INVESTING IN THE NIGERIAN TELECOMMUNICATIONS SECTOR

Editor's Comment

The Telecommunications sector in Nigeria is one of the most undeveloped in Africa and indeed, in the whole world. Several factors account for the low development of telecommunications infrastructure in Nigeria, chief amongst which is the fact that the sector had been heavily dominated by the state-run monopoly – Nigerian Telecommunications (NITEL) Plc.

The telecommunications sector is an indispensable catalyst for the development of all other socio-economic sectors. NITEL has been unable to meet the telecomm requirements of the major sectors of the economy, typified by oil and banking, which has led to players in these sectors investing in and providing alternative means of communication for their business activities.

The Nigerian government in recognition of this fact has taken steps to liberalize its telecom sector so as to make it efficient and internationally competitive.The liberalization process is expected to culminate in the privatization by the sale by the government of 40% of its interest in NITEL shares to technical partners, and an additional 20% to the Nigerian public by September 1999.

The governments' decision to liberalize the telecom sector is certainly laudable. This newsletter will however assess the extent and impact of deregulation on the sector, the implication of the government's liberalization policy for private investors and the growth/development of the sector.

THE NEED FOR A DEREGULATED TELECOMMUNICATIONS SECTOR.

The main reasons for deregulating the Nigerian telecom industry, within the context of National Communications Commission Decree No. 75 of 1992, can be summarized as follows:

- the inability and unwillingness of government to continue to subsidize the public telecom company, NITEL;
- the need to spread some of the burden of running telecom services to the private sector;
- a growing demand for more efficient and enhanced modern facilities especially by the business community;
- the generally poor service delivery, and a slow growth of the infrastructure, access by rural populations, and quality of service;
- the global trend towards liberalization of telecom services towards a free-market economy.

The level of telecom development in Nigeria was well below that required for sustainable growth and development and in terms of telephone lines per 100 inhabitants, Nigeria had an average of 0.33 between 1992 and 1994.

NITEL has been incapable of coping promptly and effectively with the demands of modern technology in the provision of such telecom services as internet services, audio and teleconferencing and other Value Added Network Services.

THE NATURE OF DEREGULATION OF THE NIGERIAN TELECOM INDUSTRY

The process of the deregulation of the telecom sector began in the late 1980's with the commercialization of the operations of the state enterprise for the purpose of enhancing its efficiency.

However, a greater deregulation of the sector was effected by the promulgation of the National Communication Commission (NCC) Decree of 1992. The position upon deregulation was that telecom services were divided into 2 wide categories - one part for the exclusive preserve of NITEL, whilst the other allows for private sector participation. In other words, NITEL will continue to have a monopoly in the following activities:

. Exchange and Trunks
. International services

In effect, the role of NITEL has been reduced to that of an operator and no longer a regulator or adviser to government on telecomm.

Further deregulation of the sector was effected by the amendment made to the Decree in 1998. Prior to this, only Nigerians by virtue of section 10(a) of the Decree could participate in telecommunications activities. However, by the amendment, the criteria for being licensed as an independent service provider, is as spelt out in Section 10 (as amended), which stipulates that "No person shall operate a telecom service in Nigeria unless the person –

a) is registered as a body corporate under the Companies and Allied Matters Act 1990;
b) is licensed as a telecom service operator under the provisions of the NCC Decree.

VIABLE AREAS IN THE TELECOM SECTOR THAT ARE OPEN TO PRIVATE PARTICIPATION

The National Communication Commission is authorized by the NCC Decree of 1992 to grant licenses to persons wishing to provide one or more of the underlisted services.

- Installation of terminal or other equipment e.g. telephone sets, Fax etc.
- Provision and operation of public pay-phones
- Provision and operation of private network links employing cable, radio communication, or satellite within Nigeria.
- Provision and operation of public mobile communication e.g. Cellular, Paging, Trunking Mobile services etc.
- Provision and operation of community telephones e.g. in rural areas.
- Provision and operation of valued added network services
- Repair and maintenance of telecommunications facilities.

