

Telecommunications in Nigeria

Legal Framework

Pre 1992 Operations

- Service provision was basically a monopoly by NITEL. NITEL was a 1985 merger of Post & Telegraph Department and Nigerian External Telecommunications Limited and wholly owned by Government.
- Competition was only available as far as equipment supplies was concerned.
- There was no convergence between the 3 arms of communications – telecommunications, information technology and broadcasting.

Post 1992 Operations

- NCC Act No. 75 of 1992 introduced competition and regulation of telecommunications sub-sector. NBC Act No. 38 of 1992 replicated the same provisions for the broadcasting sector.
- NCC and NBC were established as regulatory agencies with powers to promote competition in their respective industries.
- Until 2001 there was no independent regulatory agency for information technology. Now there is one under the Ministry of Science & Technology.
- Major post-1992 Legal Framework issue is the location of regulatory powers for a converged industry in 3 institutions:
 - Convergence dictates that the 3 arms of communications should be regulated from a single point.
 - Advantages include central coordination and regulation, shared skills, manpower, facilities, etc., central management of common resource
 - Current practice leaves the 3 heads, with one body, pulling at different angles.

NCC Act

- Primary objectives of NCC Act are
 - Promotion of competition
 - Increase of teledensity
 - Consumer protection
- The twin instruments for achieving these objectives are
 - Licensing capacity; and
 - Regulatory control

NCC's Licensing Powers

- NCC Act provides for licensing of service providers and also stipulates different licence categories.
- Major criticisms of the licensing provisions are

- Restrictive nature of the licence categories;
 - NITEL appears to be excluded from licensing
 - NCC seems to have total arbitrary powers
- To sort out these and other issues, there are several initiatives for the review and legislation of a new Communications Act.
 - Despite these flaws, several service providers have been licensed and are providing services in the notable areas of basic telephony, ISPs and installation and maintenance of equipment.
 - One major issue in licensing is whether or not there should be a cap on the number of licences issued by NCC in any specific licence category. The answer depends on several factors including
 - Availability of finite resource;
 - Dynamism of the market

NCC's Regulatory Powers

- There are 3 broad arms of Regulation:
 - Economic Regulation, e.g. Tariff Regulation, Consumer Affairs, Competition issues, etc.
 - Technical Regulation e.g. Standards, Frequency issues, type approvals, numbering plan, etc.
 - Social Regulation e.g. Content regulation
- Instruments for Regulation are mainly 3
 - Main legislation – NCC Act
 - Subsidiary legislation – Regulations
 - Licence provisions
- NCC as at date has only one Regulation and because of this lacunae, most of its regulatory powers derive more from licence provisions and statute.
- Major criticism of the regulatory provisions in NCC Act is that it does not leave NCC as an independent organisation – there is room for interference by Government, specifically the Ministry of Communications.

Frequency Management

- Wireless & Telegraphy Act provided the basis for management of Nigeria's frequency by the Minister of Communications.
- Frequency management and planning derive from the fact that
 - Frequencies are a finite resource; and
 - Most telecommunications services require frequency allocations for the provision of their services.
- The enactment of NCC Act and continued operation of WTA created two agencies with near concurrent capacity for managing and regulating the telecommunications industry – MOC and NCC

- Subsequent modifications of WTA has vested all the ministerial powers in the Act on NCC and NCC now has the legal capacity to manage, plan and regulate Nigeria's frequencies.

Privatisation of NITEL

- BPE has responsibility for this under Public Enterprises (Privatisation and Commercialisation) Decree No. 28 of 1999.
- There have however been areas of overlap or over-zealousness on the part of BPE which has created confusion and problems in regulatory processes e.g.
 - Preparation of a new legal framework and regulations for the industry;
 - Licensing of NITEL and Digital Mobile Operators
- Need for privatisation of NITEL cannot be faulted but there is the need to refine the processes and in particular limit BPE to its core area.

Outstanding Legal Framework and Regulatory Issues

- Urgent issues and areas for regulatory intervention and/or review include
 - Consumer protection
 - Increase in teledensity
 - Expansion and provision of services beyond urban areas
 - Licensing of a Second Network Operator, with emphasis on fixed-line operations.
 - Anti-competition issues
- NCC also needs to review and upgrade its internal structures, particularly in the areas of
 - Human capacity
 - Regulatory competence
 - Data and Statistics repository
 - Investigative capacity
- These are in addition to earlier mentioned issues.

Conclusion

- The liberalisation of the communications industry and the licensing of several operators and service providers has thrown up several legal and regulatory challenges.
- The planned privatisation of NITEL and licensing of a second national carrier would further test the strength and resilience of the existing legal and regulatory framework.