

NCC and NCA encourage non-expensive dispute resolution mechanism for customer disputes – the majority of customer complaints stem from the low income earners; service providers ensure that the big spenders are well attended to and their disputes are resolved promptly and satisfactorily.

There also exists no significant body of equipment supply disputes largely because service providers have a non-explosive manner of resolving disputes with equipment suppliers; the agreement usually have dispute resolution provisions that stipulate the venues offshore; and vendors need all the customs they can get from the big network operators and so are interested in resolving disputes as amicably and satisfactorily as possible – benefit accrues from competition.
The post liberalization industry has gradually evolved into an ICT sector due to technological advancements of digitalization, computerization and Internet Protocol networks (greater capacity and integrated multi-services transmission).

IP technology enables the transmission of all kinds of data – voice, video, text, music, images etc in a single delivery/transport medium.

‘Convergence’ is the term commonly used to describe these developments i.e. the ability of distinct network platforms to carry similar range of services or the capacity of a single network to carry a range of services e.g. triple play – 3G mobile networks can provide multimedia services; voice calls over the internet; cable TV operators also offer voice services.

Telcos, ISPs, cable and satellite operators have expanded the scope of their operations to strategically place themselves to benefit from the ‘converging’ market.
The reality of convergence has driven fundamental changes in telecoms regulation. Uncertainty exists as to regulation of converged operations.

The term ‘telecommunications’ is gradually being replaced by ‘communications’ – wide enough to cover telecoms, broadcasting and IT.

NCC introduced Unified Access Service Licensing – basket license that enables an operator to provide any type of service be it mobile, fixed wireless, long distance, internet service etc subject however, to spectrum availability.

3G Spectrum Licenses were granted in March 2007.

A merger of the NCC, National Broadcasting Corporation and related bodies in the IT industry into a ‘super regulator’ for the emerging ICT sector is recommended in line with international best practices. Merger may entail a brand new Act or amendments to the NCA.
Conclusion

- Focus has been more on the expansion and deepening of the market consequent upon liberalization.

- The Nigerian communications market is gradually moving towards full competition, and this in effect means regulatory and licensing environment which requires specialized knowledge and skills on the part of the lawyers.

- Practitioners with such specialized knowledge and skills are required both as advocates and transactional lawyers, in the private and corporate sectors as well as the regulatory agency.

- The dynamic nature of technology requires a corresponding reflection in the regulation of the industry. The development of general competition law is also imperative.
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