

**International  
Comparative  
Legal Guides**



# **Telecoms, Media & Internet**

# **2024**

**17<sup>th</sup> Edition**

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### 1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

#### Telecommunications sector

The Nigerian telecommunications sector is currently ranked as the largest in Africa and the biggest contributor to the Information and Communications Technology (“ICT”) sector of Nigeria. According to the Nigerian Gross Domestic Product (“GDP”) report by the Nigerian Bureau of Statistics, the Nigerian telecommunications sector was the third-highest contributing sector to Nigeria's GDP in Q2 of 2023, contributing a total of 16.06%. The telecommunications sector is expected to grow from USD 8.68 billion in 2023 to USD 10.92 billion by 2028, at a Compound Annual Growth Rate of 4.70%.

Among the factors that have contributed to the growth of the telecommunications sector are: the growth in 5G deployment across the country; growth in data consumption; proliferation of the Internet of Things; increased smartphone and mobile app usage; increased investments in the sector and growing government initiatives and policies to drive internet infrastructure and broadband connection in Nigeria.

In October 2023, Nigeria's primary telecom regulator, the Nigerian Communications Commission (“NCC”), reported that the number of active mobile telecommunication plan subscriptions in Nigeria had risen to 220 million. High-speed mobile internet, such as 5G, supports businesses in Nigeria due to its networking application in cloud computing in business environment and as such has enjoyed increased use by businesses. Additionally, the government has also launched the National Digital Economy Policy Strategy (2020–2030) aimed at strategically positioning the Nigerian economy towards opportunities that digital technologies provide.

The major players in the telecommunications market are telco (“GSM”) operators, followed by Internet Service Providers (“ISPs”) and then other market participants such as infrastructure providers, etc. The GSM operators currently dominate the market – MTN has the highest number of subscriptions, closely followed by Globacom (“GLO”), AIRTEL and Emerging Markets Telecommunication Services Ltd. (“EMTS”) (trading as 9mobile), respectively.

#### Audio-visual sector

The audio-visual market in Nigeria is dominated by the media and entertainment market. Nigeria's Nollywood is currently

ranked as the second largest in the world with prospects of being ranked as number one.

The annual revenue of the audio-visual market is between USD 732 million to USD 806 million and is currently at USD 900 million in 2023. Technology has played a huge role in the advancement of the audio-visual market in Nigeria. From traditional audio-visual platforms such as radios and television, Nigeria has seen an increased adoption of over-the-top television (“OTT”) platforms such as Netflix, Apple, Amazon Prime and YouTube.

The key dominants of the audio-visual market in Nigeria are Multichoice Nigeria, Channels TV, Silverbird Group and Daar Communications Plc. OTT platforms such as Netflix and Amazon Prime are also dominant in the market.

1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction and any significant legislation on the horizon such as the regulation of online harms, regulation of social media or artificial intelligence (please list the draft legislation and policy papers).

#### Telecommunications and audio-visual

- The most important piece of legislation that applies to telecoms is the NCC Act, while the most important legislation that apply to the internet are the National Information Technology Development Agency (“NITDA”) Act, 2007 (“NITDA Act”) and the Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries (“ICSP/II”), 2022 (“NITDA Code”), which also applies to social media.
- The National Broadcasting Commission (“NBC”) Act, 2004 (“NBC Act”) is the most important legislation that applies to broadcasting. The National Broadcasting Commission Code, 2020 (6<sup>th</sup> edition) (“NBC Code”) outlines the minimum requirement for broadcasting and broadcasting companies in Nigeria. It provides best practices required for broadcasting online and regulates the adoption of technological devices in broadcasting.
- The National Film and Video Censors Board (“NFVCB”) Act, 1993 (“NFVCB Act”) establishes the NFVCB to regulate the censorship and exhibition of films and video works.

The Advertising Regulatory Council of Nigeria (“ARCON”) Act, 2022 regulates advertisement in Nigeria including online/internet advertisement.

#### Significant legislation on the horizon

There are interesting times ahead for the telecoms, internet and audio-visual space, particularly as policy makers are focusing on

passing laws to address the needs of Nigeria’s digital economy and steps are now being taken to rectify the *status quo*.

- The NITDA Bill, 2021 aims to repeal the NITDA Act and provides for: the administration, implementation and regulation of IT systems; Nigeria’s digital economy; technology and communications companies; as well as the licensing of these companies. The NITDA Bill is currently before the National Assembly.
- From a broadcasting perspective, there is currently a National Broadcasting Commission Act (Amendment) Bill, 2023 (“NBC Bill”) which proposes to expand the scope of coverage of the NBC Act by recognising newer forms of broadcasting within the broadcasting regulatory framework in Nigeria, including OTT services.
- A bill seeking to repeal the NFVCB Act was also introduced in 2021. The bill proposes to establish the National Film and Video Classification Commission (“NFVCC”) to, among others, provide licences to online platforms that engage in the sale, rentals, leasing, distribution or exhibition of films and video works, musical videos and video games, among others.

