



REPORT OF THE PUBLIC INQUIRY ON THE DRAFT SPECTRUM TRADING GUIDELINES

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 Spectrum Trading Guidelines (Draft Spectrum Trading Guidelines).

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 the following stakeholders:

1. Airtel Networks Limited
2. MTN Nigeria Communications Limited
3. Smile Communications Limited
4. VDT Communications Limited

As required by Section 58 of the Act, a Public Inquiry on the Draft Spectrum Trading Guidelines was scheduled for October 5, 2021 and a Notice of the Public Inquiry was published in Punch Newspapers and People's Daily Newspapers on Thursday, August 26, 2021.

2.0. THE PUBLIC INQUIRY

The Public Inquiry held virtually as scheduled, commencing at 11:00am and was chaired by the Executive Vice Chairman, Professor Umar Garba Danbatta ***FNSE, FRAES, FAEng, FNIEEE***. Mr Adeleke Adewolu, the Executive Commissioner, Stakeholder Management, also attended the Inquiry alongside Alhaji Abdulazeez Salman, a Board Commissioner and Chairman of the Board Committee on Licensing and Chief Uche Onwude, a Board Commissioner and Chairman of the Board Committee on Finance and Establishment. The Virtual Public Inquiry was attended by about One Hundred and Twenty (120) participants, including Staff of the Commission, representatives of telecommunications companies, as well as other interested stakeholders.

In his opening remarks, the EC-SM welcomed participants to the forum, and stated that the Public Inquiry is an avenue that enables the Commission develop and review its regulatory instruments by incorporating the comments and suggestions of industry stakeholders. He further added that this process ensures that the regulatory instruments issued by the Commission are in consonance with the best practices in the industry.

The Executive Vice Chairman, Professor Umar Garba Danbatta in his opening remarks stated that the Public Inquiry was consistent with the rule making process of the Commission and also in line with the Strategic Collaboration and Partnership Pillar of the 5 (Five) Point Agenda of the Commission.

The EVC noted that the Spectrum Trading Guidelines is a key regulatory instrumental that will guarantee the optimal use of spectrum resources, particularly in view of the forthcoming 5G spectrum auction.

He also added that the Inquiry was a testament to the commitment of the Commission to keep up with the pace of the dynamic growth in the industry. Subsequently, the EVC enjoined all participants to make their contributions freely and raise issues that will assist the Commission in developing and issuing a regulatory instrument that will continually contribute to the development of the industry and sustain its positive contributions to the Nation's economy.

The Assistant Director, Spectrum Administration Department, Mr. Usman Aliyu, gave an overview of the Draft Spectrum Guidelines, while Mr. Maigana G. Ahmed, Assistant Director, Spectrum Administration Department presented the Commission's responses to the comments received from stakeholders prior to the Public Inquiry.

A. GENERAL OVERVIEW OF THE SPECTRUM TRADING GUIDELINES

The Spectrum Trading Guidelines ensures the optimal use of Spectrum and the provision of an enabling environment for the growth and development of the Communications Industry. The Spectrum Trading Guidelines was reviewed to ensure that the Spectrum Management Policy of the Commission is further liberalized in a manner that enhances communications services across the Country.

B. REVIEW OF COMMENTS RECEIVED BEFORE THE PUBLIC INQUIRY

1. Smile Communications Limited

1.1 Comment

Smile Communications Limited (Smile) recommended that the Commission delete Paragraph 1.3(v) which states that one of the purpose of the Guidelines is to 'increase revenue for holders of idle/excess spectrum'. Smile stated that it promotes the holding of spectrum by entities who may not necessarily need such spectrum.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines

1.2. Comment

Smile recommended that in relation to Paragraph 4.4(vi) both the Buyer and Seller must be in good regulatory and financial standing with the Commission within the current timeline of the proposed trading.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines

1.3. Comment

Smile sought clarity on the legal status of the Governing Board of the Commission as the appropriate body to approach on regulatory issues as stated in Paragraph 5.6 of the Guidelines. The Commission notes that MTN made a similar comment in this regard.

Response

The Commission would consider this comment in the final review of the draft Guidelines.

1.4. Comment

Smile notes that paragraph 5.8 of the Guidelines which provides that the Commission may depart from the Guidelines in the interest of the industry, is vague and may lead to regulatory uncertainty. The Commission notes that VDT Communications made a similar comment in this regard.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines.

1.5. Comment

Smile notes that the increased Net Proceeds to 70% may discourage Licensees to transact in Spectrum Trading. It therefore recommended that the Commission review the provision to 40% for the 2 years moratorium period and then scale it up to 60% afterwards.

Response

The comments are noted and will be considered during further review of the Draft Guidelines.

1.6. Comment

Smile requested that the Commission reconsider the imposition of fines in the Guidelines as this was already covered in the Enforcement Processes Regulations 2019. Airtel Networks Limited, MTN Communications Plc and VDT

Communications Limited made similar comments in this regard.

Response

The comments are noted and will be considered during further review of the Draft Guidelines.

1.7. Comment

Smile sought clarification on the Use-it or Lose-it policy. Specifically, it requested to know if it meant that the buyer who fails to use spectrum under the Guidelines would lose the spectrum.

Response

The Commission affirms that, that is the import of the provision.

1.8. Comment

Smile recommends that the Paragraph 11.3 be redrafted as follows: “Spectrum trading transactions shall include a transfer of licence obligation which may warrant the grant of a new licence which may be all or part of Licence obligations for the original licence duration subject to the fulfilment of roll-out obligations in the states left in the original licence duration”.

Response

The comment is noted and will be considered during further review of the Draft Guidelines.

2. Airtel Networks Limited

2.1. Comment

Airtel recommended that in addition to Paragraph 4.4(v), a proviso be added, stating that licence must have a minimum term of 5 (five) years outstanding in its licence before the Commission allows spectrum trading.

