

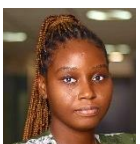
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Client Alert

The Nigeria Communications Commission (“NCC”) Calls for Stakeholder Input on Draft Regulations

The NCC recently issued a set of draft regulations and is calling for public consultation on the proposed regulations. This presents an important opportunity for stakeholders to provide their input and feedback on the draft regulations. The draft regulations are:

1. [Draft Data Protection Regulations;](#)
2. [Draft Guidelines on Corporate Governance;](#)
3. [Draft Quality of Service Regulations](#) and the [Draft Business Rules;](#)
4. [Draft Commercial Satellite Guidelines;](#)
5. [Draft Competition Practices Regulations;](#) and
6. [Draft Numbering Regulations.](#) (the “**Draft Regulations**”)

1. The Draft Data Protection Regulation (the “DPR”)

The draft DPR seeks to introduce a data protection framework specifically for the Nigerian communications sector to regulate the processing of communications data. It is noteworthy that the DPR does not reference the newly enacted Data Protection Act (“DPA”) and the Nigeria Data Protection Commission (“NDPC”). Rather, the NCC is recognized as the primary data protection regulator for the DPR. This suggests that the NCC intends for the DPR to run parallel with the DPA, thereby creating multiple data protection compliance regimes for businesses in the telecommunications sector. This is particularly relevant because the DPA prescribes its priority over any conflicting law relating directly or indirectly to the processing of personal data.¹ In this regard, we note that there are provisions in the DPR that directly conflict with the DPA. Some of these provisions are highlighted below:

- (a) Processing of Biometric Data: The DPR sets stricter requirements than the DPA for processing biometric data, requiring consent and compelling public interest for processing biometric data.²
- (b) Data Breach Notification: The DPR’s data breach notification requirements generally appear stricter than the DPA. First, the DPR requires notification to data subjects immediately after the breach occurs³, while the DPA only requires

¹ Section 63 of the DPA.

² Section 7(1) of the DPR

³ Section 9(1) of the DPR.

notification when the breach is likely to result in a high risk to data subjects.⁴ Second, the DPR requires notification to the NCC within seventy-two (72) hours of the occurrence of the incident⁵, while the DPA only requires notification to the NDPC within seventy-two (72) hours of becoming aware of the breach.⁶

- (c) Cross-Border Transfers: The DPR creates a parallel regime for the cross-border transfer of data⁷ which differs from the DPA regime requiring licensees to seek case-by-case approval from the NCC before making cross-border transfers.⁸

Relatedly, the DPR also imposes an obligation to notify data subjects, by text message, every last quarter of the year of the data processing activities carried out with the data subject's consent and submit a report in this respect to the NCC before 31 December 2023.⁹ It is also noteworthy that failure to comply with the regulation attracts an administrative fine of Ten Million Naira (₦10,000,000) and where the infraction continues, a daily default penalty of One Million Naira (₦1,000,000).¹⁰

2. Draft Guidelines on Corporate Governance

The Draft Guidelines on Corporate Governance (the "**Guidelines**") seeks to repeal the Code of Corporate Governance for the Telecommunications Industry 2016 (the "**2016 Code**"). The Guidelines introduce major changes to the corporate governance regime for the communications sector. These changes include the following:

- (a) All telecommunications companies not just Large companies¹¹ are now required to have a minimum of five (5) directors;¹²
- (b) The tenure for directors has been reduced from three (3) terms of five (5) years each to two (2) terms of five (5) years each;¹³
- (c) The number of non-executive directors on the board of a licensee, excluding the Chairman, must be equal to or higher than the number of executive directors and at least one-third of the board of directors must consist of independent directors;¹⁴
- (d) Not more than two (2) family members can be members of the board of a licensee simultaneously;¹⁵
- (e) Each board committee must have a minimum of at least three (3) directors;¹⁶ and
- (f) Each licensee is required to develop a corporate social responsibility (CSR) policy that positively impacts society¹⁷.

3. Other Regulations

The other Draft Regulations are amendments to existing regulations and do not introduce substantial changes to the existing law save for the Draft Commercial Satellite Communications Regulations. The most significant change to the Quality-of-Service Regulations is the deletion of Schedule 1 (Threshold Targets and Key Performance Indicators) which has been incorporated into the standalone Draft

⁴ Section 40(3) of the DPA.

⁵ Section 9(2) of the DPR.

⁶ Section 40(2) of the DPA.

⁷ Section 34(1) of the DPR.

⁸ Section 34(2) of the DPR.

⁹ Section 14 of the DPR.

¹⁰ Section 40 of the DPR.

¹¹ A large telecommunication company under the 2016 Code was a company:

a) whose operations must span a minimum of three geo-political zones.

b) whose turnover must exceed one (1) billion naira.

c) that employs over 200 staff members.

d) with a subscriber base of 500,000 or more.

¹² Section 7(2) of the Guidelines.

¹³ Section 22(2) of the Guidelines.

¹⁴ Section 7(3) of the Guidelines.

¹⁵ Section 7(7) of the Guidelines.

¹⁶ Section 8(5) of the Guidelines.

¹⁷ Section 14(8) of the Guidelines

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Business Rules. The definition of "licensee" has also been amended. The only major change to the Competition Practice Regulations is the inclusion of transactions that results in the change of a licensee's status from a private company to a public limited liability company as one of the transactions subject to merger review by the NCC. The alterations made to the Numbering Regulations are also minimal. The only significant modification is the inclusion of Autonomous System Number on the list of items that are not considered numbers under the regulation. Additionally, the Draft Regulation replaces the term "customer" with "subscriber" throughout the regulation.

As earlier stated, the Draft Commercial Satellite Communications Regulations introduces notable changes to the 2020 Guidelines. These changes include expanding the scope of the regulation to encompass Mobile Satellite Services (MSS), High-Altitude Platform Station (HAPS) operators, Drone/UAV operators, and other emerging services within the sector. Furthermore, the licensing requirements and fees under the 2020 Guidelines have been revised.

Next Steps:

Following the publication of the Draft Regulations, the NCC has [invited](#) interested stakeholders to provide written submissions on the Draft Regulations. Stakeholders are requested to address their submissions to:

The Executive Vice Chairman
Nigeria Communications Commission
Plot 423, Aguiyi Ironsi Street, Maitama, Abuja
Attention: Director, Legal and Regulatory Services

The NCC has also extended an invitation to stakeholders to participate in public inquiries regarding the Draft Regulations. These inquiries will be held on the following dates:

S/N	Regulatory Instrument	Date of Public Inquiry
1.	Draft Quality of Service Regulations and the Draft Business Rules; and Commercial Satellite Guidelines.	Tuesday, July 25, 2023, at 11:00 am
3.	Draft Guidelines on Corporate Governance; and Draft Data Protection Regulations.	Wednesday, July 26, 2023, at 11:00 am
5.	Draft Competition Practices Regulations; and Draft Numbering Regulations.	Thursday, July 27, 2023, at 11:00 am

Engaging with the NCC through written submissions or public inquiry sessions will be crucial for stakeholders in shaping the final regulations and ensuring their interests are represented. Therefore, it is crucial that stakeholders carefully review these Draft Regulations to understand the impact of the proposed changes on their operations.