**1.3 List the government ministries, regulators, other agencies, and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms, including internet; (b) audio-visual media distribution sectors; (c) social media platforms; and (d) artificial intelligence in your jurisdiction.**

- The NCC, supervised by the Federal Ministry of Communications, Innovation and Digital Economy (“FMCIDE”), is the primary regulator of the telecoms sector.
- NITDA, supervised by the FMCIDE, is the regulator responsible for the regulation of Nigeria’s IT sector and social media. Through the NITDA Code, NITDA regulates social media platforms. Although Nigeria does not have a specific regulator for AI, NITDA promotes AI research through its subsidiary – the National Centre for AI and Robotics (“NCAIR”).
- ARCON, which regulates all forms of advertising (online or otherwise) in Nigeria, requires all advertisers (including social media advertisers) to obtain pre-exposure approval for all advertisements targeted at the Nigerian market.
- The NBC, supervised by the Federal Ministry of Information & National Orientation (“FMINO”), regulates the broadcasting sector.
- The NFVCB regulates the exhibition and distribution of films and video works.

**1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment including in relation to the supply of telecoms equipment? Are there any upper limits?**

**Telecoms and internet**

The Nigerian telecommunications sector is largely liberalised, which has contributed to the mass investment in the sector. There are neither limitations to the participation of foreign investors in the telecoms sector nor limitations to the supply of telecoms equipment to Nigeria. An investor that intends to provide telecommunications services in Nigeria must be incorporated in Nigeria and licensed by the NCC to provide such service. A foreign investor can participate in the sector through equity ownership in a Nigerian incorporated entity subject to

fulfilling the foreign participation requirements and registration with the Nigerian Investment Promotion Commission. There is, however, a limitation in the sector. Prior to the introduction of the NITDA Code by the NITDA, OTT platforms such as Netflix, Google, YouTube, Instagram and Twitter did not require incorporation in Nigeria to be able to access Nigerian subscribers/consumers. However, with its introduction in 2022, ICSPs and IIs whose users/subscribers are more than 1 million in Nigeria are now mandated to be incorporated in Nigeria and to have a physical contact address in Nigeria.

**Audio-visual distribution**

The NBC Code requires an applicant company to demonstrate that it is not representing any foreign interests. Furthermore, the NBC holds exclusive authority to decide whether or not to recommend the issuance of a new licence by the President of Nigeria to any applicant. The NBC also possesses the discretion to approve the acquisition of a broadcasting licensee’s equity by a foreign entity.

The NBC Code also restricts the transmission of foreign sports content into Nigeria unless the broadcaster has also acquired prime local sports content of the same category, with a minimum of 30% of the cost of acquiring the prime foreign sports content. Similarly, the NBC Code mandates the NBC to ensure that a broadcasting entity incorporated in Nigeria is 70% owned and operated by Nigerians.

**2 Telecoms**

**2.1 Is your jurisdiction a member of the World Trade Organization? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?**

Yes, Nigeria became a member of the World Trade Organization (“WTO”) on 1 January 1995.

The specific commitments for Nigeria regarding communication services under the GATS are set out in the Schedule of Specific Commitments dated 15 April 1994 (as amended on 26 February 1998). The commitments are with respect to modes of supply in four areas: (i) sale/installation of terminal equipment; (ii) operation of payphones; (iii) mobile communications (cellular phones, paging, voice and data, etc.); and (iv) value added services (“VAS”). The modes of supply include cross-border supply, consumption abroad, commercial presence and presence of natural persons.

Yes, to an extent, Nigeria has adopted and implemented the principles in the telecoms reference paper. For example, Nigeria has introduced a licensing regime for the telecommunications sector in line with one of the six regulatory principles of the reference paper.

**2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?**

The NCC is the primary telecommunications regulator in Nigeria. The Nigerian Communications Act, 2003 (“NCA”) gives the NCC the power to make subsidiary legislation by way of regulations, guidelines, etc. to regulate telecommunications services. The NCA stipulates that anyone who intends to operate a communications system or facility or provide a communications service must have been authorised and licensed by the NCC or have been exempted from such requirements. A separate licence is usually required for each type of telecommunications activity, although it is also possible for a number of activities to

be undertaken under a single licence. Generally, such licences are categorised into two categories: individual licences; and class licences. Individual licences are typically bespoke licences in which the terms and conditions upon which the licence is granted are specific to the activity undertaken by the licence holder; whereas for class licences, the terms and conditions upon which the licence is granted are common across all licensees.

Other relevant telecommunications laws include the Wireless Telegraphy Act, 2006 (“**WTA**”) – which sets out the framework for regulating the use of wireless telegraphy, the NBC Act – which regulates broadcasting services in Nigeria, the Cybercrimes Act – which regulates cybercrime and security in Nigeria and the Nigeria Data Protection Act, 2023 (“**NDPA**”) – which regulates the processing of personal data in Nigeria.

