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EDITORIAL COMMENT

The University of Ilorin's administration is making a giant stride to take the university to a higher level of academic standard. The Department of Business law is availing itself of this opportunity in a number of ways which includes coming up with this Journal. Unilorin Journal of Business and Corporate Law .

The journal is designed to promote scholarship in the area of legal studies. This maiden edition of the journal contains well- researched articles on different areas of Business law. The edition explores articles that provides timely and timeless insights into the essential culture and values of business and corporate law research and reasoning. The 13 articles in this volume draw on several aspects of business and corporate legal jurisprudence and specialised frontiers of law.

The debut of this maiden edition is made possible by the untiring efforts of the editorial board (internal and external) and of course the unquantifiable valuable comments of the scholars who reviewed the various manuscripts submitted for consideration. We appreciate these sacrifices.

Finally, it is my hope that all the issues cum questions raised in various articles as well as the recommendations will inspire future article(s) and contribution(s) to the next edition of the Unilorin Journal of Business and Corporate Law.

Thanks

Prof. Saka Muhammed Olokooba

Editor -in-chief, H.O.D. Business law

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DISECTING THE ALIEN PARTICIPATION IN THE NIGERIAN TELECOMMUNICATIONS INDUSTRY

Dauda A. Ariyoosu

Abstract

While stressing the need for a viable regulation in the telecommunication sector, this paper examines the legal requirements for alien participation in the telecommunication industry as contained in the Nigerian Communications Act and other relevant laws with the attendant setbacks and limitations. The information used in this paper is sourced from the Nigerian Communications Act and other statutes regulating foreign participation in the economic clime of Nigeria. Notable statutory instruments and internet materials are also used as secondary sources of information. The paper found that despite the huge benefits the deregulation of the sector has brought to the nation's economy, foreign participation in the sector is not without imminent odds, thus endangering the future hope of foreign investment in the sector. Based on this finding, the paper recommends that policies and regulations on alien participation in the Nigerian telecommunications industry must be transparent, stable and conducive for foreign investment to thrive.

Keywords: Telecommunication, Alien Participation, Deregulation, Liberalisation

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1.0 Introduction

Nigeria is the largest country in Africa, with its over 158 million population. It accounts for 47% of West Africa's population and it is the biggest oil exporter in Africa, with the largest natural gas reserves in the continent. The country also has a large reserve of human and natural resources, and is poised to build a prosperous economy, significantly reduce poverty, and provide health, education and infrastructure services to meet its population needs.⁷⁵⁰

To this end, Nigeria has made commitments to improve its economy, through broad-based approach, oriented primarily towards the domestic market, and driven by strong performance of the agricultural, trade, telecommunications and manufacturing sectors. In fact, the government has expressed determination to make job creation central to its economic strategy and has specifically targeted the Information Communication Technology (ICT) sector, among others.⁷⁵¹

Privatisation of the telecommunications sector by the Federal Government of Nigeria is a direct measure aimed at liberalising / deregulating the sector to which foreign participation in the sector is encouraged.⁷⁵² The purpose of deregulation is to allow capable hands through private sector participation and global trends towards liberalisation,⁷⁵³ to which the foreign participation can provide the necessary scheme and financial viability.

Foreign investors are conscious of the abundant resources in Nigeria, which makes it a strategic market for all manners of investment. With the country being the most populous in Africa and the 7th most populous country in the world, Nigeria remains the largest market for all manners of products and investments.⁷⁵⁴

It is observed that an efficient and widespread telecommunications network is increasingly becoming a necessary infrastructure to utilise and develop various technologies, and to achieve both economic and social

⁷⁵⁰ World Bank, 'Economic Overview and Performance' <<http://www.worldbank.org/en/country/nigeria/overview>> accessed on 06 May 2022.

⁷⁵¹ Ibid.

⁷⁵² Templars Law, 'Investing in Nigerian Telecommunications Sector' <<http://www.templarslaw.com/media/investing-telecom-nigeria.pdf>> accessed on 08 June 2022.

⁷⁵³ Ibid.

⁷⁵⁴ Lovells, H, 'Foreign Investments in Nigeria-Preliminary Legal Issues' <<http://www.google.com/url?q=http://www.lexology.com/library/detail.aspx>> accessed on 07 June 2022.

goals.⁶ Hence in 1992, the Federal Government under the military administration of General Ibrahim Badamasi Babangida embarked on market oriented reforms by partially liberalising the telecommunications sector, in order to enhance the effectiveness of the activities of the sector, especially when the Nigerian Telecommunications Limited (NITEL) had been unable to satisfy the demands of the sector in terms of expansion and quality.