Though deregulation has led to an increase in the volume of service providers and the quality of the services being provided, the present supply of such services is still a long way from satisfying the needs of the end users. In other words, there is a need for more service providers to come into the market in order to meet these demands.

MODES OF FOREIGN PARTICIPATION IN THE NIGERIAN TELECOM INDUSTRY

Foreign participation in the telecomm sector is much encouraged by the Nigerian government. The Nigerian Investment Commission Decree of 1995 which regulates foreign investment, provides for the unconditional transferability of funds into and out of Nigeria, on the condition that this is done through an authorized agent.

Large unmet demand for basic telephone services and ever-increasing demand of business for modern communications facilities have created opportunities for private sector participation in the Nigerian telecom industry.

As earlier stated, the provisions of the NCC Decree allow for both local and foreign participation in the telecomm sector. This is in order to ensure participation by companies with experience in the operation of telecom services and who also have the requisite technological and financial resources at their disposal.

A foreigner can participate in the Nigerian telecom sector through any of the following avenues*:*

A) By incorporating a company in Nigeria as provided for by section 10 of the NCC decree.

B) By purchasing a stake in a Nigerian company, after complying with the necessary legal requirements and conditions stipulated by the NIPC and the Nigerian Stock Exchange for such transactions.

C) By providing consultancy and technical services to telecom companies. In some cases, agreements can be negotiated whereby the foreigner acquires a stake in the business in exchange for the service provided.

D) Limited recourse borrowing whereby the lender acquires a stake in the business in consideration for the loan granted to the telecom operator.

F) Agency -The foreign investor may appoint a Nigerian company as its agent in Nigeria.

LICENCES

The NCC provides licenses for 4 distinct categories of entities in the telecom sector. These are:

- Carriers, defined to include owners of networks and trunks.
- Authorized operators of telecom services to provide public services.
- User operators who operate their own network mainly for their internal communication needs.
- Technical services e.g. equipment/system installation, repair and maintenance, and cabling.

The NCC has issued licenses to several companies for the provision of these services, but there is yet to be any serious activity by most of the licensees. For instance, in the area of mobile telephony, the NCC is considering issuing only 4 mobile licenses i.e. that issued to M-Tel (the national mobile telecom carrier) and 3 others.

Although licenses have been issued, only M-Tel is operational. The main reasons adduced for this is the lack of necessary funds on the part of these companies.

It has therefore become necessary for the NCC to revoke some of the licenses earlier issued, in order to re-issue those licenses to other applicants. This is a demonstration of the NCC's determination to ensure seriousness in the sector as unutilized licenses would deter the processing of licenses for other ready and willing investors.

A major concern of the NCC at present is the licensing of a second national carrier so as to complement the services provided by NITEL and also in order to fully break NITEL's monopoly in the area of services it provides.

THE BIG ISSUE – FUNDING TELECOM PROJECTS IN NIGERIA

The deregulation of the telecom sector has seen an increase in the number of telecom service providers in the market, to meet an ever- increasing demand for telecom services. A lot of these private telecom companies are over-subscribed, and unable to meet the demand for their services because of inadequate access to funds and consequently equipment and technical expertise.

This is further aggravated by the fact that the telecom sector is extremely dynamic and in a constant process of change, quickly rendering new methods obsolete.

In order to alleviate these problems there are presently a few projects embarked upon by investment banks in the West African sub-region.

These are specifically the AFRICA ONE PROJECT and the ECOWAS TELECOMMUNICATIONS PROJECT. These projects are aimed at developing and enhancing telecom facilities in West Africa by linking all capital towns in the West African region through automatic telephone and telex facilities, and generally ensuring effective global interconnectivity.

Some private operators have also entered into BOT (build, operate, transfer) contracts with investors as another method of funding. For instance, NITTI limited, a licensed operator of Private Network links (VSAT) has entered into a joint venture with BT Teleconsult limited to provide I million lines within 5 years under a BOT.