**2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government? Which regulator is responsible for social media platforms? What statutory basis do they have?**

The Federal Competition and Consumer Protection Commission (“**FCCPC**”), established under the Federal Competition and Consumer Protection Act (“**FCCPA**”), is the primary competition regulator in Nigeria. While the FCCPC serves as the primary competition regulatory authority in Nigeria, there are also sector-specific regulators with regulatory oversight on competition. For example, the NCA and the NBC Act give powers to the NCC and the NBC, respectively, to regulate competition as it relates to their licensees. Pursuant to these powers, the NCC issued the Nigerian Communications Act – Competition Practices Regulations, 2007. Therefore, in practice, depending on the sector of the licensee, the jurisdiction of the FCCPC is not exclusive. The FCCPC, NCC and NBC all enjoy some degree of autonomy; however, they are not completely independent of the government given that their leadership is appointed by the President of Nigeria.

There is currently no specific regulator for social media platforms. However, the NCC, NBC and NITDA have sought to exercise control over the regulation of OTT services. The NBC, apart from directing social media operators in Nigeria to apply for and acquire a broadcast licence, has also commenced the legislative process to amend the NBC Act. This amendment aims to incorporate regulations for OTT and Video-On-Demand (“**VOD**”) services.

NITDA has also issued the NITDA Code in collaboration with the NCC and NBC to regulate the activities of ICSPs and IIs in Nigeria. The NITDA Code outlines best practices for interactive platforms, which encompass guidelines for handling issues such as the removal of illegal content, access control, and addressing misinformation and disinformation. According to the Code, these platforms must promptly take down unlawful content upon receiving a complaint from an authorised government agency within 48 hours. If a complaint comes from a user, the removal should occur as soon as reasonably practicable.

**2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?**

Yes, decisions of the NCC, NBC and FCCPA can be appealed to the Federal High Court (“**FHC**”) in the case of the NCC or NBC, and to the Competition and Consumer Protection Tribunal with respect to decisions of the FCCPC.

**2.5 What types of general and individual authorisations are used in your jurisdiction? Please highlight those telecom-based authorisations needed for the installation and/or maintenance of infrastructure?**

The applicable licences are divided into individual and class licences. The individual licence is a form of authorisation in which the terms, conditions, obligations, scope and limitations are specific to the service being provided. They may authorise activities such as internet service, fixed wireless access, internet exchange, international cable infrastructure and landing station services, and international gateway. Class licences provide general authorisation and the terms and conditions or obligations are common for all licence holders. Registration with the NCC is the only condition precedent for applicants to commence operations. Some of the services it may authorise include sales and installation of terminal equipment (including mobile cellular phones and radio), repairs and maintenance of telecoms facilities, and operation of public payphones.

The Guidelines on Technical Specification for the Deployment of Infrastructure in the Communications Sector in Nigeria, 2023 provide the standards to be adhered to by communications services providers/operators, designers, fabricators and installers of communications towers and fibre deployment towards ensuring environmental safety and sound engineering practices.

Furthermore, the NCA and NCC Type Approval Regulations of 2008 require the NCC to conduct approval tests and issue certificates in respect of communications equipment and facilities generally. Licensed service or facilities providers, equipment manufacturers or suppliers must obtain approval certificates from the NCC with respect to their communications equipment or facilities prior to installation or sale.

Licensees may also require approvals of state governments, local government or any other relevant authority for installation, placing, laying or maintenance of any network facilities on, through, under or across any land.

**2.6 Please summarise the main requirements of your jurisdiction's general authorisation.**

The general requirement for operation in the telecommunications sector in Nigeria is to obtain a licence from the NCC in accordance with the NCA or any other applicable NCC regulation. The licence process is a documentary application accompanied by the required documentation. If the application is approved, then the applicant is required to pay a licensing fee as well as value-added tax. It should be noted that NCC licensees are also required to pay an annual operating levy (“**AOL**”). In relation to broadcasting and the media, the power to issue licences is vested in the President, and the NBC may only make recommendations to the President. The process for obtaining a licence is a documentary application process which typically varies depending on the nature of licence. As part of the licensing process, the NBC may request for specific information depending on the nature of the licence application. Additionally, NBC licences also come with financial obligations in terms of application fees, licence fees and contributions.

**2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?**

Licences granted by the relevant authority, i.e., the NBC and the NCC, authorise the licensee to carry out a specific number of

activities. The terms and conditions of each specific licence can be reviewed on the NCC's website (<https://www.ncc.gov.ng>). Most licences are valid and subsist for periods ranging from five to 20 years. A licence granted by the NCC is personal to the licensee and cannot be operated by, assigned, sub-licensed or transferred to any other party without the prior approval of the NCC.

The NBC Code requires a licensee to obtain the prior approval of the NBC in respect of any act, agreement or transaction that will directly or indirectly result in a change of effective control of its undertaking. Failure to obtain prior approval of the NBC is ground for the revocation of the licence granted and the NBC has absolute discretion as to whether to approve an application for a change of control.