The Nigerian Communication Commission Decree (NCCD) was promulgated in 1992 and became the main legislation governing the telecommunications sector. The Decree set up the government regulatory agency in the telecommunications sector - Nigerian Communications Commission (NCC), which regulates the sector by the supervision of the Federal Ministry of Communications. The NCC accredited foreign bodies and provided type approval for telecommunications equipment and facilities for use in Nigeria. With the full liberalisation of the sector in 1999, there is an increased growth in the service sector of the country. By a data recorded as at October 2013, Nigeria's active phone lines hit 121.8 million representing a growth in the sector.⁷ As at April 2015, the telecommunications subscribers' data shows that there are 196, 941, 125 connected lines, out of which fixed lines are just 371, 978 lines.⁸ By August 2023, the Nigerian Communications Commission confirmed that the number of active mobile subscriptions has risen to 220, 715, 961 million.¹⁰

Foreign participation in businesses in Nigeria is a direct response to the liberalisation of the economic sectors in Nigeria, including the telecommunications sector. It is, however, subject to certain enactments. Despite this, the NCC Act did not generally address several areas of law that effect telecommunications and which naturally touch on the process and practice of foreign participation in the sector.

⁶ Tripod, 'Telecom Pricing: Consultation Paper on Concepts, Principles and Methodologies'

<http://members.tripod.com/~India_gli/tprexsum.htm> accessed on 22 January, 2022.

⁷ Mawoli M.A, 'Liberalization of the Telecommunications Sector: A critical Review' Journal of Research in National Development, 7, No 2, 2009

<<http://www.transcampus.org/JORINDV7Dec2009/JournalsV7NO2Dec200930.html>> accessed on 20 January 2022.

⁸ National Daily, 'Nigeria's active phone lines hit 121.8 million'

<http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=1330:national-daily-28th-january-2014-nigerias-active-phone-lines-hit-1218-million&catid=86:cat-mediapr-headlines> accessed on 25 June 2022.

⁹ NCC, www.ncc.gov.ng/index.php?option=com_content&view=article&id=125:subscriber-statistics&catid=65:industry-information&Itemid=73 accessed on 07 June 2022.

¹⁰ Francis Ugwu, 'Nigeria's Active Mobile subscribers hit 220 million' < on 09 December, 2023.

2.0 Alien Participation in the Telecommunications Sector in Nigeria

Foreign participation or foreign investment in the Nigerian telecommunications sector is tantamount to an alien participation.¹¹ An alien is defined as a person or association, whether corporate or unincorporated, other than a Nigerian citizen or association.¹² Furthermore, 'subject to the provisions of any enactment regulating the rights and capacity of alien to participate in or undertake trade or business, an alien or a foreign company may join in forming a company'.¹³ Foreign participation is, therefore, allowed in the telecommunications sector as same does not fall within the negative list.¹⁴ There are procedures stipulated by law that serve as regulatory procedures for foreign participation in the telecommunications industry in Nigeria.

Procedure for Alien Participation in the Telecommunication Sector

Foreign participation or investment in Nigeria must satisfy certain requirements. The company must be registered in Nigeria as a viable company under the relevant laws. While the Companies and Allied Matters Act¹⁵ makes provisions on local incorporation, the NCC also stipulates procedures on licencing and other requirements. Other areas of law which are applicable to foreign participation in the sector are also discussed.

Local Incorporation

A foreign Company that intends to carry on business in Nigeria shall take all necessary steps to be incorporated as a separate entity, of which only upon doing so shall it be entitled to operate in Nigeria.¹⁶ Hence, a foreign telecommunications company must be registered in Nigeria as a company to be able to carry on business in Nigeria.

Print Nigeria, 'Legal Requirement for Investing in Nigeria' <<http://printnigeria.com.ng/legal-requirements-for-investing-in-nigeria>> accessed on 14 June 2022.

¹¹ See Companies and Allied Matters Act, 2020, section 868 (1).

¹² Ibid, section 20(4).

¹³ See the Nigerian Investment Promotion Commission Act, *Cap N117, Laws of the Federation of Nigeria, 2004*, sections 17 and 18. Section 31 of NIPC Act defines 'negative list' as the list of those sectors of investment prohibited to both foreign and Nigerian investors, that is – (a) production of arms, ammunition, etc.; (b) production of and dealing in narcotic drugs and psychotropic substances; (c) production of military and paramilitary wears and accoutrement, including those of the Police and the Customs, Immigration and Prison Services; and (d) such other items as the Federal Executive may, from time to time, determine.