Though these projects will go some way towards alleviating the financial constraints faced by the Nigerian telecom sector, there is still a strong need for more telecom financing.

CONCLUSION

Though the telecommunications sector is an integral element to the economic and social development of any country, Nigeria is yet to feel the impact of emerging technology.

One can easily see however that there is a strong desire on the part of the nation to meet up with the rest of the world. This can be gleaned from the policy framework that has been put in place by the Federal government.

The next critical step is finding willing investors and companies to help in boosting up the sector. The NCC is doing a lot in a bid to create an awareness of the possibilities in the sector as well as trying to find ways of encouraging full private participation. One of such incentives which has been put in place is the granting of pioneer/priority status to such private companies (if the approval of government is given) as a fiscal package.

The NCC has also ensured that there is a level playing field for all telecomm service operators. This is essential, putting into consideration the fact that NITEL is now operating in competition with these new entrants into the market.

GSM IN NIGERIA – TO BE OR NOT TO BE?

Although the origins of telecommunications lie in services provided along fixed terrestrial linkages, on a world-wide basis, mobile communications are clearly taking over from fixed links as the preferred mode of telephony. Mobility has become all-important.

The cellular radio market started out in an analogue format but since the introduction of the Global System for Mobile (GSM) communication, the digital format has become increasingly dominant, especially in the business sector.

Technological change is rapid and there is already competition for GSM from PCNs (personal communications networks) which operate at higher frequencies and permit the use of smaller, lightweight handsets which nevertheless have the capability to transmit data, fax and video images.

Liberalization of Mobile Services in Nigeria

With the deregulation of the telecommunications sector in 1992, the provision of mobile services was the most viable and the first to be exploited by the private telecoms operators (PTOs). The incumbent TOs are, however, better placed than private sector operators to initiate these services by virtue of their entrenched position in basic telephony. This therefore leaves the PTOs with the arduous task of striving to make significant inroads into mobile markets.

The first mobile company in Nigeria, MTS, entered into a joint venture agreement with NITEL for the provision of these services. This deal went sour years back due to irreconcilable financial differences between the 2 companies, apparently stemming mainly from the non-payment of interconnection fees by MTS to NITEL.

There has since been a deluge of cellular service providers, although only very few have managed to stand the test of time in the provision of the service.

The obstacles faced by these operators have also been traced to that which befell MTS, that being the problem of interconnection by NITEL.

This situation was not peculiar to Nigeria as the TOs of other countries such as Germany and Spain had asserted that full liberalization could potentially cut the cost of long-distance mobile calls by 50%. They further argued that they needed the revenue from mobile interconnection fees to maintain their commitment to a universal telephony service.

The European Commission in 1996 had to take a firm stand against what they termed 'unacceptable restrictions' on mobile operators, which included:-

* a ban on using infrastructure other than those provided by the incumbent;

* exclusive rights for the provision of certain mobile services in favour of the national TO;

* mobile operators are required to interconnect with other mobile operators via the national TO's fixed network.

In order to ensure full liberalization of the Nigerian mobile market, it would be instructive to take a cue from the proposals of the EU Commission thus:-

* The exclusive rights granted to organisations which already enjoyed a dominant position in creating the terrestrial networks, or to one of their subsidiaries have to be abolished.

* Member States (of the EU) shall ensure that all restrictions on operators of mobile and personal communications systems with regard to the establishment of their own infrastructure, the use of infrastructures provided by third parties and the sharing of infrastructure, other facilities and sites are lifted.

* Member States shall ensure that direct interconnection between mobile communications systems is allowed.

These recommendations would in no small measure pave the way for mobile operators to provide quality services to their subscribers at a lower cost. The number of mobile telephony operators in Nigeria is at present insufficient, with consequent high cost of subscription. The NCC would do well to issue new licenses and create a level playing field in mobile communications.

