



REPORT OF THE PUBLIC INQUIRY ON THE COMPETITION PRACTICES REGULATIONS

1.0 INTRODUCTION

The Nigerian Communications Commission (the Commission) pursuant to its powers under Section 72 of the Nigerian Communications Act 2003 (the Act), commenced the process of reviewing the Draft Competition Practices Regulations for the Industry.

Based on the Commission's policy of participatory rule-making, the Draft Regulations was published on its website for comments from the general public, particularly its licensees and other stakeholders.

Further to this, the Commission received submissions from MTN, Kenna Partners and other stakeholders.

As required by Section 58 of the Act, a Public Inquiry on the Draft Regulations was scheduled for July 27, 2023 and a Notice of the Public Inquiry was published in the Guardian and Daily Trust Newspapers on Friday, June 30, 2023.

2.0 THE PUBLIC INQUIRY

The Public Inquiry held both physically and virtually as scheduled. It commenced at 11:00am and was chaired by the Executive Commissioner Stakeholder Management (EC-SM) Barr. Adeleke Morounfolu Adewolu. Attendees at the Public inquiry included staff of the Commission, representatives of Telecommunications Companies, the Press and other interested stakeholders.

Mr. Vincent Nwobi (*Principal Manager, Policy Competition and Economic Analysis Department*) gave an overview of the amendments made in the Draft Competition Practices Regulations for the Industry. Princess Greatness Eze (*Senior Manager,*

Telecoms Laws & Regulations Unit) made a presentation on the comments received prior to the Public Inquiry.

A. GENERAL OVERVIEW OF THE DRAFT COMPETITION PRACTICES REGULATIONS

The Competition Practices Regulations seeks primarily to ensure that there is fair and equal opportunity accorded all players in the Communications Sector without giving nor allowing undue advantage to any player against another. The Regulations are made to provide a regulatory framework for the promotion of fair competition in the communications sector, and protection against anti-competitive practices. The regulatory framework is nondiscriminatory and takes into consideration the various factors and indices that could play out against smaller operators and in effect take them out of business and or limit their competitive edge.

The conduct of the parties as it relates to competition in the Telecom Industry is basically standardized and guided by the Commission, to ensure a balanced platform for all operators and prospective investors.

B. REVIEW OF COMMENTS RECEIVED BEFORE THE PUBLIC INQUIRY

1. MTN Nigeria Communications Plc.

1.1 Comment

Part III – Anti-Competitive Agreements and Practices – Regulation 15
proposed that a new Regulation 15(2) be included as follows:

The provision of Regulation 11 of these Regulations shall not apply to an agreement or arrangement among Licensees or between Licensees and other undertakings, or a decision of an association of Licensees or a category of agreements or arrangements or decisions of association of Licensees, the entry into which is authorized by the Commission, provided that the Commission is satisfied that the agreement, arrangement or decision:

- a) Contributes to the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;*
- b) Impose on the Licensees concerned, only such restrictions as are indispensable to the attainment of the objectives referred to in paragraph (a) of this regulation*
- c) Is necessary to incentivize investment in the Communications Industry or Does not afford the Licensees/ undertakings concerned with the possibility of eliminating competition in respect of substantial part of the goods or services concerned.*

Response

The Commission notes these comments. The Commission also refers to the provisions of Section 93 of the Nigerian Communications Act, 2003. The Section already gives the Commission the power to make exemptions and allow certain practices to be conducted with an undertaking submitted by Operator.

1.2 Comment

Regulation 28 (1)- Prior Notification Proposed transactions that fall under circumstances described in Regulation 27 (a-d) will require prior notification and approval of the Commission.

Where such proposed transactions involve circumstances provided in Regulation 27 (a), such shares are viewed to be acquired through a capital or secondary market and the licensee shall not be bound by, 'no objection' letter from the Commission within a reasonable period of time after becoming aware of such acquisition.

Response

The Commission notes these comments and will take them into consideration.

2.0 Kenna Partners

2.1 Comment

Regulation 27 – Review Procedures The amendment to this section should include a provision for any transaction that results in the change of the Licensee's status from a private company to a public limited liability company.

