

# Telecoms & Media 2019

Contributing editors  
Alexander Brown and Peter Broadhurst



**Publisher**

Tom Barnes

tom.barnes@lbresearch.com

**Subscriptions**

Claire Bagnall

claire.bagnall@lbresearch.com

**Senior business development managers**

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

**Published by**

Law Business Research Ltd

87 Lancaster Road

London, W11 1QQ, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

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# Telecoms & Media

## 2019

**Contributing editors****Alexander Brown and Peter Broadhurst**

Simmons &amp; Simmons LLP

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Lexology Getting The Deal Through is delighted to publish the twentieth edition of *Telecoms & Media*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Korea.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alexander Brown and Peter Broadhurst of Simmons & Simmons LLP, for their continued assistance with this volume.



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For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

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Harris, Wiltshire & Grannis LLP

# Nigeria

Tamuno Atekebo, Otome Okolo and Chukwuyere E Izuogu

Streamsowers & Köhn

## COMMUNICATIONS POLICY

### Regulatory and institutional structure

- 1 | Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

Nigeria's communications sector is primarily regulated by the Nigerian Communications Act (NCA) and the Wireless Telegraphy Act (WTA). The NCA established the Nigerian Communications Commission (NCC), which is charged with the responsibility of regulating the communications sector. The Minister of Communications Technology (the Minister) under the NCA is vested with the responsibilities of the formulation, determination and monitoring of the general policy for the communications sector in Nigeria with a view to ensuring, among other things, the utilisation of the sector as a platform for the economic and social development of Nigeria, the negotiation and execution of international communications treaties and agreements, on behalf of Nigeria, between sovereign countries and international organisations and bodies, and the representation of Nigeria, in conjunction with the NCC, at proceedings of international organisations and on matters relating to communications.

Under the NCA, the NCC is authorised to make and publish regulations and guidelines insofar as it is necessary to give effect to the full provisions of the NCA among other reasons.

The WTA sets out the framework for regulating the use of wireless telegraphy in Nigeria.

Foreign ownership restriction does not apply to the provision of communications services in Nigeria as a company with foreign ownership, as long as it is incorporated in Nigeria, can apply for a licence to provide communications services. Under the Nigerian Investment Promotion Commission Act, a foreign national can own up to 100 per cent of a business or can invest in any business except those on the negative list. Communications services are not on the negative list.

### Authorisation/licensing regime

- 2 | Describe the authorisation or licensing regime.

Under the NCA, there are two broad licensing frameworks:

- an individual licence, which is a type of authorisation in which the terms, conditions and obligations, scope and limitations are specific to the service being provided. Some of the activities authorised by an individual licence are: internet services, fixed wireless access, unified access services, electronic directory services, internet exchange, international gateway, international cable infrastructure and landing station services, collocation services and commercial basic radio communications network services; and
- a class licence, which is a type of general authorisation in which the terms and conditions or obligations are common to all licence holders. It requires only registration with the NCC for applicants

to commence operation. Some of the services subject to a class licence are sales and installation of terminal equipment (including mobile cellular phones and HF, VHF/UHF radio, etc), repairs and maintenance of telecoms facilities, cabling services, telecentres, cybercafes and the operation of public payphones.

An entity intending to carry out a service subject to an individual licence shall apply to the NCC in the prescribed form upon the payment of the processing or administrative fee (usually 5 per cent of the licence fee) and the licence fee, while a person intending to operate under a class licence is to submit a registration notice in the prescribed form and a registration fee of 10,000 naira to the NCC.

In accordance with the NCA, a licence applicant must receive a response to the application within 90 days of submitting it. However, an offer letter is normally issued to applicants for a class licence if the application is complete. For individual licences, depending on the service and completeness of the required information, the conclusion of the process can take between four and 12 weeks.

The duration of a licence depends on the type of service authorised or spectrum licensed. The national carrier licence and international gateway licence are valid for 20 years. The unified access service licence is valid for a term of 15 years, while a digital mobile licence (DML) authorising the use of a specified mobile spectrum is valid for a term of 15 years. On the other hand, an internet service, paging, prepaid calling card and special numbering services licence are all valid for a term of five years. The licence fees payable depend on the type of service. Fees payable are fixed by the NCC and published on its website. In addition to licence fees, a prospective licensee is required to pay an administrative charge and, upon grant of the licence, a licensee shall pay an annual operating levy calculated on the basis of net revenue for network operators and gross revenue for non-network operators.

Fixed, mobile and satellite services are regulated and licensed under the NCA and to operate any of these services a licence must be obtained from the NCC. As these services are operator-specific, they fall under the individual licence category. In Nigeria, mobile telecommunications services are differentiated on the basis of whether the operator is authorised by a DML, fixed wireless access licence (FWAL) or unified access service licence. A DML authorises an operator to use appropriate equipment in a designated part of the electromagnetic spectrum and permits it to operate a network for the provision of public telecommunications services. In 2001, the NCC licensed four spectrum packages in the 900MHz and 1,800MHz bands to Mobile Telecommunications Limited (now ntel), Econet Wireless Nigeria Limited (now Airtel) and MTN Nigeria Communications Limited for use in the provision of digital mobile services. These were later joined by Etisalat and Globacom.