The NCC's Competition Practices Regulations, 2007 require a licensee to pre-notify the NCC of proposed changes in shareholding if the number of shares that will change hands after the licence issuance amount to at least 10% of total shareholding, any other transaction that results in a change of control of the licensee and any transaction that results in the direct or indirect transfer or acquisition of any individual licence granted by the NCC. Although the NCC is in the process of amending the Competition Practices Regulations, the pre-notification requirement remains unchanged.

### 2.8 Are there any particular licences or other requirements (for example, in relation to emergency services) in relation to VoIP services?

Yes, there are. The NCC published guidelines on International Gateway Access and VoIP which provide requirements for obtaining a Full Gateway Licence, an International Data Access ("IDA") Gateway Licence and a Special IDA permit.

Only operational licensees are eligible for an IDA licence. A licensee is deemed operational upon the fulfilment of the following:

- a) a customer base of at least 5,000 connected subscribers or justifiable traffic volume;
- b) a known and identifiable address and operational base;
- c) up-to-date payment of its AOL;
- d) submission of up-to-date audited accounts; and
- e) up-to-date settlement of interconnection obligations.

Full Gateway Licensees shall be assigned an international signalling point code and are able to transmit direct voice signals, deploy time division multiplexing and IP transport protocols.

Any international organisation with existing private data will be allowed to carry voice traffic using VoIP technology. International organisations to which Nigeria belongs may implement VoIP on their data networks provided they do not carry third-party traffic (voice or data), and their network is subject to type approval, inspection and monitoring by the NCC.

Non-governmental and multinational organisations that have existing leased international data circuits are allowed to carry voice over such circuits (VoIP) subject to the agreement reached with network carriers.

All other international bodies and private companies are to subscribe to the services of licensed operators.

### 2.9 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

Installation of telecommunications infrastructure on public land is subject to permits or approval from the state or local government depending on the authority that owns the land.

In the case of private land, a person seeking right to private land can only be granted leasehold interest as all land is vested in the governor of the state where the land is situated. Depending on the nature of interest granted, consent of the state governor may be required for a legitimate transfer interest from one party to another.

### 2.10 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

Following receipt of a request for interconnection, a service provider/network is obligated to interconnect its communications systems with a licensee's network in accordance with the terms agreed upon by the parties. Licensees are also required to negotiate interconnection contracts ("ICs") in accordance with principles of neutrality, non-discrimination, fair-competition, cost orientation and equality of access.

For dispute resolution, parties are required to attempt amicable negotiations prior to notifying the NCC in writing and requesting its intervention where this fails. The decision of the NCC is binding on the parties involved and can be enforced by a court as in a court judgment. A dissatisfied party may appeal the decision to the FHC; however, the decision of the NCC remains binding until the final determination of the appeal. Furthermore, interconnection arrangements are to be made in line with applicable regulations, e.g., the NCA, NCC regulations and guidelines, arbitration and mediation rules, and interconnection dispute resolution guidelines, among others.

### 2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

Although there is no obligation for operators to publish their standard IC, dominant operators are obligated to register their IC with the NCC and publish a reference interconnection offer setting out the terms, conditions and tariffs on which interconnection services are provided. However, seeing as public institutions are required to publish a list of files containing an application for any licence, contract or agreement, it may be argued that by extension, files relating to an application for the interconnect exchange operator licence and application for the registration of the IC with the NCC can be published.

### 2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Yes, interconnection charges are subject to price regulation. Notwithstanding that the terms of IC are negotiated and determined by parties, where the NCC considers that the provisions of the agreement are inconsistent with the provisions of any of the NCC standards, it is empowered to intervene in a negotiation or a concluded IC set by the NCC. To this end, the NCC, in exercising its powers, has established interconnection rates that serve as binding rules and a form of cost regulation for operators where operators are unable to reach an agreement.

### 2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

Yes. For accounting separation, Airtel, EMTS, GLO, MTN, Main One Cable Company Nigeria Limited and IHS Nigeria are

obligated to submit a regulatory financial statement, a financial and non-financial report, and an Operator Specific Accounting Separation Manual to the NCC, while individual licensees may do so at their discretion.

There are currently no operators subject to functional separation.

For legal separation, compliance with the Code of Corporate Governance for the Telecommunications Industry, 2016 (“CCG”) is mandatory for the operators that meet one or more of the following criteria:

- operators whose spread of operations covers a minimum of three geo-political zones in Nigeria;
- operators whose turnover is in excess of N1 billion;
- operators who have more than 200 staff; or
- operators who have a subscriber base of 500,000 or more.

Operators are precluded from undertaking certain telecommunication activities; for example, operators are not allowed to undertake VAS aggregation or apply for a VAS aggregator licence. It is noteworthy that the NCC has released a draft of the Corporate Governance Guidelines, 2023, which will replace the CCG when officially issued. The draft guidelines eliminate the legal separation mentioned above, as they will be applicable to all communication companies in Nigeria.

