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Regulating the Pricing of Mobile Telecommunications Services - The Role of the Nigerian Telecommunications Commission.

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Introduction.

The Nigerian Communications Commission (NCC) recently embarked upon a commendable initiative for educating consumers of telecommunications services by launching a consumer awareness outreach program in Lagos State. However at the inaugural public forum held on Victoria Island, the NCC was expectedly inundated with various complaints from the consuming public concerning the current state of telecommunications services in the country, particularly the frustrating problems of low service quality and excessive end-user prices.

When asked by a GSM subscriber whether current GSM end-user prices were truly justifiable, an NCC representative is reported to have replied that current prices are not justifiable because there are no “justifiable” prices in a competitive telecommunications industry. Presumably, the NCC representative meant to say that current GSM end-user prices have been determined and are being determined by competitive market forces, and it is not the role of the NCC to interfere with the free interplay of market forces in an attempt at fixing a “justifiable” price for the consuming public. This presumption is made against the background of similar statements made by the NCC on the question of GSM service prices – that prices would inevitably be reviewed downwards, not by regulatory intervention, but by natural competition and free market forces. Furthermore, the observable reduction in current GSM acquisition costs is readily pointed out and celebrated by the NCC in justification of its position on the matter.

The NCC’s regulatory stance on competition and price regulation in the mobile sector therefore appears to be that price regulation is not considered necessary in view of the competition evident in that sector. This article therefore examines the fundamental premises of the NCC’s position against internationally accepted principles of competition in the telecommunications industry, the current National Telecommunications Policy and the Nigerian Communications Commission Decree No. 75 of 1992 (as amended). It also focuses attention on the role of the NCC during the early stages of market liberalization when competition is generally expected to be less than ideal.

Competition Theory in the Telecommunications Industry – Basic Principles.

Historically, the telecommunications industry was regarded by most governments as a Natural Monopoly Industry, meaning that the provision of telecommunications services was considered more efficient and cost effective if supplied by just one operator, rather than through a multiplicity of smaller operators replicating extensive and expensive network facilities at great cost to the physical environment and the general economy. Most governments therefore took direct responsibility for providing telecommunications services through their Public Switched Telecommunications Networks (“PSTNs”), believing that prices could be better controlled and Universal Service better guaranteed where the heavy network infrastructure costs were borne by government and service provision could be guided

primarily by public policy objectives.

However the success of the privatization and liberalization initiatives that began in Europe in the 1980s greatly discredited the Natural Monopoly theory, and it is now universally accepted that telecommunications services are more efficiently provided at better quality and lower prices in a competitive environment. But what is a competitive environment? Ideally, a competitive environment is one where there are a large number of service providers as well as a large number of potential consumers, such that no single service provider (or duo, or group of service providers) can arbitrarily fix and sustain the price of services without reference to the consuming public, or without serious regard to the prices offered by other competitors providing similar services within the same industry. In such an environment consumers are presented with a wide range of choices and alternatives in terms of services required, the cost of those services and the providers thereof, making it unnecessary for a regulator to interfere with the operation of free market forces in determining fair prices for the services offered.

However, international experience confirms that the movement from a monopoly environment to a competitive one is a gradual and painstaking process, always characterized by a discernible transition period between the commencement of the liberalization process and the establishment of robust competition within the industry. Industry regulators the world over have therefore long recognized and embraced the need to regulate the pricing of telecommunications services during the early stages of market liberalization when competition is at its infancy. The fundamental objective of this initial regulation is always the protection of the consuming public from damaging manifestations of market failure, such as the hidden manipulation of market forces and prices through collusive practices between apparent competitors, or the unwitting substitution of a public monopoly with a private monopoly in the provision of services. However, with vigilant regulation and intelligent introduction of additional service providers the seeds of viable competition begin to take firm root within the industry, enabling regulators to gradually scale back the level of their involvement in determining service prices.

As the regulator of the Nigerian telecommunications industry the NCC is certainly aware of these established and universally accepted principles, and its refusal to regulate the current pricing of mobile service therefore appears to rely on the premise that competition is so firmly established in the mobile sector that regulatory intervention is not necessary for the determination of appropriate prices. This regulatory premise must however be examined in the light of current realities.

Competition in the Nigerian Mobile Sector.

The provision of mobile telecommunications services in Nigeria first began in 1992, arising from a joint venture between NITEL and Digital Communications Limited (“DCL”) of Atlanta in the now famous Mobile Telecommunications Services Limited or “MTS”. MTS was therefore the first and only provider of mobile (analogue) services from 1992 until 1995 when its services were suspended following major disagreements between NITEL and DCL. In 1996 the Federal Government incorporated the state-owned Nigerian Mobile Telecommunications Limited (“M-TEL”) to continue the sole provision of national mobile services to the public, and that monopoly continued until 2001 when MTN Nigeria Communications Limited (MTN), Econet Wireless Nigeria Limited (Econet) and NITEL were all licensed by the NCC to

provide national GSM mobile services. It should perhaps be added that mobile services are also being offered by 2 or 3 Wireless Local Loop (WLL) operators in Lagos State, but the services appear strictly limited to the Lagos area and the NCC's position regarding the status of their operations is somewhat unclear. The government also revalidated MTS' mobile operating license quite recently, but the company now appears to have lost the frequency with which to operate its analogue services.