Response

The comment is noted and will be considered during further review of the Draft Guidelines.

2.2. Comment

Airtel recommended that the minimum period for both the Buyer and Seller to be in good regulatory and financial standing with the Commission be reduced to One year. MTN made a similar comment in this regard.

Response

The comment is noted and will be considered during further review of the Draft Guidelines.

2.3. Comment

Airtel accepts the provision of Paragraph 5.9 prohibiting spectrum trading with Mobile Virtual Network Operators (MVNO) and stated further that the

Commission stipulate conditions, which would prevent the buyer from providing access to an MVNO

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines.

2.4. Comment

Airtel recommended that the Commission prorate the percentage of Net proceeds by the quantum of a Seller's utilization of the Spectrum.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines.

2.5. Comment

Airtel sought clarity Paragraph 7.1(iii) which introduces 'Management', a legal entity not known to the NCA 2003. MTN also made a similar comment in this regard.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines.

3. MTN Nigeria Communications Plc

3.1. Comment

MTN recommended that the Commission publish a template on fair spectrum price to guide parties prior to negotiations and to ensure stakeholder buy-in before publication.

Response

The Commission notes that this has already been captured in the Frequency Pricing Regulations.

3.2. Comment

MTN notes that Paragraph 5.8 which provides that the Commission may depart from, vary or modify the Guidelines in the interest of the industry, is inconsistent with Section 72 of the Nigerian Communications Act (NCA) 2003.

Response

The Commission notes that this has already been captured in the Frequency Pricing Regulations.

4. VDT COMMUNICATIONS LIMITED

4.1. Comment

VDT Communications Limited noted that the draft Guidelines vested in the Commission the powers to extend the timeline for communicating its decision by an

additional 15 (fifteen) days; it therefore recommend that the 30 days' timeline stipulated in the earlier Guidelines for the evaluation of the Trade Application Form be retained

Response

The comments is noted and will be considered during further review of the Draft Guidelines.

4.2. Comment

VDT noted that Paragraph 11.3 which provides for the transfer of licence obligations, may give room for Sellers to evade the fulfilment of their licence obligations.

C. REVIEW OF COMMENTS RECEIVED AT THE PUBLIC INQUIRY

The Executive Commissioner, Stakeholder Management noted that there was a need to increase sanctions to ensure they serve as a deterrent and in line with current economic realities.

D. REVIEW OF COMMENTS RECEIVED AFTER THE PUBLIC INQUIRY

1. EMERGING MARKETS TELECOMMUNICATIONS SERVICES LIMITED (EMTS)

1.1 Comment

EMTS recommended in relation to Paragraph 4.4 (vi), that in the case of Spectrum Transfer, the Buyer must be in good regulatory standing with the Commission as stipulated in the Guidelines and where the Seller is in default, it's outstanding shall form part of liabilities transferred to the Buyer or otherwise, the proceeds from the transaction may be used to settle part or all of the Seller's outstanding with the Commission. Both Seller and Buyer should however be in good standing in the case of Spectrum Leasing and Sharing.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines

1.2 Comment

EMTS recommended that in relation to Paragraph 7.1(ii) additional clarification should be provided to state explicitly that the stipulated payment of 70% commission shall not apply, where the spectrum was ab-initio acquired through an auction process.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines

1.3 Comment

EMTS recommended that in relation to Paragraph 7.1(iii), given the short-term duration of such transactions and since they are for trial purposes, they should not attract any fees. Trials of Proof of Concepts are a way of testing and verifying of technology ideas and it brings about innovation. This should be encouraged by not applying fees to this category as it's not a commercial endeavor.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines

1.4 Comment

EMTS noted that Paragraph 7.2 made an attempt to stipulate a fine which was not consummated. Further to this EMTS stated that options of fines, sanctions and penalties need to be dutifully weighed and recommended that a dedicated section ought to be contemplated to give due consideration to the issues.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines

1.5 Comment

EMTS stated in relation to Paragraph 12 that the term "Governing Board of the Commission" is undefined and alien to the Nigerian Communications Act, 2003. It was therefore suggested that "Governing Board of the Commission" be expunged from the Guidelines to avoid unnecessary subjectivity in its interpretation and application.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines.

1.6 Comment

EMTS stated that the provisions in Paragraphs 11.5, 11.6 and 11.7 dwell on operational or procedural matters as well as specificities of spectrum bands, radio techniques and use cases, etc that could change significantly in the course of time as technology and its applications evolve. Their inclusion or specific mention in the Guidelines could unduly constrain the ease and flexibility of procedures involving them, in a manner that may not be purposeful

Accordingly, it was suggested that the Commission consider creating a Business Rules as an Annexure to the Guidelines that will enable needed flexibility in dealing with issues of innovation in technology as well as operational or procedural

arrangements, etc. that may not be given appropriate liberty in a Guidelines.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines.

1.7 Comment

EMTS recommended that in relation to paragraphs 14 (i) and 14(viii), the terms Buyer and Seller be redefined, and Prospective Buyer and Seller introduced to distinguish between substantive and prospective entities in spectrum trading transactions. This will assist greater clarity and certainty with the status of the entities as well as their roles and responsibilities/obligations in the transactions.

Response

The Commission notes the comment and would take it into consideration in the final review of the draft Guidelines.

E. GENERAL COMMENTS

Dr. Mohammed Suleh-Yusuf, Senior Manager, Telecoms Laws and Regulations Unit thanked everyone for coming and stated that all comments submitted by stakeholders will be considered by the Commission before the draft regulatory instrument is finalised.

The Public Inquiry ended at about 2:45pm.

Dated this 5th day of October 2021

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