GSM IN NIGERIA – TO BID OR NOT TO BID?

GSM, which operates in 105 countries, uses the Time Division Multiple Access (TDMA) standard which allows each call a fraction of the overall signal's transmission time. A subscriber to a GSM operator can use his mobile phone in any country in which the technology is being utilised. This is referred to as roaming and a credit card size Subscriber-Identity-Module Card with a built-in chip is all that is needed to tap into any GSM system, although the cost is, and is set to remain relatively high.

There has been a lot of interest generated in this technology in recent times in Nigeria, with interested parties (both foreign and local) vying for the coveted licenses. The government has evinced an intention to appoint only four (4) operators to offer GSM services.

Initially, the license fees were pegged at $10, 000 (Ten Thousand United States Dollars) but the Obasanjo administration increased this amount to $100 million (One Hundred Million United States Dollars). Even with this sharp increase in fees, there are presently 17 (Seventeen) operators who have gone through the pre-qualification process. After the pre-qualification process, the NCC announced 7 qualified bidders.

There was attendant outcry on the list of bidders released apparently due to the fact that those announced as being qualified by the NCC were not the same as had obtained qualification by the consultants. This disharmony led to the Federal Government canceling the licensing process and announcing that the licenses would now be awarded on the basis of a public auction with the reserved price still pegged at $100 million.

GOING, GOING, GONE!!! – Auctioning of GSM Licenses.

The modalities for auctioning the licenses are yet to be released although the World Bank was initially expected to supervise the exercise in concert with the NCC. There has however been a lot of controversy surrounding the participation of the World Bank in the process, with various parties suggesting that the role of the world finance body should be merely advisory.

The arguments of the dissenting parties stems from the seeming conflict of interest of the World Bank in the GSM issue. It was alleged that the International Finance Corporation (a subsidiary of the World Bank) supported 2 telecoms firms in the cancelled bidding exercise. Furthermore, with the appointment of a 10-man board for the NCC, the Commission should be capable of properly conducting the auction exercise.

This is the least stringent of the issues surrounding the auctioning of the licenses however, the more important being the criteria for awarding the licenses. It would not do to simply award the licenses to the highest bidders as there would be no prerequisite guarantee of the capability of the operators.

As we await the official release of the criteria for award of the licenses, one expects that the government would most likely take a cue from the Kenyan experience. The Kenyan government in auctioning their GSM licenses, placed more impetus on technical capability (75%) than on the ability to pay the requisite fees (25%). This would be a better means of securing the most capable operators for the country, thereby ensuring a proper and effective deployment of the technology.

RESTRUCTURING FOR GROWTH – REGULATION OF TELECOMMUNICATIONS IN NIGERIA

INTRODUCTION

The Nigerian telecommunications sector has witnessed a lot of activity in the recent past, based on the country's desire to rapidly develop its telecommunication network to a level comparable to any other the world over. There is no gainsaying the fact that the best environment for the development of new markets in the telecoms sector is an open and competitive one.

The liberalisation of the Nigerian telecoms market would provide an impetus to growth and help to relieve governments' budgetary constraints. This is the thinking of the Federal Government of Nigeria which, since coming to power, has had a great deal of interest in the development of the sector.

Liberalization of the telecommunications markets would engender a much enhanced freedom of entry which, in turn, would necessitate significant limitations upon the monopoly powers of the incumbent state–owned entity – the Nigerian Telecommunications Limited (NITEL). Deregulation has opened the sector significantly to the private sector participants, both foreign and local.

A large number of these private telephone operators (PTOs) have already set up their networks and some have even started their operations providing services ranging from the plain old telephony services (POTS) for voice telephony to the value-added network services (VANS) such as fax, e-mail etc. Due to the integration of telecoms services, one cannot usefully be separated from the other. For instance, the operators of VANS need to lease part of the capacity of an existing network from the network owner, add value to the basic telephony service before selling it on to 3rd parties.