The Nigerian mobile sector therefore presents an interesting scenario for the consideration and application of accepted competition principles: four GSM licenses were placed on offer, three were subsequently awarded, but only two appear to be in operation. NITEL is reputed to have deployed between 1000 and 5000 GSM lines in the Abuja and Lagos areas, but that figure must be considered grossly inadequate against the actual requirements of its roll-out obligations, and against the combined total of at least 600,000 lines currently claimed by the other two GSM operators. NITEL is also in the curious position of managing the nation's analogue mobile network (having incorporated M-TEL into itself), pursuing its GSM roll-out, expanding its fixed line network and getting privatized all at the same time, with the result that members of the public can hardly acquire any mobile lines from the Company today – whether analogue or GSM. Furthermore, the WLL operators referred to earlier are so limited by their scope of operations, network capacity and regulatory circumstances that they hardly present a serious alternative to the leading mobile operators in the provision of mobile services.

Potential consumers of mobile telecommunications services in the country are therefore severely limited in their choice of service providers, while subscribers to the leading operators are held captive in the absence of realistic alternatives to a service attended by high tariffs and erratic service quality. If the truth must be told, the Nigerian public is currently caught between a rock and a hard place in trying to decide upon the cheaper or more reliable of the two leading GSM networks. In these very constricted circumstances the public must be entitled to question the NCC's premise that our mobile industry is open, vibrant and competitive enough to guarantee end-user prices that are truly the result of free market forces, uninfluenced by the distortions associated with monopolistic markets or other expressions of imperfect competition. Considering that the Nigerian mobile sector is intended to accommodate the vigorous operations of 4 GSM Operators and at least 1 Analogue Operator, it would be very difficult indeed for the NCC to maintain that current operator activities amount to the vigorous competition envisaged by the NCC and the nation at the start of the GSM license auctions.

The preceding observations are not intended, however, to indict the GSM operators or the NCC over the current state of the mobile sector. That would serve no useful purpose. Rather, the intention is to establish the point that our mobile sector is simply NOT competitive enough to justify the NCC's refusal to actively regulate current end-user prices in favour of the so-called "market-based" regulation. Furthermore, the gradual reduction in GSM acquisition costs, so warmly cherished by the NCC as the first-fruits of competition, may in reality have little or nothing to do with actual competition. Operators breaking into new telecommunications markets with a history of suppressed demand (such as Nigeria) typically expect their networks to be flooded (and possibly overwhelmed) by waves of eager subscribers upon the commercial launching of their services. Operators therefore often set entry level prices at an artificially high premium, as a convenient means of limiting or controlling initial flooding during the early days of network roll-out when heavy subscriber

demand cannot be supported without serious compromises in service quality and network integrity. Such strategies have been very successfully employed elsewhere, and operators in such markets have subsequently been able to offer significantly “reduced” “promotional” prices to a grateful but clueless public, compared to the artificially high prices that attended the initial launching of their products and services. The subtlety of such clever practices makes it all the more imperative for regulators like the NCC to scrutinize and regulate the prices offered by operators to an unwary public in the early stages of market liberalization.

Furthermore, it must not be forgotten that M-TEL’s monopoly over the mobile sector was broken less than a year ago with the introduction of current GSM services. Our mobile sector therefore obviously falls within that early stage of market liberalization when the regulation of prices is universally considered to be absolutely necessary. An industry intended for the eventual operation of five national mobile operators (and possibly several regional operators) simply CANNOT be sufficiently competitive when it is totally dominated by just two operators claiming between them more connected subscribers than the rest of the entire industry put together. If the NCC still insists that our mobile sector is sufficiently competitive in the face of these obvious realities, it may seriously need to publish its chosen indices for assessing the presence and levels of competition in the industry. Otherwise the NCC must begin to re-examine its regulatory position in the light of international best practices, the National Telecommunications Policy and indeed the NCC Decree.

Price Regulation under the National Telecommunications Policy and the NCC Decree.

The current National Telecommunications Policy (NTP) was published by the Federal Government in September 2000. While recognizing the independence of the NCC in the regulation of the industry, the NTP nevertheless states in Ch.3.1.4.1 that the NCC shall be guided by the overriding objectives of the Policy and by considerations of fairness, equity and transparency. Chapter 6 of the NTP deals with economic regulation in the Nigerian telecommunications industry, and it opens as follows:

“The objective of this policy is ultimately to establish a long term telecommunications market structure in Nigeria in which multiple operators provide services on a competitive basis to the broadest range of consumers. Under such a regime, competitive market forces would be the best determinant of the appropriate and sustainable levels of prices charges by various carriers for their services.