A FWAL authorises an operator to use appropriate equipment in a designated part of the electromagnetic spectrum for a term of five years (with renewal for a further five years) and permits it to operate a network for the provision of public telecommunications service. FWALs

are granted on a regional basis to reflect the 36 Nigerian states and the federal capital territory, with operators wishing to achieve national coverage required to obtain licences in each of the licensing regions. In 2002, the NCC in authorising FWAL services also offered 42MHz paired in the 3.5GHz band, and a total of 28MHz paired in the 3.5GHz band across the 37 licensing regions of Nigeria to 22 new licensees.

In 2007, the NCC introduced the unified access service licence (UASL) scheme and allocated 40MHz of paired spectrum in the 2GHz band in four equal blocks of 10MHz paired spectrum. On successful allocation of the spectrum, the allottees were issued with a spectrum licence and where necessary, a UASL. The UASL authorises the holder to provide both fixed and mobile services including voice and data, and imposes special conditions requiring its holders to build and operate a telecommunications network to provide voice telephony, video services, multimedia services, web browsing, real-time video streaming, video surveillance, network gaming, email, SMS, file transfer, broadband data and location-based services, and other services that may be authorised, and that the 3G network be built and operated according to certain defined technical standards.

In the broadband ecosystem, a wholesale wireless access service licence (WWASL) authorises the holder to construct, maintain, operate and use a network consisting of a mobile communication system, a fixed wireless access telecommunications system, or a combination of any of these systems comprising radio or satellite or their combination, within Nigeria, deployed for providing point-to-point or switched/unswitched point-to-multipoint communications for the conveyance of voice, data, video or any kind of message. The WWASL also authorises the holder to construct, own, operate and maintain an international gateway, while an infrastructure company licence authorises the holder to provide and operate on a wholesale basis an open access metropolitan fibre network within a designated geographical area in Nigeria, in particular among other things, to construct, maintain and operate fibre optic network facilities.

Satellite services in Nigeria are normally authorised by a global mobile personal communications by satellite (GMPCS) licence. In addition to the general conditions applicable to fixed, mobile and satellite services, a GMPCS licence imposes special conditions requiring the holder to, among other things, construct, operate, implement and maintain a GMPCS land earth station for the purposes of establishing, maintaining, validating and controlling command functions and communication with the space segment of a GMPCS system; deploy a GMPCS network for the purpose of providing one-way or two point-to-point or point-to-multipoint communications for the conveyance of voice data or video; sell telecommunications components and accessories used or intended for use in the installation of GMPCS terminals; install GMPCS terminals; and provide activation, billing, maintenance and related management services for subscribers to GMPCS services. Licensing of satellite services continues to be by way of a separate licence.

Public Wi-Fi services are authorised under the Regulatory Guidelines for the Use of 2GHz ISM Band for Commercial Telecoms Services. Under these Guidelines, Wi-Fi hotspots shall, inter alia, be deployed in the 2GHz ISM band and must be registered and authorised by the NCC. In addition, commercial Wi-Fi hotspot operators must hold a licence for the provision of internet services.

**Flexibility in spectrum use**

**3** | Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

Yes, in line with the Frequency Management Policy, an applicant for a commercial frequency licence from the NCC must also hold a commercial operating licence from the NCC (or must have submitted an application

for an operating licence to the NCC). The commercial operating licence authorises the provision of a specific service for which the spectrum is intended to be used. An applicant for a frequency licence may also be given a frequency reservation pending the outcome of the processing of his or her commercial operating licence. However, the frequency licence will be subject to successful approval of the commercial licence.

Pursuant to the provision of Spectrum Trading Guidelines issued by the NCC, radio frequency spectrum is tradable, provided such transactions comply with the eligibility criteria set out in the Guidelines

**Ex-ante regulatory obligations**

**4** | Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

The NCA imposes on the NCC the obligation to promote fair competition in the communications industry and to protect communications services and facilities providers from misuse of market power or anticompetitive and unfair practices by other service or facilities providers or equipment suppliers. The NCA also authorises the NCC to determine whether a licensee is in a dominant position in any aspect of the Nigerian communications market. In April 2013, the NCC undertook a detailed study of the level of competition in the Nigerian communications market and identified the following broad-based markets subject to ex-ante competition regulation:

Market segment	Sub-segment
Voice	<ul style="list-style-type: none"> <li>Mobile telephony (including messaging); and</li> <li>fixed-line telephony.</li> </ul>
Data	<ul style="list-style-type: none"> <li>Fixed data, retail data transmission services and leased lines; and</li> <li>mobile data (eg, dongles, data cards, tablets, internet through mobile phone connections, for example, 3G, GPRS, Edge).</li> </ul>
Upstream segments	<ul style="list-style-type: none"> <li>Spectrum;</li> <li>tower sites;</li> <li>network equipment;</li> <li>wholesale broadband or internet access; and</li> <li>wholesale leased lines and transmission capacity.</li> </ul>
Downstream segments	<ul style="list-style-type: none"> <li>Handsets/devices (includes the device operating system); and</li> <li>applications/content (includes m-commerce).</li> </ul>