**2.14 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or ‘regulatory holidays’?**

There are no specific regulations governing high-speed broadband networks. They are regulated in the same manner as other licensees. The Nigerian National Broadband Plan 2020–2025, published in April 2020, is the latest articulation of the Nigerian government’s broadband strategy. The document articulates the government’s plan to deliver data download speeds across Nigeria of a minimum 25Mbps in urban areas, and 10Mbps in rural areas, with effective coverage available to at least 90% of the population by 2025 at a price not more than N390 per 1GB of data (i.e. 2% of median income or 1% of minimum wage).

The following incentives are available:

- Grant of pioneer status (which includes a tax holiday) to interested investors for the production/assembly of telecommunication/ICT end-user equipment and devices as contained in section 10 of the Industrial Development (Income Tax Relief) Act, 1971.
- Reduction/waiver of duties, taxes and other charges on telecommunication/ICT equipment, devices and components, as provided under the Industrial Development (Income Tax Relief) Act, 1971.

**2.15 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?**

Individual operators set retail tariffs and charges for telecommunication services, although the NCC must approve these fees in the form of a price cap. Licensees are not permitted to increase these rates and charges without the NCC’s prior consent. When deciding and fixing tariff rates for non-competitive services offered by such licensees, the NCC may intervene as it sees fit.

Tariffs must be founded on the principles defined from time to time by the NCC, including the absence of non-competitive discounts, cost orientation, and fair and non-discriminatory pricing.

**2.16 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?**

Yes. The NCC issued the Consumer Code of Practice Regulations, 2007 and General Consumer Code of Practice which apply to all NCC licences, and in regard to all telecommunication services offered to the public. The General Consumer Code of Practice prescribes the minimum set of requirements and the minimum standard for the provision of services and related consumer practices applicable to all NCC licensees. Further to this Code, individual licensees are required to prepare their individual consumer codes. The NCC has released a draft Consumer Code of Practice Regulations, 2022, which if issued will replace the 2007 regulations.

The NCC in 2023 also directed the harmonisation of short codes for all licensed Mobile Network Operators. Furthermore, the draft NCC Data Protection (Communication Services) Regulations, 2023 provide that the consent of a data subject must be obtained before the provision of value-added electronic communications services and marketing of electronic communications services.

**2.17 How are telephone numbers and network identifying codes allocated and by whom?**

The NCC is solely responsible for allocating the network identifying codes and specifies the range of telephone numbers to be assigned by operators. The National Numbering Plan (“NNP”) published by the NCC specifies operator dialling codes, dialling procedure and routing codes. In general, the NNP contains the details of the Nigerian numbering scheme structure, thereby providing a uniform dialling procedure for national and international calls. Telephone numbers for each subscriber are allocated by operators, who shall allot numbers in compliance with the provisions the NNP.

**2.18 Are there any special rules which govern the use of telephone numbers?**

Every operator is obligated to register each subscriber identification module (“SIM”) card that it issues to subscribers. Such registration recognises the National Identification Number (“NIN”) as the only valid means of identification. No SIM registration, mobile number portability or SIM replacement can be carried out unless a subscriber provides the operator with a NIN.

**2.19 Are there any special rules relating to dynamic calling line identification presentation?**

Each party to an interconnection agreement shall ensure its network is adequately equipped to handle Calling Line Identification (“CLI”). The CLI of the call originating party shall be transmitted to the receiving party during the signalling procedure. This requires that the identity of the origin of a call should never be masked, but transmitted right through to its destination operator, even where it must be masked from the called party at the request of the calling party.

### 2.20 Are there any obligations requiring number portability?

Yes. All operators are required to offer mobile number portability services to subscribers subject to regulations by the NCC. Request for porting by any subscriber must be granted by an operator once there is no previous history of porting within the last 45 days, or within seven days of SIM replacement on a number.

## 3 Radio Spectrum

### 3.1 What authority regulates spectrum use?

The NCC and NBC are responsible for regulating the use of spectrum. The NCC possesses exclusive powers to manage, administer, grant licences for and regulate the use of the frequency spectrum for the communications sector.

Other notable regulatory authorities include the National Frequency Management Council, FMINO and FMCIDE.

### 3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative ‘beauty parades’, etc.?

The use of radio spectrum is authorised by the NCC which issues frequency licences categorised into short-term permits (four months), medium-term permits (one year) or long-term licences (a term of five, 10 or 15 years). The NCC reserves the right to change the duration, terms and conditions of any frequency spectrum licence.

The NCC allocates spectrum based on a combination of commercial value, optimal usage, uniform development and to some extent, universal access and service through several means, including “first come, first serve” (where supply exceeds demand), to more competitive methods such as open or selective auctions, either by way of lotteries or beauty contests (where demand exceeds supply), to automatic assignment (where, as with microwave frequency, there is unlimited sharing capability) and other internationally accepted methods of bidding for the acquisition of frequency spectrum.

