NCC, Telecommunications & Tariffs Regulations

Consumers of telecommunications services in Nigeria , especially voice service, ("the subscribers") welcomed the introduction of Global System for Mobile Communications ("GSM") in the year 2001. This was because of the dearth in the provision of this and other telecommunication services in Nigeria .

Unfortunately, there persists a conflict on the tariffs charged, between the subscribers and the GSM service providers (?GSM Operators?). The GSM operators have, as a defence, contended that the high cost of paying for their licenses, i.e. $250Million, the lack of minimum infrastructure facilities in Nigeria and the alternative option of constructing the basis infrastructure, etc have made present tariff rates of an average of N 50 per minute, during peak time, impossible to reduce. The official exchange rate in Nigeria at the time of this article was N ?. to One (1) US Dollars.

To the subscribers, there is the contention that it is wrong for a new business to transfer all its start-up costs to its consumers. There is the further contention that the current tariff charged is not competitive relative to those charged in other countries, whether with developed GSM technologies/market or not. The refusal of NCC and the Nigerian government to intervene in the tariffs charged has not augured well for all the stakeholders especially as the functional operators are presently running an Oligopoly.

The Nigerian government and NCC have refused to intervene in the tariff administration on the principal ground that the Nigerian economy is a free market economy devoid of government intervention and regulation.

Communication is a basic need of life and communication companies have always been classified as institutions that provide socio-economic services. It is therefore essential that the services provided must at all times reflect the state of the well being of that community or its people. No government or political institution, have strictly left the determination of tariff charged solely on market forces and the operators. All countries have always established regulatory bodies to regulate, define and set tariffs, policies and or prices of telecommunications services and operation.

Abandoning the politics of what tariff should be charged, let us consider the enabling Law establishing NCC which is the Nigerian Communications Commission Act, 1992 as amended in

1998 ("the NCC Act") vis-à-vis the power of NCC to regulate the telecommunications industry, tariffs and NCC funding.

NCC Act:

Section 2(1) of the NCC Act provides that some of the objectives of NCC includes: ?to ensure that licensees or authorised carriers and other providers of telecommunication services and infrastructure meet their commercial obligation and such other obligations specified under this Decree in a manner which promotes co-operation and fairness ?.

Section 2(d) of the NCC Act also provides, as part of the objectives, ?to protect licensees and the public from unfair conduct of other providers of telecommunication services, with regard to the quality of service and the payment of tariffs ?.

Section 2(j) in addition provides that NCC shall ensure ?the protection of licensees from misuse of market power by other carriers?.

Section 26 of the NCC Act provides that ?the Commission may with the approval of the Minister make regulations generally for the purpose of giving effect to the provisions of this Decree and may in particular without prejudice to the generality of the foregoing provisions make regulations to the following matters, that is:

(d) **tariff charged by operators** ;?.

Note that all the underlinings above are mine.

Under the old ?NCC guidelines for considering applications for a Licence?, it is provided that ? ?. The need to protect a fair return on the investment of existing licensees should not be an obstacle in the granting of new licensees in any enterprise or location?.

The NCC ?form of application for Licence? requires in paragraph 4.2(f) and (g) the furnishment of a business plan, which should detail the proposed amortisation period of the investment and the proposed tariffs.

Nigerian National Policy on Telecommunications

The Nigerian National Policy on telecommunications (?the Policy?) became operational in May

2000. The principal objective of the policy is to ?? provide Nigeria the basic framework and primary building blocks for the much desired telecommunications revolution?.

On page 14 of the policy, NCC is required to ?define standards for economic regulations of dominant operators including tariffs regulation as outlined in this policy?.

The policy also requires the Ministry of Communications to establish a National Frequency Management Council. The Council shall be responsible for planning, co-ordination and bulk allocation of the radio frequency spectrum in the country.

NCC is further enjoined by the Policy to, ?? establishing and enforcing regulations that ensure fair and equitable competitive practices among all telecommunications operators?.

On interconnectivity charges, the Policy requires that ?where adequate cost infrastructure is not readily available, the Commission may examine comparable interconnection pricing policies and price levels from international experience to establish fair benchmark for operator interconnection charges in Nigeria ?.