The identified markets were further divided into wholesale and retail sub-segment as follows:

	Upstream segment	Voice segment	Data segment	Downstream segment
Services provided as wholesale by an operator to other operators	Wholesale broadband access	Wholesale voice termination on voice network		
Services provided as wholesale by an operator to other operators	Wholesale leased lines and transmission capacity	Wholesale voice termination on fixed network		
Service provided as retail by each individual operator to its consumers		Retail voice access on mobile networks	Retail broadband or internet access on mobile devices	Supply of applications, content and devices

Upstream segment	Voice segment	Data segment	Downstream segment
Service provided as retail by each individual operator to its consumers	Retail access on fixed networks	Retail broadband or internet access on mobile devices at fixed location	
Service provided as retail by each individual operator to its consumers		Retail leased lines	

This study also determined that MTN held and Globacom and MTN collectively held significant market power for the mobile voice and upstream segment respectively. As a result of this conclusion, the NCC (in exercising its power to remedy anticompetitive practices under the Competition Practice Regulations) imposed on MTN as the operator with significant market power in the mobile voice market the following obligations:

- accounting separation;
- collapse of on-net and off-net retail tariff;
- submission of required details to the NCC; and
- a determination of the pricing principle to address the rates charged for on-net and off-net calls for all operators in the mobile voice market.

In respect of the joint dominance collectively held by Globacom and MTN in the market for upstream segment, the NCC imposed the following obligations on both operators: a price cap for wholesale services and a price floor for retail services as to be determined by the NCC on a periodic basis; accounting separation; and submission of required details to the NCC.

In October 2014, the NCC reviewed its direction requiring MTN to collapse its on-net and off-net retail tariff, by approving a stipulated differential for MTN's on-net and off-net call charges.

In October 2015, the NCC, in a bid to ensure sustainability, growth and development of the data service market, approved the withdrawal of floor price for data services. The NCC stated that it would restore the floor price if any distortion is observed within the Nigerian Communication market.

Regulations 10 to 12 of the Telecommunications Networks Interconnection Regulations 2007 (the Interconnection Regulations) made by the NCC under its rule-making powers, impose certain obligations on a licensee declared by the NCC to be dominant in one or more communications market relating to interconnection. A dominant licensee is required to:

- meet all reasonable requests for access to its telecommunications network, in particular access at any technically feasible points;
- adhere to the principle of non-discrimination with regard to interconnection offered to other licensed telecommunications operators, applying similar conditions in similar circumstances to all interconnected licensed operators providing similar services and providing the same interconnection facilities and information to other operators under the same conditions and quality as it provides for itself and affiliates and partners;
- make available on request to other licensed telecommunication operators considering interconnection with its network, information and specifications necessary to facilitate conclusion of an agreement for interconnection including changes planned for implementation within the next six months, unless agreed otherwise by the NCC;

- submit to the NCC for approval and publish a reference interconnection offer, describing interconnection offerings, broken down according to market need and associated terms and conditions including tariffs; and
- provide access to the technical standards and specifications of its telecommunications network with which another operator shall be interconnected.

In addition, the dominant licensee shall, except where the NCC has determined interconnection rates, set charges for interconnection on objective criteria and observe the principles of transparency and cost orientation. The burden of proof that charges are derived from actual costs lies with the licensed telecommunications operator providing the interconnection service to its facilities. The dominant licensee may set different tariffs, terms and conditions for interconnection of different categories of telecommunications services where such differences can be objectively justified on the basis of the type of interconnection provided.

A dominant licensee shall also:

- give written notice of any proposal to change any charges for interconnection services in accordance with the procedure set out in the guidelines on interconnection adopted by the NCC and the provisions of the operating licence;
- offer sufficiently unbundled charges for interconnection, so that the licensed telecommunications operator requesting the interconnection is not required to pay for any item not strictly related to the service requested;
- maintain a cost accounting system which, in the opinion of the NCC, is suitable to demonstrate that its charges for interconnection have been fairly and properly calculated, and provides any information requested by the NCC;
- make available to any person with a legitimate interest on request, a description of its cost accounting system showing the main categories under which costs are grouped and the rules for the allocation of costs to interconnection. The NCC, or any other competent body independent of the dominant telecommunications operator and approved by the NCC, shall verify compliance of the dominant telecommunications operator with the cost accounting system and the statement concerning compliance shall be published by the NCC annually.

Lastly, if interconnection services are not provided through a structurally separated subsidiary, the dominant licensee shall:

- keep separate accounts as if the telecommunications activities in question were in fact carried out by legally independent companies, so as to identify all elements of cost and revenue with the basis of their calculation and the detailed attribution methods used;
- maintain separate accounts in respect of interconnection services and its core telecommunications services and the accounts shall be submitted for independent audit and thereafter published; and
- supply financial information to the NCC promptly on request and to the level of detail required by the NCC.

