



SOCIETY FOR CORPORATE GOVERNANCE OF NIGERIA

CORPORATE GOVERNANCE INTERVIEW SERIES

**INTERVIEW OF PROFESSOR UMAR GARBA DANBATTI,
EXECUTIVE VICE CHAIRMAN,
NIGERIAN COMMUNICATIONS COMMISSION**

1. Against the background of economic changes, what is the outlook of the Telecommunication Industry and its next phase of growth?

If there was any case study on the dangers of operating a mono economy driven only by oil revenues, the Nigerian experience will make an interesting and fitting analysis. It would appear that the foundation of the entity known as Nigeria was firmly laid in the oil wells dotting the length and breadth of the Niger Delta. Otherwise, how does one explain the sudden disappearance of the Groundnut pyramid, the hide and skin factories and the textile industries of the North, the vast and viable cocoa plantations of the West, and the palm produce of the East, among other mainstays of our pre-independence economy.

Today, in a world driven by formidable multilateral economies, the tragedy of building our national life around oil revenues is all too evident. As at the end of the second quarter, the economy was adjudged to be in technical recession due obviously to dwindling oil prices and rising internal and external debt profile. Against weak exports, hysterical demand for imported goods, poor income per capita, weak infrastructure and spiraling unemployment rate, inflationary pressure is already bursting at its seams, while the Naira has suffered its worst devaluation in decades. Worse still, are the effects of the centrifugal forces of public corruption fostered by successive administrations on an already prostrate economy. The economic

outlook of the nation has never looked so bleak. This is our story—a story of a once prosperous and resilient economy that held so much promise for her people, the sub-region and indeed the African continent.

In the face of these alarm bells, the Federal Government is making deliberate and conscious efforts to diversify the economy by developing the real and non-oil sectors as viable options to a sustainable economy. I am glad to note that in this new drive, the telecoms industry has been identified as one of the key change agents.

As you may be aware, the Information and Technology industry contributed about 12.68% in the second quarter to the GDP and grew by 1.35% year-on-year. In an economy that posted negative numbers and recorded southward movement in other sectors (National GDP for the same period regressed to -2.06, a further contraction from the first quarter numbers), the telecoms industry continues to make significant contributions towards the nation's economic recovery. This is in addition to other positive spin-offs such as creation of jobs across the value chain.

On the whole therefore, the outlook of the industry remains bright, though we must admit that challenges still exist. To illustrate, in the voice segment, the Average Revenue per User (ARPU) is on a decline due largely to Over The Top (OTT) services such as Whatsapp, Facetime, Skype etc. OTTs essentially are services that ride on existing data services to create additional value for users at no extra cost beyond the cost of buying the initial data plan.

To stem the imminent loss of revenue and deepen the industry, we recently launched an eight point agenda to take the industry to the next phase. One of the cardinal objectives of our administration is to deploy pervasive broadband infrastructure across the country. The model we have chosen for this next phase of growth in the sector is known as the Open Access Model, which ensures that broadband infrastructure and services will be rolled out in an open, fair and non-discriminatory basis. At the moment, we have licensed two InfraCos for Lagos and North Central respectively under Phase I of the project and the process of licensing more companies for other

regions has just commenced. It is our expectation that upon completion, Nigerians will begin to enjoy fast and efficient broadband services at competitive data rates. Other positive spin-offs include accelerating national development, increased FDIs, creating direct and indirect employment in the value chain and generally reflating the economy.

2. The Nigerian Communications Commission recently made the Code of Corporate Governance for the telecommunication industry mandatory. What are the reasons for this?

The process of making the Corporate Governance Code mandatory is still ongoing. Over the years, the Commission has had a robust and methodical process of introducing industry-defining initiatives. The idea is that, surprises are not deliberately sprung on the industry and stakeholders are given the opportunity to participate in, and own the initiative, when it finally becomes effective. First, as part of the Commission's engagement process, we had a consultative Forum in June. The objective of the Forum was to obtain necessary inputs from industry stakeholders on the proposed mandatory regime. As expected, industry views and contributions garnered during the Forum will be reflected in the new Code. The next stage of the process will be to upload the Draft Code on the Commission's website for further industry comments. Thereafter, the finalized Code will be gazetted and made an appropriate subsidiary legislation, having a binding nature and the force of law.

The reasons for this transition are twofold: first is the need to sustain the gains recorded in the industry over the years, as well as leave a lasting legacy to incoming generations. This speaks to our commitment to the principle of intergenerational equity. Secondly, while the Commission has done well in technical regulation, not so much has been achieved in the area of behavioral regulation. Recent events point to the fact that, like most successful corporates, telecoms companies have the tendency to act outside the rules of engagement. Therefore, as a Regulator, it is important to put in place

appropriate legal and regulatory frameworks that will curb some of these excesses and risky behaviors even before they crystallize.

3. What are the likely impacts of making the NCC Code of Corporate Governance mandatory on Telecommunication Companies in the Country?

The whole idea of making the Code mandatory is to further entrench the culture of accountability, probity, integrity and sustainability in the industry. It is our hope that when the Code becomes effective, telecoms companies will see the need to align their operations and conduct their businesses within the context of the principles stated in the Code, for the overall benefit of the industry and the country at large.

