



Legal framework for the liberalization and deregulation of telecoms industry in Nigeria: An overview

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Abstract

The deregulation of the Telecoms industry is crucial to the growth of the country, the liberalization of same from the monopoly of the erstwhile government owned industry has fast-tracked private ownership and involvement in Telecoms in Nigeria as there are many GSM (Global system of mobile communications) operators. This study examines the Legal framework for the Telecoms industry from the inception of the telecommunication industry in Nigeria till the present time, it also analyze the role of the regulatory Agencies in charge of Telecoms in Nigeria. This work will adopt the doctrinal method of research, placing reliance on both primary and secondary sources of information at the end the study makes recommendations.

Keywords: liberalization, deregulation, industry, Nigeria, Telecoms

Introduction

The Telecommunication industry is undergoing transformation around the globe, Nigeria is not left out of the scene. With new technological developments, changing market structures, privatization of former public telecom operators which have hitherto had a monopoly in the industry NITEL in particular (Nigerian Telecommunications Limited). The deregulation of the Nigerian economy began in 1988 with the creation of the Technical Committee on Privatization and Commercialization (TCPC), to oversee the privatization program. The Olusegun Obasanjo Administration catalyzed this liberalization by involving the Global System of Mobile Communications (GSM) service providers. Some private companies received licenses, but no operation took place until 2001 when three operators got digital mobile licenses auctioned by the NCC; the operators include Econet, MTN and MTEL. After this, there was a great explosion in the sector; by 2007 the number of telephone lines in the country grew to 38 million as against 450,000 that was in place as at 1999, and 85 million by April 2010, due largely to the mobile network, which made the country the world's fastest growing teledensity ^[1]

This study will undergo an overview of the advent of Telecoms in Nigeria and what characterized the industry at the time, it will make an overview of the Legal framework for the Liberalization and deregulation of Telecoms in Nigeria from inception of the industry. At the end, recommendations will be made.

2. Definition discourse

To liberalized and deregulate means to remove regulations and hindrances to free market, and economy. Deregulation is when the government seeks to allow more competition in the industry by removal of monopolies. Deregulations occurs when there is a significant decrease or elimination of government regulation over an industry ^[2].

Olashore argues that deregulation is an "economic policy and is often used synonymously with liberalization to mean the removal of official restrictions on consumer choice and the introduction or extension of competition on the supply side of market". He

contends that it is a way of relying on private entrepreneurs as a motivator for development. He stress the differences between deregulation and privatization, saying while deregulation abolishes monopoly, privatization is what transfers ownership from public to private sector. In other words, privatization is an instrument under deregulation ^[3].

Owojori sees deregulation as "the process of reducing or eliminating specific governmental rules and regulations that applies to private business". It is the expansion of private sector activity and consequently the reduction in public sector size, in the interest of productive efficiency. One of the benefits is that it attracts foreign investment into the country. However, he warns that corrupt practices in the government circles will reduce the effectiveness of deregulation as a policy towards development ^[4].

3. Deregulation of the telecoms industry

For many decades, the NITEL which was the sole Telecom operator in Nigeria held sway, this resulted in a monopoly and poor results in the country, the era was characterized by slow pace of Network rollout, and long waiting line for services, weak Infrastructure base, and lines concentrated mostly in selected urban centers ^[5].

The deregulation of the Telecoms industry in Nigeria and the break away from the monopoly of NITEL saw the introduction of new technologies such as the GSM (Global System of Mobile Network) in 2001. This happened in phases, and the process began in the early 1990s when the federal military government put in place measures to deregulate the erstwhile NITEL ^[6]. The first attempt by the federal military government of Nigeria to deregulate Telecoms was the setting up of the Technical Committee on privatization and commercialization TCPC in July 1987 which led into the promulgation of Decree No 25 of 1988.