As at the time of writing, the NCC has engaged a consultant to undertake a study of the level of competition in the telecoms industry (2010–2015) and where necessary propose regulatory obligations to be imposed on dominant operators in each of the identified telecommunications markets. The outcome of the study is still awaited as at this time.

## Structural or functional separation

### 5 | Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

Under the Competition Practice Regulations, the NCC in issuing a direction to remedy an abuse of a dominant position or an anticompetitive practice may direct a licensee to make changes in actions or activities including structural separation of services or businesses, as a means of eliminating or reducing the abusive or anticompetitive practice. Pursuant to the provisions of the recently enacted Federal Competition and Consumer Protection Act 2018 (the Competition Act), the Competition Tribunal is empowered upon receipt of a monopoly report from the Competition Commission to order the division of any undertaking by the sale of any part of its shares, assets or otherwise.

## Universal service obligations and financing

### 6 | Outline any universal service obligations. How is provision of these services financed?

The Universal Service Provision (USP) Fund established by the NCA is geared towards promoting the widespread availability of network services and applications services by encouraging the installation of network facilities and the provision of network services, application services and broadband penetration in unserved, underserved areas or for underserved groups within the community.

The USP Fund is financed from monies appropriated to the USP Fund by the National Assembly; contributions from the NCC based on a portion of the annual levies paid by licensees; and gifts, loans, aids and such other assets that may, from time to time, specifically accrue to the USP Fund. In practice, the USP secretariat created by the NCC is responsible for implementing and executing USP programmes and USP projects. The USP board supervises and provides broad policy directions for the management of the USP Fund.

## Number allocation and portability

### 7 | Describe the number allocation scheme and number portability regime in your jurisdiction.

The Numbering Regulations 2008 (the Numbering Regulations) regulates the allocation (or assignment) of numbers. In this regard, the Numbering Regulations provides a regulatory framework for the control, planning, administration, management and assignment of numbers, pursuant to section 128(1) of the NCA. Under the Numbering Regulations, the holder of a communications licence may apply in the prescribed form to the NCC to be assigned numbers (in a set of blocks) by stating:

- the name and contact details of the applicant;
- the licence under which the application is made;
- the services intended to use the assignment;
- the geographic areas for completing calls or transmitting messages to the numbers to be included in the assignment;
- the quantity of numbers requested for inclusion in the assignment;
- any particular blocks requested for inclusion in the assignment;
- the utilisation of the assignment predicted for 12 months after the grant of the assignment;
- the current utilisations of existing assignments to the applicant for the intended services;
- an indication of which, if any, portions of the application are confidential to the NCC;
- any other information that the applicant considers necessary or appropriate to justify the application; and

- any other information that the NCC may, from time to time, require to assess the application.

In making a decision on an application for an assignment, the NCC shall take into account factors including but not limited to:

- any earlier decisions about assignments to the applicant or other licensees for service similar to the intended services;
- any statements in the licence of the applicant about eligibility for providing services or being assigned numbers;
- the usage conditions;
- the digit analysis capabilities of communications networks that are operated in Nigeria;
- the utilisation of the assignment predicted for 12 months after the grant of the assignment over the next three years;
- the current utilisations of existing assignments to the applicant for the intended services; and
- the quantity and fragmentation of blocks that have not been assigned; and whether or not the licensee has failed to fulfil an obligation in the Numbering Regulations or the National Numbering Plan, or any other numbering related obligation under the Act, has committed a contravention of its regulatory obligation.

The Nigerian Mobile Number Portability Business Rules and Port Order Processes (the MNP Business Rules) sets out the regulatory, legal and technical framework for implementing MNP in Nigeria. The NCC has also issued the Mobile Number Portability Regulations 2014 to provide a regulatory framework for the operation of MNP in Nigeria. Under the terms of the MNP Business Rules, MNP is obligatory for all mobile network operator and is currently available across only Global Systems for Mobile networks (although number portability is intended to be implemented in phases that will cover Code Division Multiple Access, fixed networks and location).

Under the MNP Business Rules, MNP is 'recipient led'. To initiate a porting request, the recipient operator would receive a porting request from a subscriber to port their number. The recipient operator, number portability clearing house and donor operator then exchange messages to validate the porting request. Porting is free and is normally completed within 48 hours.

A port request, however, can be rejected for a number of reasons including where the number is not included in the Nigerian numbering plan, where the number was ported within the last 90 days, where the number is not registered in the subscriber information database, and where the number is already subject to a pending port request.

## Customer terms and conditions

### 8 | Are customer terms and conditions in the communications sector subject to specific rules?

Yes, the NCA requires each licensee to prepare a consumer code for their respective customers and such consumer code shall be subject to prior approval and ratification by the NCC. The individual consumer code governs the provision of services and related consumer practices applicable to the licensee. Where the NCC designates an industry body to be a consumer forum, any consumer code prepared by such industry body shall be subject to prior approval and ratification by the NCC. A consumer code prepared by a consumer forum, the NCC or licensees shall as a minimum contain model procedures for:

- reasonably meeting consumer requirements;
- the handling of customer complaints and disputes including an inexpensive arbitration process other than a court;
- procedures for the compensation of customers in case of a breach of a consumer code; and
- the protection of consumer information.