A key aspect of new networks in telecoms is that they have a much greater capacity than existing ones and hence do not merely provide a more sophisticated and better quality package of services but also provide it at an appreciably lower marginal cost.

In this regard, an incumbent is at a disadvantage due to its reluctance to discard its existing network and invest in a replacement.

The incumbent service provider that has hitherto operated as a monopoly is (in a deregulated sector) expected to lose a large portion of its market share to the new entrants and not surprisingly, one of the ways incumbents will compete will be in finding ways to avoid competition. Hence, there is the need for proper, all-encompassing regulation.

THE PATH TO A VIABLE REGULATORY FRAMEWORK -Issues In The Forefront

The Nigerian telecommunications sector was deregulated as far back as 1992 with the promulgation of the Nigerian Communications Commission Decree. However, it is only in recent times that activities have really taken off in the sector. There has been a renewed interest in Nigeria since the inception of the present democratic government and the telecom sector is one of the main areas of focus of foreign and local investors.

The private sector is expected to provide most of the finance for investment but this investment will not be forthcoming unless a clear and stable regulatory framework is promptly established, identifying the general principles and giving a clear timetable.

In order to have a policy document which fully caters for all aspects of the industry and hastens the development of the sector, it would be essential to keep in mind pertinent issues that need to be addressed.

Appointment Of Additional National Carriers

Initially, the NCC Decree merely opened up the market to allow PTOs to compete with the incumbent service providers in all areas of provision of telecommunications services, except:

*Exchange and Trunks; and

*International services.

The President, Olusegun Obasanjo, advocated for the immediate break up of the monopoly hitherto enjoyed by the incumbent TO with the immediate appointment of two (2) national carriers to compete with NITEL for local, trunk and international services.

This was a welcome development due to the inefficiency of NITEL in providing these essential services. The appointment of additional national carriers is expected to put NITEL under pressure to perform and may also lead to mergers and acquisitions in the private sector industry where some companies are already offering small- scale services in parts of the country.

Though the previous administration had considered appointing a second national carrier, the appointment had been put aside indefinitely due to the belief that the second carrier appointment before or during privatisation may result in lesser offers for the national carrier. It would seem that this thinking has also been imparted to the present administration as the appointment of the national carriers appear to have been shelved.

That notwithstanding, appointment of two national carriers and the privatisation of NITEL are the major expectations to satisfy the demand for volume telephone services that will guarantee quality, reliability and affordability in the country.

Interconnectivity

Deregulation of the telecommunications sector has been evidenced by the emergence of PTOs which compete with NITEL for subscribers. However, one obstacle the PTOs have had to face is the issue of interconnectivity with NITEL.

Interconnectivity is the mode of linking NITEL's network exchanges and those of the PTOs. Unless this is done, subscribers of both service providers (NITEL and the PTOs) cannot get their calls through to one another. Since NITEL is presently the only national carrier having about 90% subscribers, all PTOs are desirous of interconnecting with the carrier.

NITEL stands to realize huge financial benefits from the fees to be paid by the PTOs but inspite of this, the organisation appears to be reluctant to interconnect all the private operators which have applied to it. Affected adversely by NITEL's interconnectivity problems are private operators which have licenses to offer both national and international traffic via satellite.

It can be deduced therefore, that the major reason why NITEL is yet to interconnect some of the PTOs is the fact that many of them have the capability to offer international traffic, an area where NITEL generates a lot of revenue. It would appear therefore that NITEL has employed the issue of interconnectivity to be a sort of "barrier to entry" against its competitors.

This particular problem is one which may be easily resolved by the appointment of additional carriers as the PTOs will have a choice of which organisation to approach for interconnection. This has led to a clamour by the PTOs for an appropriate regulatory framework which will see to the strict implementation of rules for the introduction of competition especially those that will guarantee unlimited and uninhibited network access and interconnection.