¹⁴ Companies and Allied Matters Act, 2020, section 78 (1).

¹⁵ Ibid.

A company may, however, apply for an exemption from registration if it falls under certain stipulated conditions. Also, the provisions of CAMA as relate to corporate personality are equally applicable to a foreign company and as such it can sue and can be sued once incorporated locally.¹⁷

A foreign telecommunications company may, therefore, incorporate a Nigerian branch or its subsidiary, of which a solicitor can be empowered in this regard through a Power of Attorney. The Power of Attorney is to empower the solicitor to act as an agent, and in which case his service lapses at the end of the registration formalities.¹⁸

Requirements under the Nigerian Communications Act

The NCC is a creation of the Nigerian Communications Act.¹⁹ The Commission is allowed to make rules, regulations and guidelines on many subjects of telecommunications. It can also hold public enquiry on the subjects, while taking into consideration the findings of the enquiry.²⁰ The NCC may review the rules as and when due, and the rules, regulations and guidelines so made can be repealed and varied subjects to public enquiry.²¹ This ultimately reflects the main objective of the NCC, which is to establish a regulatory framework for the Nigerian communications industry and for this purpose to create an effective, impartial and independent regulatory authority. Its objective is also to encourage local and foreign investments in the Nigerian communications industry and the introduction of innovative services and practices in the industry, in accordance with international best practices and trends. and foreign investments in the Nigerian communications industry and the introduction of innovative services and practices in the industry, in accordance with international best practices and trends.²²

¹⁷ Ibid, section 42.

¹⁸ Otubu, A, 'The Regulator and the Regulated: An Examination of the Legal Framework for Telecommunications in Nigeria' <<http://www.unilag.edu.ng/opendoc.php>> accessed on 07 June 2022.

¹⁹ Nigerian Communications Act, section 3. <http://www.ncc.gov.ng/index.php?option=com_docman%26task%3Ddoc_download%26gid%3D128%26Itemid%3D55> accessed on 08 June, 2022.

²⁰ Ibid, section 71.

²¹ Ibid section 72.

²² NCC, 'Objectives of the NCC'

<http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=57&Itemid=64> accessed on 20 February, 2022.

A foreign telecommunications company must possess a license of operation issued by the NCC.²³ The NCC also involves in the granting and renewing communications licenses whether or not the licenses themselves provide for renewal in accordance with the provisions of the Act. It also monitors and enforces compliance with license terms and conditions by licensees. It also proposes and effects amendments to license conditions in accordance with the objectives and provisions of the Act. Fixing and collecting fees for grant of communications licenses and other regulatory services provided by the Commission are also part of the Commission's statutory responsibilities. Thus, NCC has given licenses to digital mobile phone operators and several private telephone operators. The main licensed operators include: Celtel (now Airtel), MTN Nigeria, Etisalat (now 9mobile), Multilinks, Starcoms, Intercellular, Visaphone, Reltel, MTS etc.²⁴ Various 'categories of license can be obtained by a telecommunications company to function in Nigeria.²⁵

A foreign telecommunications company may participate in a wide range of telecommunications services.²⁶ The National Policy on Telecommunications in Nigeria provides that the goal of the policy is to ensure total liberalisation and privatisation through private sector development in the telecommunications sector. Chapter Four of the Policy provides that licences may be issued by public tender invitation, competition bidding and others, through international and national advertising process. Obviously, this is to attract foreign investors to participate in the telecommunications sector in Nigeria. Chapter Fifteen provides for an international perspective of which 'international cooperation' is emphasised. International organisations are said to be important as they provide suitable vehicle for the achievement of the objectives of NCC and that bilateral arrangement can be

²³ Nigerian Communications Act, sections 10 and 157. See also NCC, 'Functions of the NCC' <http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=56&Itemid=64> accessed on 20 February, 2022.

²⁴ I HY, 'Doing Business in Nigeria' <http://www.glessen-friedberg.ihk.de/linkableblob/glihk24/Geschaeftsberelche/International/downloads/2278318/2./data_Doing_Business_in_Nigeria-data.pdf> accessed on 14 June 2022.

²⁵ See Templars Law, 'Investing in Nigerian Telecommunications Sector'. See also Mbendi Information Services, 'Telecommunications in Nigeria - Regulation' <<http://www.mbendi.com/indy/cotl/tlcm/af/ng/p0010.htm>> accessed on 11 June 2022.