The Consumer Code of Practice Regulation (the Consumer Code Regulations) also requires that the individual consumer code after its approval by the NCC be published in at least two national newspapers (or as the NCC may direct), and the approved individual consumer code shall become applicable from the date of its publication. The Consumer Code Regulations is under review by the NCC, and may be amended by the Draft Consumer Code of Practice Regulations 2018 if eventually approved.

The competition provisions of the NCA and the provisions of the Competition Practice Regulations may limit the application of certain customer terms and conditions deemed to be anticompetitive in the communications sector. Also, the Regulations on Enforcement Processes require every licensee to submit the contents and representations contained in any promotions of products or services to the NCC for its prior approval. Failure to obtain the required approval shall constitute a contravention under these Regulations.

### Net neutrality

**9** | Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

Under the extant regulatory framework, there are no express restrictions or limitations regarding an internet service provider's (ISP) freedom to control or prioritise the type or source of data that it delivers. The guidelines for the provision of internet service, the licence for the provision of internet service, the UASL and the WWASL do, however, impose some obligations on the ISP and the holders of these licences. An ISP and the respective licensees are required not to show (whether in respect of charges or other terms or conditions applied or otherwise) undue preference to or to exercise undue discrimination against any particular person in respect of the provision of a service or the connection of any equipment approved by the NCC.

The NCC has developed a Draft Internet Industry Code of Practice (the Draft Code). With respect to net neutrality, the Draft Code inter alia:

- prescribes measures that seek to guarantee the rights of internet users to an open internet;
- imposes specific transparency obligation on Internet Access Service Providers (IASPs) with respect to performance, technical and commercial terms of its internet access service in a manner that is sufficient for consumers and third parties to make informed choices regarding their uses of such services;
- imposes a positive obligation on IASPs when providing internet access service, to treat all traffic equally, without discrimination, restriction or interference, independently of its sender or receiver, content, application or service, or terminal equipment;
- bars IASPs from blocking lawful content on the internet, unless under condition of reasonable network management;
- bars IASPs from degrading or impairing lawful internet traffic unless under condition of reasonable network management;
- bars IASPs from engaging in paid-prioritisation; and
- sets out circumstances that warrant the use of reasonable network management practices.

### Platform regulation

**10** | Is there specific legislation or regulation in place, and have there been any enforcement initiatives relating to digital platforms?

Except for the Framework and Guidelines to the Use of Social Media Platforms in Public Institutions issued by the National Information Technology Development Agency (NITDA) in January 2019, which

provides guidance on the use of social media within a public institution's communications environment, there is no specific legislation or regulation in respect of digital platforms.

### Next-Generation-Access (NGA) networks

**11** | Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

Yes, in addition to the application of regulatory obligations ordinarily applicable to other category of communications licensees, the holder of the WWASL will be required by the licence to, among other obligations, roll out services at least as follows: three state capitals in year one, four additional state capitals in year two, six additional state capitals in year three, 12 additional state capitals in year four, 12 additional state capitals in year five and two-thirds of all local government headquarters in the remaining licence period. Also, a WWASL requires the holder to supply customer premises equipment adapted in such a way as to reasonably accommodate the needs of hearing-impaired individuals.

Notwithstanding the application of the USP fund for the facilitation of broadband penetration in Nigeria, there are other NCC-initiated projects such as the Wire Nigeria project aimed at facilitating the rollout of fibre optic cable infrastructure in which subsidies based on per kilometre of fibre and incentives to encourage rapid deployment of non-commercially viable routes are provided. The State Accelerated Broadband Initiative is aimed at stimulating the demand for internet services and to drive affordable home broadband prices where subsidies on terminal equipment based on broadband infrastructure deployed in state capitals and urban and semi-urban centres are provided to operators. Also, under the ongoing Open Access Model for Next Generation Fibre Optic Broadband Network (Open Access Model), there shall be a one-off government financial support to facilitate the rollout of the infrastructure companies. This financial support will be based on meeting pre-identified targets at certain points in time during the rollout of the broadband infrastructure phase.

### Data protection

**12** | Is there a specific data protection regime applicable to the communications sector?

Part VI of the General Code (in appendix I of the Consumer Code Regulations) sets out the responsibilities of a licensee in the protection of individual consumer information. These responsibilities stipulate that a licensee may collect and maintain information on individual consumers reasonably required for its business purposes and that the collection and maintenance of such information on individual consumers shall be:

- fairly and lawfully collected and processed;
- processed for limited and identified purposes;
- relevant and not excessive;
- accurate;
- not kept longer than necessary;
- processed in accordance with the consumer's other rights;
- protected against improper or accidental disclosure; and
- not transferred to any party except as permitted by any terms and conditions agreed with the consumer, as permitted by any permission or approval of the NCC, or as otherwise permitted or required by other applicable laws or regulations.