The NCC awards and assigns licences and frequencies based on a combination of commercial value, optimal usage, uniform development and to some extent, universal access and service. These policy objectives have led to competitive methods of licensing and frequency assignment, including open or selective auctions (either by way of lotteries or beauty contests), tenders and fixed prices as determined by the Commission.

### 3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions? Are there penalties for the unauthorised use of spectrum? If so, what are they?

Yes, the NCC has declared the 5.25–5.35GHz and 5.725–5.875GHz bands to be licence-exempt. However, the following conditions must be fulfilled:

- there must be at least 75 hopping frequencies;
- the average time of occupancy on any frequency should not be greater than 0.4 seconds;
- the radio equipment should have the capability to choose within the range of hopping frequencies, or a channel, or be frequency optimised for the desired service;

- systems deployed in any of the licence-exempt bands shall employ transmitter power control (“TPC”), and if TPC is not used, the maximum mean equivalent isotropically radiated power density must be halved;
- the peak transmit power shall not exceed the lesser of 1 W or  $17 \text{ dBm} + 10 \log B$ , where B is the 26-dB emission bandwidth in MHz. For frequencies greater than 10 MHz above or below the band, the level must be less than  $-27 \text{ dBm/MHz}$ ; and
- the peak power spectral density should not exceed  $17 \text{ dBm/MHz e.i.r.p.}$

According to the NCA, any person who operates a communications system/facility such as a spectrum *without a communications licence (unless exempted to) shall be liable for an offence.* The penalty includes a fine not less than the initial fee for the relevant licence, a fine not exceeding 10 times the initial fee for the relevant licence, imprisonment for a term of a maximum of one year, or both fine and imprisonment.

### 3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

In Nigeria, the pricing may vary depending on the frequency band, with other factors taken into consideration, including: the level of congestion; market demand; and relative cost of deploying network infrastructures and other factors as determined by the NCC. The formula for calculating spectrum fee is:

$$\text{Spectrum Fee} = (\text{Unit Price}) \times (B) \times (K1 \times K2) \text{ per state}$$

B = assigned bandwidth in MHz or spectrum size in MHz  
K1 = band factor  
K2 = tenure duration factor.

The NCC in 2021 issued a draft Frequency Spectrum (Fees and Pricing, etc.) Regulations, which revise the Spectrum Fee calculation formula among other amendments.

### 3.5 What happens to spectrum licences if there is a change of control of the licensee?

The licence remains valid provided that the prior consent of the NCC was obtained for the change of control.

### 3.6 Are spectrum licences able to be assigned, traded or sub-licensed and, if so, on what conditions?

Yes, spectrum licences can be traded provided that the parties obtain prior written approval from the NCC, further to the NCC Spectrum Trading Guidelines, 2022.

## 4 Cyber-security, Interception, Encryption and Data Retention

### 4.1 Describe the legal framework for cybersecurity. Are there any specific requirements in relation to telecoms operators?

The principal legislation governing cybersecurity in Nigeria is the Cybercrimes Act. Other secondary frameworks include:

- the Money Laundering (Prevention and Prohibition) Act, 2022, which requires transfer of funds or securities to and from a foreign country in excess of USD 10,000 (which could be effected through the use of the internet) to be reported;



- b) the Criminal Code Act, which criminalises the obtaining of goods and credit by false pretences or other fraud;
- c) the Advance Fee Fraud and Other Fraud Related Offences Act, 2006, which criminalises the obtaining of property by false pretence and with the intent to defraud;
- d) the NCC Act, which provides that licensees shall use their best endeavours to prevent their network facilities or the network service, applications service from being used in, or in relation to, the commission of any offence under any law in operation in Nigeria; and
- e) the Nigeria Data Protection Regulation, 2019 (“**NDPR**”) and the NDPA regulate the processing of personal data in Nigeria.

Yes, there are specific requirements in relation to telecoms operators. Under the Cybercrimes Act, a relevant authority or a law enforcement agency can request for a service provider to: (a) keep any traffic data, subscriber information, and content or non-content information; or (b) release any information it has stored. Additionally, the NCC Consumer Code of Practice Regulations provide that any person granted a telecommunications licence by the NCC that collects information on individual consumers shall adopt and implement a policy regarding the proper collection, use and protection of that information.

**4.2 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.**

Under the Cybercrimes Act, where there are reasonable grounds to suspect that the content of any electronic communication is reasonably required for the purpose of a criminal investigation or proceedings, a judge may require a service provider to “intercept, collect, record, permit or assist competent authorities with the collection or recording of content data and/or traffic data associated with specified communications transmitted by means of a computer system”. The judge may also authorise a law enforcement agent to collect or record electronic communications through application of technical means. A service provider is also required to comply with a judge’s order to “intercept, collect, record, permit or assist competent authorities with the collection or recording of content data and/or traffic data associated with specified communications transmitted by means of a computer system” and to generally assist with the identification, apprehension and prosecution of offenders.