However, it is likely that for some interim period active competition will not fully develop throughout the market, leaving one or more dominant operators with the power to control pricing. In these circumstances, it is appropriate for the Nigerian Communications Commission to establish tariff regulation requirements for such dominant operators, which will ensure that service prices are cost-oriented, that consumers’ and competitors’ interests are protected, and that the industry develops in the most efficient manner possible”.

The NTP’s objectives are therefore clearly consistent with the prescriptions of international best practices concerning the tariff regulation in the telecommunications industry. It especially recognizes and anticipates that “transition period” during which it is absolutely justifiable to regulate end-user prices in the interest of the consuming public. It also directs the NCC to establish the appropriate definitions and criteria for determining market dominance by

operators, as well as the essential nature of the services being provided as a prelude to the necessary tariff regulation.

It is also important to recall that S.4 (a) of the NCC Decree gives the NCC responsibility for the economic and technical regulation of the privatized sector of the telecommunications industry. It is therefore suggested that the economic regulation function referred to in the Decree is to be exercised within the context of Chapter 6 of the NTP, the opening portions of which have already been reproduced above. Other sections of the Decree also emphasize the NCC's duty to regulate the industry for the benefit of the consuming public. S. 4 (o) entrusts the NCC with responsibility for the protection of consumers from unfair practices of licensees and other persons in the supply of telecommunications services and facilities. S.2 (d) requires the NCC to protect the public from unfair conduct of providers of telecommunications services with regard to the quality of service and the payment of tariffs. S. 2 (f) prescribes that standard telephone services are to be supplied as efficiently and economically as possible and at such performance standards that reasonably meet the social, industrial and commercial needs of the community.

The provisions of both the NTP and the NCC Decree therefore require and empower the NCC to regulate the pricing of mobile services during the early stages of market liberalization, and it may only decline to regulate those prices after the firm establishment of competition in the industry.

Recommendations.

Fortunately for the Nigerian public, the National Telecommunications Policy has already established the policy direction for tariff regulation in the telecommunications industry. Chapter 6 of the NTP states that in determining a tariff regulation regime, the NCC 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.
- Telecommunications service tariffs shall generate sufficient revenues for regulated operators to compensate for their investments, while also seeking to be as affordable as possible to the broadest range of potential service customers.
- In general, cross-subsidies between services or service categories shall be prohibited. In certain circumstances, 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 cost.

These guidelines prescribe a clear and equitable balance between the protection of the public interest and the commercial interests of the mobile operators. The NCC is therefore called upon to implement the policy directives of the NTP by formulating a tariff regulation regime for the mobile sector, and in the event that it has already done so, it is further called upon to publish that regime on its website and other publicly accessible media for the benefit of operators and consumers alike. The primary objective of such a regime will be to ensure that end-user prices are fair and affordable, taking into account the cost of providing the mobile

services as well as the long exclusivity period given to the operators for recouping their investments. While it is important to ensure that investors are guaranteed a reasonable return on their financial investments, the protection of the public interest must always remain uppermost in the mind of an industry regulator.

Conclusion.

The NCC has had a relatively short history of active regulation in the Nigerian telecommunications industry. Although the NCC was created in 1992, it operated more like a department of the Ministry of Communications until April 2000 when the Federal Government inaugurated its current Board of Commissioners. However, the successful execution of the GSM auctions so soon after the Board's inauguration gave very promising indications of the NCC's determination and ability to meet and surmount its many challenges – the first of which involved the credible licensing of industry operators.

But while the success of the GSM auctions will always remain a significant milestone in our telecommunications history, the NCC must now look beyond the successful licensing of operators to the successful regulation of licensees in the provision of their products and services. The Nigerian telecommunications industry is set to become one of the most complex and dynamic in Africa, and the NCC must urgently begin to create a solid foundation for responsible and efficient market conduct within the industry. International experience teaches us that markets must never be liberalized to the detriment of the public interest, and it is a fundamental objective of regulators the world over to protect the public interest against every foreseeable, negative consequence of market liberalization – including the insidious effects of imperfect competition. The NCC must therefore take its place amongst the forward thinking regulators of the world by ensuring that the Nigerian public is adequately protected against the present and foreseeable consequences of imperfect competition, particularly the high end-user tariffs currently being suffered by the subscribing public. Further delay in establishing the much-needed tariff regulation regime will only make it more difficult for the NCC to do so later, because operators will be sure to argue with each passing day that the industry is moving beyond that early stage of market liberalization when price regulation is considered necessary.