Licensees are required by the Consumer Code Regulations to adopt similar provisions guaranteeing the same level of protection (or higher) in the production of their own individual consumer codes.

In addition, licensees are required by these responsibilities to meet generally accepted fair information principles including:

- providing notice as to what individual consumer information they collect, and its use or disclosure;
- the choices consumers have with regard to the collection, use and disclosure of that information;
- the access consumers have to that information, including to ensure its accuracy;
- the security measures taken to protect the information; and
- the enforcement and redress mechanisms that are in place to remedy any failure to observe these measures.

Lastly, it is also pertinent to state that recently there have been indications that the NCC intends to enact through administrative rulemaking, a data protection regulation for the telecoms sector because of the inadequacy of the Consumer Code Regulations (and the General Code) to offer an adequate level of privacy protection to telecoms subscribers. If this regulation is eventually enacted, it will prevail over the privacy protection provisions in the General Code, and may indeed offer a stricter level of protection for the data subject.

### Cybersecurity

#### 13 | Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

Yes. The Cybercrime Act 2015 provides a unified and comprehensive legal framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. The Cybercrime Act 2015 also ensures the protection of critical national information infrastructure and promotes cybersecurity and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.

Additionally, the Cybercrime Act 2015 and General Code (applicable in the telecommunications sector) make provision for the application of cybersecurity techniques as it relates to the protection of personal or customer information or when acting as a data controller. In this regard, section 38(5) of the Cybercrime Act requires telecommunication service providers to take appropriate (cybersecurity) measures to safeguard the confidentiality of the data retained, processed or retrieved for the purpose of law enforcement. The General Code in paragraph 35(2)(d), in turn, requires licensees to include in their fair information principles the (cyber)security measures taken to protect customer information, and the enforcement and redress mechanisms that are in place to remedy any failure to observe these measures.

### Big data

#### 14 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

There is no specific legislation on big data. However, the Cybercrime Act 2015 has as one of its objectives the promotion of cybersecurity and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights. The Cybercrime Act does not use the term 'big data' but uses the term 'data', which it defines as 'representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer'. The Cybercrime Act imposes a number of obligations relating to the retention and confidentiality of data on any public or private entity that provides to users of its services the ability to communicate by means of a computer system, electronic communication devices, mobile networks and entities that process or store computer data on behalf of such communication service or users of such service. We are unaware of any enforcement initiatives that have occurred since the enactment of the Cybercrime Act.

### Data localisation

#### 15 | Are there any laws or regulations that require data to be stored locally in the jurisdiction?

Yes. The Guidelines on Nigerian Content in ICT issued by NITDA requires ICT companies and data and information management firms in Nigeria to host, respectively, all subscriber and consumer data and government data locally within the country and further provides that they shall not for any reason host any government data outside the country without an express approval from NITDA and the Secretary to the government of the Federation.

### Key trends and expected changes

#### 16 | Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

#### Draft Code

As stated earlier, the NCC has developed a Draft Internet Industry Code of Practice. The Draft Code has the following objectives:

- protect the right of internet users to an open internet;
- provide clear guidelines to IASPs on the use of traffic management practices;
- outline the obligations of IASPs in relation to the protection of consumers' personal data;
- outline the obligations of IASPs in the handling of offensive and potentially harmful content, and the protection of minors online;
- ensure adequate safeguards are put in place by IASPs against unsolicited internet communications; and
- establish best practices for internet governance in Nigeria, in line with emerging issues and global trends.

The Draft Code applies to all IASPs operating in Nigeria. The NCC has conducted a public inquiry in respect of the Draft Code, and as at the time of writing the outcome of this inquiry is still expected.

#### Framework for determining cost-based pricing for retail broadband, data services and mobile termination rates in Nigeria

In 2017, the NCC engaged KMPG and Pricewaterhouse Cooper to respectively develop a framework for determining cost-based pricing for retail broadband, data services and mobile termination rates in Nigeria. With respect to mobile termination rates, the report was released in 2018 wherein the NCC determined:

- the termination rates for voice services provided by one operator in Nigeria to another operator in Nigeria for terminating a call in their network are as follows:
  - generic 2G/3G/4G operators – 3.90 naira per minute;
  - new entrant (LTE) operators – 4.70 naira per minute; and
  - clearing houses – payment and volume discounts as negotiated.
- the international termination rate of 24.40 naira determined in 2016 will continue to apply until a new Determination is made.

This Determination became effective from 1 July 2018 and remains valid and binding on licensees until further reviewed by the NCC. As at the time of writing, the report on pricing for retail broadband data services is still being awaited.

#### Expiration of the Broadband Plan

The National Broadband Plan expired in 2018. We expect that the incoming Minister and the NCC will draft a new national broadband plan in the coming months.