Under the Terrorism Prevention Act, 2011 (as amended) (“**TPA**”), law enforcement agencies have the power to apply for a court order to compel communication service providers to intercept specified communications, provided they obtain the requisite approvals of the Attorney-General and the National Security Adviser.

The NCA also empowers the NCC to order the interception of any communication or class of communications to or from any NCC licensee, person or the general public, relating to any specified subject in the occurrence of a public emergency or in the interest of public safety. In 2019, the NCC issued the Lawful Interception of Communications Regulations, 2019 (“**LIC Regulations**”), which legalise the interception of certain communications by authorised agencies in Nigeria under the circumstances described in the regulations.

**4.3 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?**

Please see question 4.2 above, as the answer relates to the TPA and LIC Regulations. As previously stated, the LIC Regulations allow for the interception of any communication (which includes calls, emails and other forms of communication).

**4.4 How does the state intercept communications for a particular individual?**

Under the LIC Regulations, Cybercrimes Act and TPA, upon an application, a judge could require a telecoms provider to intercept and retain specified communication received or transmitted by that service provider, or authorise the relevant law enforcement agency to enter any premises and install and subsequently remove any device with which a communication or communications of a specified description may be intercepted and/or retained, for purposes of intelligence gathering. In addition to the above, the Cybercrimes Act also empowers a judge to authorise a law enforcement agent to collect or record electronic communications through application of technical means.

**4.5 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.**

The LIC Regulations state that where the communication intercepted is an encrypted or protected communication within the possession of the licensee, the licensee shall, on request, provide the relevant authorised agency with the key, code or access to the protected or encrypted communication, and that where the key or code is in the possession of any person outside its jurisdiction, the authorised agency may seek assistance from a foreign authority in accordance with any international mutual assistance agreement.

**4.6 Are there any specific cybersecurity requirements on telecoms, cloud providers or social media platforms? (If so, please list the relevant legislation.)**

Yes, there are. The NDPA mandates the adoption of technical and organisational measures to ensure the security, integrity and confidentiality of personal data and the reporting of personal data breaches to the Nigeria Data Protection Commission and the affected individuals (where applicable).

Under the NITDA Code, IIs and ICSPs are mandated to, upon receiving an order from a court, provide information, including personal data, under their domain or any assistance to any authorised government agencies regarding content put on a platform, to carry out an investigation, combat cybercrimes or prosecute an offence. NITDA also issued the Nigeria Cloud Computing Policy in 2019. However, the Cloud Computing Policy does not propose any specific cybersecurity requirements on telecoms or cloud providers.

#### 4.7 What data are telecoms or internet infrastructure operators obliged to retain and for how long?

A service provider is required to keep all traffic data and subscriber information that may be prescribed by the NCC for a period of two years. With respect to personal data, the NDPR and the NDPA provides that personal data must be stored only for a period within which it is reasonably needed. The NCC's Guidelines for the Provision of Internet Service ("NCC Internet Service Guidelines") similarly require ISPs to retain internet service-related information, including user identification, content of user messages and traffic or routing data for a minimum period of 12 months or any other period directed by the NCC.

## 5 Distribution of Audio-Visual Media

#### 5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

The distribution of audio-visual media is principally regulated by the NBC and the NBC Code, which is issued pursuant to the Act. The Code sets out the minimum standard to be complied with by broadcasters. Therefore, anyone who intends to operate a broadcast station, facility or equipment must be authorised to do so by way of a broadcasting licence or frequency allocation by the NBC.

#### 5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

For traditional distribution platforms, such as radio and television, content regulation in Nigeria is primarily overseen by the NBC pursuant to the NBC Act and the NBC Code. The NBC Code also applies to internet (radio/television) broadcasters streaming from Nigeria and these broadcasters are subject to the same content regulation requirements as traditional broadcasting platforms. In contrast, the application of the NBC Act and NBC Code to newer platforms such as OTT/VOD services is currently subject to debate. The prevailing market view has been that these services (regardless of the NBC's attempt to regulate them) through the NBC Code, do not fall within the regulatory scope of the NBC Act. This is because the scope of the NBC Act and the powers and functions of the NBC under the Act appear to regulate traditional broadcasting services such as television and radio and do not contemplate OTT services or any digital broadcasting. This perspective is reinforced by the proposed NBC Bill, which seeks to include OTT services within the regulatory purview of the NBC highlighting the inability of the current NBC Act to regulate OTT services. It has thus been argued that the provision in the NBC Code with respect to OTT/VOD are not valid as the NBC Code, which is a subsidiary legislation, cannot be used to expand the powers of the NBC under the NBC Act (the principal legislation). This was the position of the FHC in the case of *Femi Davies v. NBC* FHC/L/CS/1152 2020 (unreported), where it held the NBC's extension of the NBC Code to regulate advertising and exclusivity of intellectual property rights as *ultra vires*, incompetent and void. In light of the above and in the absence of NBC licensing categories for OTT/VOD platforms, the content regulation requirements for these platforms remain unclear.