There is also the recommendation with respect to Regulation 27 (e) that a satisfactory legal opinion should be a requirement to the Commission especially in circumstances where the transaction is likely to result in substantial lessening of competition in one or more communications market or a licensee/successor company having a dominant position in one or more communications market.

The Regulations should also include the requirement of notifying the Commission for mergers/acquisitions/takeovers without prejudice and in line with the requirements under the Federal Consumer Protection Commission Act for similar transactions.

Response

The Commission notes these comments and will take them into consideration.

2.2 Comment

Regulation 27 (b) It should be clear that the definition of what amounts to ‘control of a licensee’ is the acquisition of over 50% of the shareholding of the licensee.

This section should be redrafted to provide for “*any other transaction that results in a change in control of the licensee*”.

Response

The Commission notes these comments and will take them into consideration.

2.3 Comment

Section 28 – Prior Notification; That with respect to transactions that results in the change of status of a licensee from a Private Company to a Public Limited Liability Company as provided in Regulation 27(d), approval must be sought from the Commission and upon receipt of approval and the successful conversion at the Corporate Affairs Commission (CAC), the following documents must be forwarded to the Commission:

- a. The re-issued Certificate of Incorporation from CAC.
- b. The Special resolution from shareholders and directors to convert the Company from Private to Public.

Response

The Commission notes these comments and will take them into consideration.

3.0 ATC Wireless Infrastructure Limited

3.1 Comment

PART I- Scope and Objectives – Regulation 1.-ATC stated that the sentence seems incomplete and must have been abridged.

Response

The Commission notes these comments and will take them into consideration.

3.2 Comment

Regulation 6 – Procedures ATC stated that this sentence seems incomplete and must have been abridged.

Response

The Commission notes these comments and will take them into consideration.

3.3 Comment

PART VI- Review of Mergers, Acquisitions and Takeovers - Regulation 26. ATC stated that the sentence seems incomplete and must have been abridged.

ATC also requests that the Commission should kindly note that the prior notification and approval of the Federal Competition & Consumer Protection Commission pursuant to the Federal Competition and Consumer Protection Act 2018 is also required for mergers, acquisitions and takeovers and there is therefore need to reconcile this provision with the supremacy clause of Section 104 of the Federal Competition and Consumer Protection Act stating the that FCCP Act is supreme over all other sector specific/regulated industries.

Response

The Commission notes these comments and will take them into consideration.

C. REVIEW OF COMMENTS RECEIVED AT THE PUBLIC INQUIRY

1. MAIN ONE -

Comment

On the FCCPC Establishment Act, the requirements are such that they are of a general nature and are applicable across all sectors, as a result, they are of the opinion that it is better to rely on the NCC Regulations because it is sector specific and narrows the provisions in accordance to the FCCPC Act to a more industry focused regulatory framework.

There is a need for the Commission and FCCPC to work together to probe, detect and rectify any inconsistencies that may exist between the Act and the draft Regulations.

Response

The Commission notes the comments and will take them into consideration

2. FCCPC -

Comment

FCCPC stated that the FCCPC Act is not only ex-ante but is also ex-post. It also takes into consideration mergers and acquisitions amongst other things and is not restrictive. The representative, reiterated the fact that the FCCPC Act is superior to any other law as regards Competition and Consumer Practices and the need to ensure any Regulatory instrument is in tandem with the Act. The representative however agreed that collaboration between the

two agencies will be needed to review any inconsistencies and get more clarity.

Response

The Commission reiterated the process of developing these Regulations and most especially to stress and reassure interested parties that their comments will still be taken into consideration even after the Public Hearing, as there is still a 7-day window within which further comments can be forwarded to the Commission.

D GENERAL COMMENTS

Mr. Oludayo Okeowo (*Deputy Manager, Telecoms Laws & Regulations Unit*) thanked everyone for coming and noted that the session was very informative. He stated that all the issues raised will be considered and consolidated to benefit the Telecommunications Industry.

The Public Inquiry ended at 12:45 pm.

Dated this 27th July, 2023

Professor Umar Garba Danbatta, *FNSE, FRAES, FAEng, FNIEEE*
Executive Vice-Chairman/CEO
NIGERIAN COMMUNICATIONS COMMISSION