The Nigerian Communications Commission (NCC)

The NCC as set up by the decree of 1992 was to operate as a corporate and autonomous body whilst maintaining close liaisons with the Ministry of Communications which still retained the role of policymaking and frequency coordination.

The Commission could not however be regarded as being fully autonomous as final approval for the granting of licenses came from the Presidency based on the recommendation from the NCC through the Ministry of Communications. This led to a situation where licenses were granted or refused based on the level of influence the applicants could wield amongst the powers that be in the government. The NCC was oftentimes compelled by powerful elements to recommend applicants for approval irrespective of whether they were qualified or not.

Further, the NCC was empowered to exercise control only over the PTOs and not the national carrier, NITEL. The Commission lacked the capacity to call NITEL to order and could merely license the private operators and type-approve their equipment but could not compel NITEL to interconnect them. This was a major problem as most of the PTOs even with their networks in place, could not commence their operations.

A strengthening of the powers of the NCC has thus been called for in order to be able to create a level playing field and the creation of a conducive environment for growth in the telecommunications sector.

Strengthening The Regulator

In order to properly regulate the telecoms sector, there is a need for the regulator, the NCC, to have wide – reaching control over all players in the industry. While attaining absolute transparency and independence might be an illusion, in regulation, the NCC must strive to ensure that no one group is able to influence the decisions of the Regulator. This would of course include the incumbent operator which had hitherto more or less enjoyed a free hand to do as it pleased.

It is not only in Nigeria that there has been a conflict between the regulator and the incumbent telecom operator. For instance, in the UK there were regulatory quarrels between BT and the Office of Telecommunications (OFTEL) and on a global scale, between the European Commission and regulatory bodies of the member states.

The cause of the conflict can be easily traced to the fact that the incumbents regard the regulators as attempting to tilt the playing field even further in their own favour (and by extension, new entrants to the sector).

However, the true situation is that the process of negotiation (in relation to privatisation) is a long-winded process which allows incumbents use delaying tactics to their advantage, and that they are already advantaged by the fact that all information about, for example, costs, must ultimately emanate from themselves.

It is therefore of the utmost importance that the regulators be strengthened and the incumbent operators brought fully under their control. Furthermore, in Africa, not only is there a need for strong national regulatory bodies, but continental coordination and harmonisation of those bodies should be encouraged to attract the much needed investment and development in the telecoms sector.

The African Telecommunications Union, the telecommunications arm of the OAU, is the largest coordinating body and the highest level of the framework.

The ATU however lacks such wide reaching powers as that enjoyed by the European Commission, in formulating a comprehensive framework for the development of telecommunications in the African continent.

A Regulators Forum is to be established, possibly under the auspices of the ATU. The proposed Forum is geared towards addressing the challenges faced by the national regulators for the formulation of a coherent regulatory framework to cope with the developments in technology and the explosion in services, and to address the needs of potential international investors.

There is no doubt that with the setting up of this forum, the African continent can move as one towards the set goal of enhancing investments in the various countries and developing the sector to a level comparable to others the world over.

THE FIRST STEP – The National Policy On Telecommunications

The long-awaited Telecommunications policy was released in October 1999.

The policy has since then been beclouded by controversy based mainly on the fact that the much expected revolutionary changes were not included and more powers seem to have been ceded to NITEL rather than taken away from it. The outcry from industry watchers eventually led to the Federal Government denouncing the policy.

There have since been debates and public hearings on the policy, which is expected to culminate in extensive amendments been made to it in the near future.

It may be instructive for us, however, to look into the policy with a view to discovering where and to what extent the policy as it stands deviates from the collective desire of the Federal Government, the local and foreign investors, the NCC and industry watchers.

The Policy – Revolution or Evolution?

It would appear that the Telecommunications policy was bedeviled from the start. This is because, surprisingly, a policy recommendation meant for the Federal Council's consideration and approval

approval was first made public even before the council had an opportunity to see the document. One wonders if, had the proper procedure been followed, the policy would have seen the light of day.