## Enactment of Competition Act

The Competition Act was signed into law on 30 January 2019 and provides that its provisions shall override the provisions of any other law including the Investment and Securities Act that relates to matters of competition and consumer protection. Insofar as the Competition Act applies to an industry or sector of an industry that is subject to the jurisdiction of another regulator under any law, in matters or conducts relating to competition and consumer protection, the provisions of the Competition Act shall be construed as establishing a concurrent jurisdiction between the Competition Commission and the relevant government agency, and the Competition Commission shall have precedence over and above the relevant government agency. In addition, the Competition Act requires that all appeals or request for review of the exercise of the power of any sector-specific authority shall first be heard and determined by the Competition Commission before such appeals can lie before or be determined by the Competition Tribunal.

## MEDIA

### Regulatory and institutional structure

17 | Summarise the regulatory framework for the media sector in your jurisdiction.

The National Broadcasting Commission Act (the NBC Act) regulates the broadcasting sector in Nigeria. The NBC Act also established the National Broadcasting Commission (NBC), which is responsible for regulating the broadcasting industry. There is also the Broadcasting Code (BC), which was made by the NBC under the NBC Act. The BC represents the minimum standard for broadcasting in Nigeria.

### Ownership restrictions

18 | Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

Yes, the ownership of broadcasting networks is restricted. The NBC Act requires the NBC to satisfy itself when granting a broadcasting licence that the applicant can demonstrate to the satisfaction of the NBC that he or she is not applying on behalf of any foreign interest. The NBC is also prohibited from granting a licence to either a religious organisation or a political party. Foreign investors can therefore participate in broadcasting activities, provided that the majority of shares in a broadcasting company are held by Nigerians.

In terms of cross-ownership in the broadcasting industry, the NBC Act provides that a person is prohibited from having 'controlling shares in more than two of each of the broadcast sectors of transmission'. Apart from the provisions in the NBC Act, there are no regulations regarding cross-ownership of media companies.

### Licensing requirements

19 | What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

To operate a radio, sound, television, cable or satellite station in Nigeria, an application in the prescribed form is addressed to the Director-General (DG) of the NBC requesting approval to purchase a set of application forms indicating the licence category and proposed location. If granted, the applicant would be required to complete the application form and submit it to the DG. The form is accompanied by a certificate of incorporation, a certified copy of the company's memorandum and

articles of association, an engineering design of systems including feasibility study, a letter of undertaking to abide by the terms of the licence and a letter of reference from the company's bankers.

Section 9(1) of the NBC Act sets out the criteria used by the NBC in the grant of a broadcast licence and these require the applicant to be a corporate body registered in Nigeria or a broadcasting station owned, established or operated by the federal, state or local government. The NBC is also required to satisfy itself that the applicant is not applying on behalf of any foreign interest. If the NBC is satisfied with the application, it will make recommendation through the Minister of Information to the President for the grant of a licence.

The licence fee for an initial term of five years is as follows:

Type	Fee (naira)	
Category A	Radio	20 million
	Open TV	15 million
	Cable TV	10 million
Category B	Radio	15 million
	Open TV	11.25 million
	Cable TV	7.5 million
Direct broadcast satellite (single channel)		10 million
Direct-to-home (multi-channel)		25 million

There is no specific timescale for the grant of a licence.

### Foreign programmes and local content requirements

20 | Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

The NBC Act and the BC regulate the broadcasting of programmes and the minimum local and foreign programme content. Foreign content is permissible provided it is essential and relevant to the entertainment, education and information of Nigerians. The BC stipulates that a broadcaster relaying foreign content shall ensure the proper acquisition of broadcasting rights to such content. In addition, with the exception of special religious and sports programmes or events of national importance, Nigerian broadcasters shall not link up live to foreign programmes.

A licensee is required to adhere to a minimum of 60 per cent local content for open television and 80 per cent local content for radio. The cable and satellite retransmission stations are mandated to reflect a minimum of 20 per cent local content in their programming. In addition, the NBC issued a regulation on local content in February 2009, which requires all terrestrial television stations operating in the country to air only Nigerian local content during peak family viewing hours, between seven o'clock and ten o'clock in the evening.

There are no specific regulations on broadcast of foreign programmes to mobile devices.

### Advertising

21 | How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

Broadcast media advertising is regulated by the NBC Act, the BC, the Advertising Practitioners Council of Nigeria Act (the APCON Act), the Nigerian Code of Advertising Practice and Sales Promotion and the APCON Vetting Guidelines (the Vetting Guidelines). Under the Vetting Guidelines, any broadcast media advertising material must be submitted for approval by the Advertising Standards Panel before it is aired.

By the provisions of the BC, all regulations governing broadcasting including the rules on programmes and advertising shall apply to internet broadcasting.

### Must-carry obligations

- 22 | Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

Yes, under the BC a terrestrial subscription service is required to carry a free-to-air terrestrial public broadcasting station in its area of coverage free of charge. A satellite subscription service is also required by the BC to carry a free-to-air national public broadcasting station free of charge.

At present, there is no mechanism for financing these obligations in Nigeria.

### Regulation of new media content

- 23 | Is new media content and its delivery regulated differently from traditional broadcast media? How?