4. What effort is the Commission putting in place towards effectively enforcing the Code in the industry?

We have put in place a number of measures to enforce compliance with the provisions of the Code. It is important to note that though the Code will be mandatory, we are not dispensing with the “comply or explain” window. The Commission recognizes that there may be situations where it may be impracticable to comply with the provisions of the Code. In such circumstances, cogent reasons may be adduced for non-compliance. Secondly, the Commission is developing a detailed monitoring framework that will deploy appropriate survey instruments, questionnaires and checklists to elicit appropriate responses from industry players on a broad swathe of corporate governance issues. Thirdly, the Commission will institute a periodic reporting mechanism, which will mandate operators to file required reports, stating compliance status on the various aspects of the Code. The frequency of these reports will be worked out and communicated to operators in the final Code document. In addition, the Commission will undertake scheduled checks on records of players.

5. It has been observed in some quarters that monetary sanction is not the most effective penalty for non-complying firms in the industry. What is your view on this?

We agree no less that monetary sanctions are not always the most effective penalty for non-compliance. However, it may be the minimum, designed to trigger the alarm bells that further infractions could attract stiffer non-monetary sanctions. Non-monetary sanctions may include withdrawal of regulatory services to erring operators and in severe cases, revocation of licences. In any case, as amply stated in many fora, the Commission is not always in a hurry to apply sanctions or otherwise wield the proverbial big stick. In line with its anticipatory regulatory approach, Commission will do all within its powers to encourage remedial and abatement actions where infractions have been flagged. It should be noted that the Commission has instituted a recognition and incentive regime aimed at encouraging operators to comply with rules and regulations without bad press and pain of sanctions.

6. Are there sanctions for non-compliance with the Code in the industry?

Certainly yes, but like we said earlier, sanctions are always the Commission's last resort. The Commission will continue to engage with erring operators until the observed infractions are redressed or mitigated. Having said this, sanctions, particularly where the process of engagement has failed irretrievably, could take the form of administrative fines, withdrawal of regulatory services and in extreme cases, revocation of operating licences.

7. In your opinion, whose has the responsibility of ensuring that corporate governance practices are in place and implemented?

Generally speaking, my take on this is that it is a collective responsibility. Every stakeholder within the value chain must be involved in ensuring that corporate governance principles are in place and implemented. From the

Regulator who sets the standards to the Board, Management and Staff of the company, every stakeholder should own these principles. But more specifically, as the moral compass of companies, the Board has an abiding duty to always ensure that these practices are implemented; bearing in mind that Corporate Governance speaks to global best practices and standards which every company strives to adhere to.

8. What in your opinion, is the benefit of having Independent Directors on Boards?

An independent Director offers unique benefits, services and business advantage. In the wake of corporate failures, business communities are now placing more emphasis on accountability and transparency in the running of companies, while public companies are now required to meet proper accounting and fiduciary obligations. Similarly, investors expect no less and require further assurances from non-public companies.

Essentially, independent directors bring independence, credibility, ability to resolve competing interests, among others, to the Board. However, despite the benefits of having an independent director on the Board of organizations, the debate really is on, how 'independent' is an independent director. Independent directors are not appointed in a vacuum, but typically will be nominated by a stakeholder in the organization, to whom his ultimate allegiance lies. Experience has shown that such stakeholder will nominate persons who will pander to his or her wishes in the course of running the organization. Furthermore, concerns have been raised about the cost of hiring an independent director, loss of control by the owners of the business and the competence of independent director, who sometimes, does not know the business well enough to make quality decision and contributions.

9. How would you reconcile the respective responsibilities of Boards and Managements towards effective corporate accountability?

Apart from formulating strategic policies towards the effective administration of organizations, Boards are generally perceived as providing the much needed ethical balance in the conduct of a company's business. On the other hand, Management ensures the effective administration of organizations in order to achieve set targets and goals. To this extent, the Board complements the work of Management. However, the Board has a greater responsibility to ensure that these organizational goals and aspirations are achieved within a sound ethical compass of fairness, probity, accountability and responsibility.

10. In Nigeria, most of the Telecommunications firms are neither public companies nor listed on the Nigerian Stock Exchange. What are your views on this?

Telcos operate within the larger legal regime that regulates the formation, management and general conduct of companies in Nigeria. Every Telco was duly incorporated as a corporate entity at the Corporate Affairs Commission. Therefore, while the Commission will continue to encourage and deepen local participation in the industry, we recognize that it is entirely the prerogative and discretion of telcos to either remain private entities or list as public companies with all the benefits and corresponding stricter requirements of accountability, transparency, probity, disclosure etc. That said, the Commission is committed to further liberalizing the sector for greater participation by other foreign and local investors.

11. What is your comment on the application of corporate governance principles on public entities including MDAs?

Over the years, public entities have been beset by wanton profligacy, corruption, mismanagement, red-tapism, lack of accountability, among other monstrous vices. These organizations are hardly run as target-driven institutions set out to meet measurable goals and exceed stakeholders' expectations. Most times, political patronage underpins and colour critical

decisions that should have been made for overall national interest. Furthermore, some government entities operate with no discernable goals, while performance indices are hardly ever a factor in the management of these MDAs. Therefore, it is my expectation that applying the principles of corporate governance will address these challenges in more ways than one. More importantly, these MDAs will be run on a more sustainable basis. Of course, these principles can only be applied to MDAs within the context of appropriate and enabling legal environment.