²⁶ See the 'National Policy on Telecommunications.' <<http://www.researchinAfrica.net/countries/nigeria/National>> accessed on 12 June 2022.

explored.²⁷ It is emphasised that the regulations of NCC can make a profound difference when entry and pricing is effectively regulated.²⁸

Nigerian Investment Promotion Commission Requirements

Investment promotion is defined as an effort by a government to communicate the nature of the country's investment climate to foreign investors and to persuade and assist these investors to invest or re-invest in the country.²⁹ The Nigerian Investment Promotion Commission (NIPC) is directly responsible for investment promotion and its co-ordination in order to boost the foreign investment in the country and the economy in general.³⁰

The NIPC Act³¹ provides for the registration of a foreign company as a pre-requisite before operation.³² A foreign company must be registered with the NIPC and complete the registration process at the Corporate Affairs Commission (CAC). A foreign investor in an approved enterprise is guaranteed unconditional transferability of funds through an authorised dealer, in freely convertible currency, be it dividends or profit (net of taxes) attributable to the investment; payments in respect of loan servicing where a foreign loan has been obtained; remittance of proceeds (net of all taxes) and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment; or total repatriation of capital, should the investor choose to relocate elsewhere. Applications for business permit and expatriate quota, among others, are made to the NIPC.

Furthermore, no enterprise shall be nationalised or expropriated by any government of the federation, and no person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to

²⁷ Ibid, Chapter 5 of the policy is on Restructuring and Privatisation and it emphasises the goal of the policy aimed at increasing private investment as a philosophy that will lead to future development of the telecommunications sector. Private sector development is to attract foreign participation.

²⁸ Auriol E. 'Telecommunication Reforms in Developing Countries' <<http://neeo.univ-tlse1.fr/1575/1/telecom.pdf>> accessed on 13 June 2022.

²⁹ Babatunde K. A. *et al.*, 'Nigerian Investment Promotion Commission and Foreign Direct Investment In Nigeria' Kuwait Chapter of the Arabian Journal of Business and Management Review <http://www.arabianjbm.com/pdfs/KD_VOL_2_9/3.pdf> accessed on 10 June 2022.

³⁰ NIPC, 'Foreign Investment Requirement and Protections' <<http://www.nipc.gov.ng/Important%2520document/FOREIGN%2520INVESTMENT%2520REQUIREMENTS%2520AND%2520PROTECTIONS.doc>> accessed on 10 June 2022.

³¹ Cap N117, *Laws of the Federation of Nigeria, 2010*.

³² NIPC Act, section 20.

surrender his interest in the capital to any other person.” Also, the government cannot acquire the interest of any company unless for public purpose, but with fair and adequate compensation and a right to access to the court, of which the compensation is made without delay.³⁴

A foreign company not willing to register or incorporate a company in Nigeria can purchase shares in a Nigerian company in any convertible currency, this is in addition to various NIPC incentives.³⁵

Requirements under the Investment and Securities Act

A foreign telecommunications company can either invest through the Foreign Direct Investment (FDI) or the Foreign Portfolio Investment (FPI). FDI is a means of foreign ownership of productive assets and liabilities which include factories, mines and land, while FPI involves the purchase of stocks and bonds in the exchange market by the foreign telecommunications company. Thus, if an alien wants to invest in the shares of a company, whether public or private, he can do so through Foreign Portfolio Investment. However, FDI is recognised as a measure of growing economic globalisation.³⁶ Part 2 of the Investment and Security Act, 1999 (ISA)³⁷ provides for the functions of the Securities and Exchange Commission (SEC).³⁸ However, the Federal Government of Nigeria (FGN) sets to review the Investment and Securities Act to enable the Chairman of the Investment and Securities Tribunal to be rated at par with judges of the Federal High Court. This is to ensure efficiency, according to the Minister of Information. The tribunal is an independent specialised judicial body established by Section 244 of the Investments and Securities Act, 1999

³⁴ Ibid. See also section 25(1) a-b NIPC Act. Section 29 of the Act allows NIPC to render assistance and guidelines to the enterprise and shall act as liaison between the enterprise and the relevant government Department.

³⁵ Ibid. See also section 25(2) and (3) NIPC Act. Section 27 of the Act provides for the settlement of disputes through mutual discussion between the enterprise and the Federal Government of Nigeria with the aim of settlement, but in case of non-settlement, the Arbitration and Conciliation Act shall apply.