That is not to say that the policy was bad in its entirety only that it could have been better. Some of the noteworthy terms of the policy are –

* The Management structure of the telecommunications industry, which is to consist of –

a) Government;

b) Ministry of Communications;

c) National frequency management Board;

d) Nigerian Communications Commission; and

e) National Carriers and others.

The various bodies are assigned with daunting responsibilities, though these are mainly functions which have always existed but have not been performed. The new innovation in this regard is the National Frequency Management Board (NFMB) which is newly created by the policy.

The NFMB is to be responsible for the planning, coordination, allocation, assignment, registration and monitoring of the radio frequency spectrum in the country. The Board is to report directly to the Ministry of Communications and is composed of the following – a representative each of the Ministry of Communications; the NCC; the NBC; Security; Aviation; Maritime; Licensed operators and such other bodies as may be determined from time to time.

*** National Carriers**

There is to be a minimum of 2 national carriers including NITEL. A third carrier may be licensed thereafter on the basis of economic viability. The responsibilities of the National Carrier are clearly spelt out, though merely a reiteration of its erstwhile responsibilities which it had hitherto failed to carry out effectively.

This particular issue of the scope of the responsibilities of NITEL has been the main source of controversy. This is because though the responsibilities of the National Carrier have been spelt out in the policy, there seems to have been an attempt by the Minister of Communications to expand on the scope of NITEL's operations beyond that contained in the policy.

International Traffic

NITEL currently enjoys a monopoly over international traffic to the disadvantage of other players in the industry. In the United States, the entrenched monopoly position of AT&T came under attack by antitrust authorities on the grounds that whereas there was economic sense in retaining a single fixed system for local telephony, the same did not hold for long distance telephony.

Accordingly, after a full judicial procedure, AT&T retained long distance traffic subject to open competition. In 1984, AT&T controlled about 80% of this traffic but by 1993, this had fallen to 60% with fierce competition from MCI & Sprint.

Surprisingly, under the present dispensation in Nigeria, contrary to the provisions that a GSM operator can go international, international traffic other than from NITEL was, under the policy, pronounced illegal.

This automatically bans all international VSAT operators.

Mobile Cellular Operators are however allowed "the right of establishment and operation of international telecommunications gateway for cellular traffic only, if found necessary.

Global System for Mobile

NITEL has been pronounced by the Minister of Communications to be allowed to participate in the "bidding" for a GSM license, though there is already in existence a national mobile telecommunications company, M-Tel which is properly geared towards the provision of that service. Initially, both NITEL and M-Tel had been declared to be allowed to bid for a GSM license but this is no longer the case.

NITEL is expected to bid for the license and upon being awarded, will utilise the license in concert with M-Tel. Furthermore, it would appear that the second national carrier, if and when appointed, will be precluded from going into GSM. This clearly puts NITEL at an advantage over the second national carrier.

Furthermore, the other 3 GSM operators would essentially be expected to approach their competitor for interconnection. This is hardly characteristic of a level playing field, although it remains to be seen how this particular problem would be tackled.

Interconnection

Interconnection is still within the purview of the responsibilities of NITEL, though it is difficult to see what advance could be gained from the present situation in which NITEL refuses to interconnect the PTOs within a reasonable time.

Fixed Services National and Zonal Operators

Provision is also made for the licensing of Fixed Service National Operators and Fixed Services Zonal Operators, though no where in the policy is this defined.

The National Operators are to "establish and operate telecommunications services in all the 6 geo-political zones", whilst the Zonal Operators are to "establish…..in only one of the geo-political zones" with responsibilities similar in scope to that of the National Carriers, though on a much lesser scale.

Whither Change?

In order to revolutionize the telecom industry, a dynamic telecommunications policy could have achieved a monumental leap in the right direction. The issues to be addressed were clear and therefore, one would have assumed that the much – touted policy to be released by the Federal Government would have been a welcome development in taking Nigerian telecoms to the level it ought to be.