Internet radio and broadcasting streaming signals from and into Nigeria requires a licence from the NBC. In practice, most of the internet radio stations operating in Nigeria already have a radio (or other broadcast) licence issued by the NBC. The BC also requires the local content for this category of licence to be 80 per cent. The regulations and conditions governing news, programmes, advertising and sponsorship in relation to other forms of broadcasting or broadcast licence are also applicable to internet broadcasting.

### Digital switchover

- 24 | When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

In 2016, the federal government proposed 20 June 2017 as the new date when Nigeria will switch over from analogue to digital broadcasting. As at the time of writing, the digital switchover has been rolled-out in phases in parts of Nigeria, and is ongoing.

The NCC is proposing that the radio frequencies freed up should be reallocated to mobile broadband.

### Digital formats

- 25 | Does regulation restrict how broadcasters can use their spectrum?

Yes. Broadcasters are required to use the spectrum assigned to them in accordance with the technical specifications and conditions specified in their licence.

### Media plurality

- 26 | Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

There are no express provisions respecting media plurality under the NBC Act. However, the BC does incorporate some provisions that appear to support media pluralism. For instance, the BC provides that panellists in discussion programmes are expected to reflect various viewpoints, and for political broadcasts equal airtime shall be provided to all political parties or views, with particular regard to the duration

and the particular time within which such programmes can be broadcast during political campaign periods.

### Key trends and expected changes

- 27 | Provide a summary of key emerging trends and hot topics in media regulation in your country.

As stated earlier, the digital switchover has been rolled-out in phases in parts of Nigeria, and is ongoing as at time of writing. We expect that the process will continue in the coming months.

## REGULATORY AGENCIES AND COMPETITION LAW

### Regulatory agencies

- 28 | Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

As stated earlier (in questions 1 and 17) the NCC and the NBC respectively regulate the communications and broadcast sectors, while the Competition Commission created by the recently enacted Competition Act is the lead antitrust regulator in Nigeria, and is a separate institution from the NCC and NBC. The Competition Commission is charged with the administration and enforcement of the provisions of the Competition Act including the approval of mergers and the protection and promotion of consumer interests.

### Appeal procedure

- 29 | How can decisions of the regulators be challenged and on what bases?

Decisions of federal regulatory and administrative bodies such as the NCC and the NBC are subject to judicial review by the Federal High Court (FHC) and can be litigated up to the Supreme Court. Decisions can be challenged on the grounds of lack of authority, breach of the rules of natural justice, error of law on the face of the record and that the decision has been obtained by fraud. Under the NCA, a person dissatisfied or whose interest is adversely affected by any decision of the NCC must comply with a two-stage process within the stipulated time frame, before proceeding to the FHC for a review of the decision of the NCC. A person who is dissatisfied with the decision of the NCC will request that the NCC provide a statement giving the reason for the decision. Upon receipt of the NCC statement of reasons, the person may ask the NCC in writing for a review of its decision, specifying the reason and basis for its request. The NCC, upon receipt of the written submission, shall meet to review its decision, taking into consideration the submission of the dissatisfied person. It is only after the person has exhausted this two-stage process that he or she can proceed to court for a review of the NCC's decision.

With respect to the Competition Commission, the Competition Act provides that an appeal against the decision of the Commission shall lie to the Competition Tribunal.

### Competition law developments

- 30 | Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

The Competition Act was signed into law on 30 January 2019. The Competition Act in its explanatory memorandum seeks to provide for

the establishment of the Competition Commission and the Competition Tribunal, and for the promotion of competition in the Nigerian markets at all levels by eliminating monopolies, prohibiting abuse of dominant market positions and penalising other restrictive trade and business practices. Accordingly, the Competition Act regulates three business practices, namely: restrictive agreements; abuse of a dominant; and mergers. Secondly, business practices deemed to be anticompetitive are subject to review by the Competition Commission. Lastly, the Competition Act creates a number of enforceable consumer rights.

The Competition Act provides that its provisions shall override the provisions of any other law that relates to matters of competition and consumer protection. Insofar as the Competition Act applies to an industry or sector of an industry that is subject to the jurisdiction of another regulator under any law, in matters or conducts relating to competition and consumer protection, its provisions shall be construed as establishing a concurrent jurisdiction between the Competition Commission and the relevant government agency (including NCC and NBC), and the Competition Commission shall have precedence over and above the relevant government agency. In addition, the Competition Act requires that all appeals or request for review of the exercise of the power of any sector specific authority shall first be heard and determined by the Competition Commission before such appeals can lie before or be determined by the Competition Tribunal. As at the time of writing, both the Competition Commission and Competition Tribunal are yet to be constituted.

## STREAMSOWERS & KÖHN

BARRISTERS, SOLICITORS & ARBITRATORS

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**Tamuno Atekebo**

tamuno@sskohn.com

**Otome Okolo**

otome@sskohn.com

**Chukwuyere E Izuogu**

chukwuyere@sskohn.com

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16D Akin Olugbade Street, off Adeola Odeku Street  
Victoria Island  
Lagos  
Nigeria  
Tel: +234 1 271 2276 / 3846  
Fax: +234 1 271 2277  
www.sskohn.com

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