On tariff regulation, the policy recognises that in the short term, there will be dominant mobile operators in the market with the power to control pricing. The Policy therefore requires NCC to ? **establish tariff regulation requirements for such dominant operators which will ensure that service prices are cost oriented, that the consumers and competitors interest are protected and that the industry develops in the most efficient manner possible?.**

The Policy further provides that ?in determining a tariff regulation regime, the Commission shall be guided by the following principles:

- Telecommunications service tariffs shall in all cases be cost-oriented, reflecting the actual cost required by operators to provide the services in question;
- Tariff setting rules must be transparent to both operators and their customers, with stable, predictable, and understandable standards for current prices and for changes to those prices over time;
- Telecommunication service tariffs shall generate sufficient revenues for the operators to compensate for their investments, while also seeking to be as affordable as possible to the broad range of potential service customers;
- In general, cross-subsidies between services or service categories shall be prohibited. In

certain cases, limited cross-subsidies may be permitted, only in connection with an explicit public purpose such as the promotion of universal access, and where such subsidies can be effectively targeted to accomplish that purpose at minimum costs.?

On the former monopolies in the industry, i.e. Nigerian Telecommunications Limited (?Nitel?) and the Mobile Telecommunications Limited (?M-Tel?), the Policy provides that ?NCC shall undertake a tariff review and re-balancing process, in co-ordination with the privatisation and restructuring of these companies?.

Experiences From Other Emerging Jurisdictions**:**

From the International Law Office website, www.internationallawoffice.com , we came across the following regulatory experience of other jurisdictions. In Ecuador for example, there is presently no definition of who a dormant operator is. Consequently, the Regulator is reviewing the market environment in Ecuador so that it can respond quickly to situations and conflicts. In Brazil , the Regulator approved new requirements on the use of chip cards for public telephones. In Finland , the Ministry of Transport and Communication intervened in the pricing of mobile phone calls, which originate and terminate within a single network as it claims that the low price distorts competition in the market place.

On April 28 th , 2003 in the United Kingdom , the regulatory body, the Office of Telecommunications (?OFTEL?) ?. published its review of the wholesale broadband access market as well as a statement of its views on what constitutes ?narrowband' and, by process of elimination, its working definition of ?broadband' services?. In Spain , the Telecommunication Market Commission decided to investigate Telefonica, Vodafone and Amena for alleged breaches of a Commission Resolution ?? on number portability where a change occurs in the mobile network?.

Suggested Improvements:

It is conceded that the present functional and dominant GSM Operators and NCC have contributed immensely to the development of telecommunication services within a very short time. However, NCC MUST raise to the challenge of reasonably regulating the telecommunications industry as the alternative option would be the humiliating experience of other Nigerian regulatory agencies/bodies who have had to rely on the operators within their industry, that they are in Law required to regulate, for their basic tools of administration.

To effectively carry out the above, NCC should resort to Section 31 of the NCC Act, which provides for the establishment of a Fund for the Commission. Subsection 2 of this Section also provides that:

? There shall be paid and credited to the Fund established pursuant to Subsection (1) of this Section: -

- Such moneys as may, from time to time, be lent or granted to the Commission by the government of the Federation or of a State;
- All moneys raised for the purpose of the Commission by way of gifts, loans, grant-in-aid;
- All subscriptions, fees and charges payable to the Commission; and
- All other assets that may, from time to time, accrue to the Commission.

There is further a provision in the licences granted to the Operators, which requires them to pay to NCC a percentage of their annual profits.

NCC must also be run as a professional private enterprise so as not to fall into the error of depending only on government subvention which is always inadequate and irregular in disbursement as to have such a dependence will be fatal to its statutory duties, responsibilities and obligations.

It is globally conceded that mobile tariffs are always more expensive than land call tariffs. It is therefore not yet time for NCC to feel that it's principal objective have been met, as the number of landlines in Nigeria are very nominal per density of the population. Finally, other areas that call for attention from the GSM Operators and the Regulator, NCC include per minute billings, calls that are not properly terminated or received but are billed against the Subscriber's account, etc. The excuse by the GSM Operators that the software for remedying these problems are very expensive is not on very strong footing as it was recently reported that their parent companies in South Africa have been restrained by a Court order from converting and charging per second calls as per minute calls.

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