4. Privatization and Commercialization Decree No 25 1988

It was promulgated in 1988 by the federal government of Nigeria, the Decree established the committee on privatization and commercialization. Its section 4 sets out the privatization

procedures which includes, to advise on the capital restructuring needs of public enterprises to be privatized or commercialized in order to ensure good reception in the stock exchange market as well as to facilitate good management and independent access to the capital market and also to approach through the appointed issuing houses, the securities exchange commission for a fair price for each issue and ensure the updating of the accounts of all commercialized enterprises, with a view to ensure financial discipline ^[7]

5. Bureau of Public enterprises Decree no 28 of 1988

After the report of TCPC were reviewed, it recommended the establishment of Bureau of public enterprises to continue the privatization process. The decree repealed the TCPC Decree and transferred its functions to the Bureau. Section 3 sets out its purpose among others which include: advising further on privatization of public enterprises, carry out all activities required for the successful public issues of the shares of the enterprises to be privatized, including the appointment of issuing houses, stockbrokers, solicitors, trustees, accountants and other experts on the issue and also to arbitrate in disputes arising from the performance or non-performance by any of the parties of its undertakings under a performance agreement ^[8].

6. Public Enterprises (Privatization and Commercialization) ACT 1999

The administration of Alhaji Abdulsalam Abubakar promulgated the public enterprises privatization and commercialization into law. The Act repealed the Bureau of public enterprise Decree of 1988, the Act created the National council of privatization to determine the political, economic and social objectives of privatization and commercialization of public enterprises, approve public enterprises to be commercialized, approve the legal and regulatory framework for the public enterprises to be privatized, determine when a public enterprise is to be privatized and approve the appointment of privatization advisers and consultants and their remuneration ^[9].

7. Nigerian Communications Commission Act 2003

The primary purpose of the Act is to create and provide a regulatory framework for the Nigerian communications Industry and all matters related to it. The Act repealed the Nigerian communications Commission Act 1992. By its section 3, the Act established the Nigerian communications Commission. A very notable section of the Act is section 31 which grants licence to operate communications system in Nigeria, section 32 goes further to categorize the licenses to be issued as individual and class license ^[10]. This is deregulation at its peak,

8. Wireless Telegraphy Act

As part of the federal government to deregulate the telecoms industry, the wireless telegraphy Act now a compilation of part of the Laws of the federation 2004 in Nigeria was passed. wireless telegraphy” means the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy of a frequency not exceeding three million megacycles a second, being energy which either serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not), or for the actuation

or control of machinery or apparatus; or is used in connection with the determination of position, bearing or distance, presentor for the gaining of information as to the presence, absence, position or motion of any object or of any objects of any class, and reference to stations for wireless telegraphy and apparatus for wireless telegraphy shall be construed as references to stations and apparatus for the emitting or receiving as aforesaid of such electro-magnetic energy as aforesaid ^[11].

Section 6 of the Act deals with granting of License to operators of stations it provides as follows

‘A licence may be issued subject to such terms, provisions and limitations as the Commission may think fit, including in particular in the case of a licence to establish a station, limitations as to the position and nature of the station, the purposes for which, the circumstances in which, and the person by whom the station May be used, and the apparatus which may be installed or used therein, and, in the case of any other licence, limitation as to the apparatus which be installed or used, and the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used ^[13].’

9. Regulatory agencies

The Nigerian communications commission is the principal agency for Telecoms in Nigeria, established in 1992, commenced operation in mid-1993, Commenced full market liberalization and Sector Reform in 2000 which includes successful auctioning of the 2G Digital Mobile Licenses in January 2001(Total of four GSM licenses issued). Licensing of Fixed wireless Access (FWA) operators in 2002, (both national & regional licenses issued) and several Internet services providers licensed to encourage fast growth of Internet nationwide. Several Satellite services providers licensed to provide long distance transmission links. The Regulatory Body has been strengthened, and is receiving full support from the government reparation of the Incumbent operator for privatization ^[13].

10. Conclusion

This study has made an overview of the Telecoms industry in Nigeria, with emphasis on the legal framework for the Liberalization and deregulation of same, however there still persist some problems bedeviling the industry. The problem of poor electricity power supply have made the operations of telecom gadgets slow, also the issue of high tariffs on customers is also another problem. The stealing of cables and wire has made the functioning of the telecoms redundant, as cables and wire are needed for electricity supply, though there is a Bill before the National Assembly the critical Infrastructure Bill 2010 which is yet to get presidential assent prohibiting and criminalizing stealing of cables. The federal government should set the task of addressing these problems in motion. The Telecoms operators should seek adequate legal advice before installation of mast as over times, such land become subject of Litigation.

11. References

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