The expectations for a revolutionary telecom policy would have been along the following lines –

- The issue of conflict between NITEL and the NCC would have been conclusively resolved, with the former being brought under the full control of the latter;

- The NCC would be fully autonomous, meaning that it will issue licenses after the aspiring operators have satisfied all requirements for the issuance of licenses;

- The NCC would be empowered to allocate frequencies as against the previous arrangement in which the Technical unit of the Ministry of Communications assigns frequencies. In other words, the NCC should be able to ensure that there is available frequency before issuing a license to an operator.

  Furthermore, by so doing, the aspiring operator is able to obtain all his requirements form the same body instead of having to go from one agency to another before he can commence his operations. This had in the past proved to be a source of frustration for the operator. In order for the new system to work, it is hoped that the NCC and the NFMB will work closely together to ensure the allocation of frequencies to operators as they obtain their licenses to operate;

- The problem of interconnection should also have been comprehensively addressed, with the policy putting in place a process whereby an operator is licensed and interconnected simultaneously, thus removing the hurdle posed by the inability to get interconnected by NITEL.

Fiscal Incentives For New Entrants In The Telecoms Sector

The incumbent operators have the advantage of economics of scale and a wide customer base whilst the new entrants (PTOs) face the arduous task of competing against long established service provision and brand name recognition.

However, based on the lack of capability on the part of the incumbent TOs, there will always be availability of market share for the entrants. It is necessary to put in place some incentives for the PTOs in order to ensure for them a recoup of their investments.

Various incentives have been suggested for new entrants into the telecoms sector due to the capital-intensive nature of the industry. Most of these incentives have been utilized elsewhere and have proven to be effective.

Some incentives which can and most probably will be utilized in Nigeria are:-

- Pioneer status for all operators in order to have a tax reprieve for 5 years;

- Reduction of Customs duties from 25% to 5% to cushion the effect of tariff burden currently borne by many subscribers;

- Guarantee of long term loans at minimal interest rates for telecom operators etc.

One incentive which will be given is the granting of exclusivity to telecom operators, typically to provide fixed telecom services for specified number of years. This monopoly implies some sort of monopoly status for the PTOs.

The objective of the grant of exclusivity is to encourage the PTOs to invest adequately to meet network expansion and service access targets, given some degree of protection against competition.

This was utilized in Ghana as part of their telecom privatisation programme. A duopoly was established by the granting of licenses to 2 carriers for the provision of both national and international telecommunication services. The licenses issued contained exclusivity clauses which operated to limit the competition for voice telephony, other than cellular communication services, for a period of 5 years. The companies were further given set targets which were to be met within the same period.

Exclusivity has been suggested for the Second National Carrier (when appointed) and the PTOs for a period of at least 2 years from the date operations commence, with the operators being given targets, failing which would attract the imposition of fines.

CONCLUSION

In view of the fact that regulation had hitherto been used by the government as a barrier to entry into the telecoms sector, it goes without saying that the entire legal framework governing the sector must be reviewed in order to open up the sector to new entrants.

The review of the legislation in Nigeria has taken quantum leaps in liberalizing the sector, although a lot more still needs to be done to further ensure the success of the process.

It has oftentimes been said that the more telecoms is liberalized, the more it ends up being regulated. This is true to the extent that being a delicate, though viable, sector, there is a need to 'cover the field', as it were, in putting in place a regulatory framework. It would be dangerous for the government to leave any stone unturned or any fibre optic cable unconnected in regulating the sector.

The Nigerian telecoms market has been opened up to new entrants but is still in the process of having a comprehensive regulation by which all players in the sector are to be governed. This situation is one which is expected to be resolved in the shortest possible time with the enactment of an all - encompassing Telecommunications Law.

On the continental level, it is hoped that the Regulators Forum will be put in place in the near future, thereby giving the continent a regulatory body through which the development of the sector can be more easily achieved.