It should also be noted that advertisement is regulated by ARCON under the ARCON Act, although the extent of its applicability is limited to advertising practitioners – persons registered by ARCON to practice advertisement, advertising and marketing communications in Nigeria.

#### 5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

The categories of licences that can be granted by the NBC are as follows:

- a) Satellite Broadcast; Subscription DTH (Audio and Video).
- b) Cable Television Subscription.
- c) Community (Radio and Television).
- d) Networking (Radio and Television).
- e) FM Radio Broadcasting.
- f) Internet Broadcasting.
- g) Digital TV Content Aggregation.
- h) Broadcast Signal Distribution.
- i) Digital Terrestrial TV.
- j) Direct Satellite Broadcast.
- k) Mobile/Handheld.
- l) Digital Subscription Television.
- m) Electronic Programme Guide.
- n) OTT/VOD.

The key obligations for the licences range from filing of returns to complying with the broadcasting standards set out under the NBC Code. For example, the NBC Code imposes local content obligations on licensees. Additionally, other obligations include adherence to the general principles of legality, decency, truth, integrity and respect for human dignity as well as the cultural, moral and social values of the people within the purview of the Nigerian Constitution, respect for community standards in the provision of programme materials and establishment of a mechanism for addressing complaints as well as feedback. It is noteworthy that the NCC is yet to issue any licence with respect to OTT/VOD services to date.

#### 5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Broadcast licences are generally unassignable; although the NBC has shown a willingness to allow the transfer of a licence by a licensee to its subsidiary. A transaction to transfer the ownership of a licence is only valid where such transfer has been pre-approved by the NBC. Where the prior approval of the NBC is not obtained before the completion of such transaction, the licence may be revoked.

## 6 Internet Infrastructure

#### 6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

As far as we know, the issue of "mere conduit" or "common carrier" in its strict sense, have not come up for consideration before any Nigerian court.

Nonetheless, it is noteworthy that Paragraph 11 (a) of the NCC Internet Service Guidelines provides protection for ISPs

acting as a mere conduit; that is, where such ISP did not initiate the transmission of the infringing content, did not select the recipients of the transmission, did not modify the content and promptly removed the infringing content on receipt of a takedown notice.

Also worthy of note is the defence of “innocent dissemination” that was applied in the cases of *Anolowo v. Kingsway Stores & Anor* [1968] 2 All NLR 217 and *Vanguard Media Ltd and ors v. Olafisoye* (2011) LPELR-8938 (CA), where the court stated that innocent dissemination is a defence to a charge of defamation; although, this related to print publication rather than digital content.

**6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. to provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?**

By the NCC Internet Service Guidelines, ISPs have the precautionary obligation to protect their users, who may be content creators, by: educating them on the methods by which they may restrict or control access to their content; informing them of their rights under the relevant laws with regard to the placement of their content on the internet; and informing them of the procedure that they may follow in the event that their content is infringed upon by another. The obligations of the ISPs, in this regard, are fulfilled when they display these instructions on the home pages of their websites.

ISPs are obligated to react to the infringement of such content by cooperating with relevant regulatory and law enforcement agents to investigate such illegal activity. This cooperation includes the provision of relevant information to the NCC.

ISPs may also suspend or disconnect the account of users who infringe upon the content of other persons in violation of the Guidelines.

**6.3 Are there any ‘net neutrality’ requirements? Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks?**

There are net neutrality requirements provided for under the NCC Internet Service Guidelines. Paragraph 3.2 of the NCC

Internet Service Guidelines requires ISPs to treat all lawful traffic within the same service category equally, without discrimination, restriction or interference, irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.

According to the sample Internet Services Licence issued to ISPs, a licensee would be deemed discriminatory where it favours one party over another in the provision of its services.

**6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?**

By the licence issued to them, ISPs and/or telecommunications operators have the obligation to restrict access, through their network, to information that has the effect of casting aspersions on a religion, a political group, a race or an ethnic group. ISPs also have the duty to block access to pornography or pornographic content, as well as any obscene article and/or seditious publication as defined under the Nigerian Criminal Code.

ISPs do not have the right to block “any lawful content, applications, services or non-harmful devices” except where reasonably necessary for the purpose of managing the network.

Presently, consumer VPN services are neither regulated nor blocked.

**6.5 Is there any regulation applicable to companies that act as ‘intermediaries’ or ‘platforms’ in their role of connecting consumers with goods, services, content, or are there any proposals for such regulation? Include any proposals or legislation regulating social media platforms in relation to online content or safety.**

The NITDA Code for IIs and ICSPs is the primary regulation for intermediaries/platforms in Nigeria. There have also been unsuccessful proposals for social media regulation. Attempts at passing the Frivolous Petitions Bill in 2015 and the Protection from Internet Falsehood and Manipulation Bill (Anti-Social Media Bill) in 2019, both aimed at regulating social media in Nigeria, were protested leading to their eventual withdrawal.



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