³⁶ For such incentives see, NIPC, 'Frequently asked Questions' <<http://www.nipc.gov.ng/faqpage.html>> accessed on 08 June, 2022.

³⁷ Victor Chigozie, Foreign Participation in the Nigerian Business Sector <<http://wingrass.blogspot.co.uk/2013/02/foreign-participation-in-nigerian.html>> accessed on 07 June 2022.

³⁸ Now embodied in *Cap 124, Laws of the Federation of Nigeria, 2010.*

³⁹ See the Investment and Securities Act <<http://www.sec.gov.ng/files/20090915470014THE%2520INVESTMENTS%2520AND%2520SECURITIES%2520Act%25202007.pdf>> accessed on 10 June 2022. Section 13(a-z) and (aa-dd) of Investment and Security Act. While subsections b, g and m and some other subsections allow investment in FDI, subsection i specifically allows the maintenance of portfolio investment.

know Section 247 of ISA, 2007) to interpret and adjudicate all capital market, investment and other related matters.³⁹

Foreign Exchange Requirements

Subject to money laundering restrictions, foreign currencies are allowed through an authorised dealer, the Central Bank of Nigeria. The bank will issue a certificate of capital importation (CCI) to the investor as evidence of the cash inflow. In case of importation of equipment, raw materials or machinery, the same rule applies. Without the CCI, foreign exchange cannot be purchased.⁴⁰ Funds from abroad that are meant for the purpose of investing in Nigeria are governed by the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995.⁴¹

Transfer and Protection of Technology- National Office of Technology Acquisition and Promotion Act

Generally, agreements as to the use of foreign know-how, patents, copyright, trademarks, trade secrets and the like count as "transfer of technology" agreements, and are registered with the National Office of Technology Acquisition and Promotion, not later than 60 days from the execution of the agreement. The office can refuse registration based on a long list of criteria designed to ensure that such agreements are fair to the Nigerian contracting party and not inimical to the national interest.⁴²

Other requirements to be complied with by a foreign telecommunications company include Environmental Standards Regulations made pursuant to the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA Act)⁴³ and Immigration requirements under the Immigration Act.⁴⁴

³⁹ The Punch, 'FG to Review Investment and Securities

Act' <<http://www.punchng.com/business/business-economy/fg-to-review-investment-and-securities-act/>> accessed on 18 June 2022.

⁴⁰ Ibid. See also Templars Law, Investing in Nigerian Telecommunications.

⁴¹ Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, *Cap F34 Laws of the Federation of Nigeria, 2010*.

⁴² See the National Office for Technology Acquisition and Promotion Act, *Cap N62 Laws of the Federation of Nigeria 2010*. Section 5(2) of the Act provides for registration requirements.

⁴³ The NESREA Act, *Cap N164, Laws of the Federation of Nigeria, 2010*.

⁴⁴ Immigration Act 2010.

3.0 Notable Shortcomings in the Regulatory Frameworks for Foreign Investment and Participation in the Telecommunications Sector

The regulations on the foreign investment and participation in the Nigerian telecommunications sector are laudable, yet some prominent shortcomings are notable and highlighted thus:

Foreign Investment and the Nigerian Communications Act

It is arguable that the rule making powers of the NCC as stated in Section 72 of the Nigerian Communications Act, 2003⁴⁵ is prone to abuse. This is because it is tantamount to an abandonment of the powers of the National Assembly, which is supposed to exercise some supervisory powers on same. Furthermore, section 73 of the Nigerian Communications Act on Arbitration does not recommend the use of professionals to do the mediation, conciliation and arbitration. This is said to be a great lacuna, even with the arbitral award that is enforceable in court. The reason that it made the NCC ranks with the Federal High Court is also a great breach of the principle of separation of powers, because reference to the court system in the Act by virtue of section 157 is the Federal High Court.⁴⁶

Also, section 78 (2) and (3) of the NCA on the presentation of certificate to the court before judgement can be enforced is against the principles of fair hearing as the provisions give the Commission the power of a judge in her own case. More so, the power of judicial review under sections 88 of NCA imposes series of qualifications, which defeats the aim of the provision. It provides that a party can only apply to the commission for judicial review which takes up to 90 days to complete. The party must have exhausted all the remedies under the Act before application. It is also argued that the expressions such as "as the Commission thinks fit", "as the Commission thinks just" etc are worded to give so much powers to the Commission.

Foreign Investment and Investments and Security Act (ISA)

⁴⁵ Now embodied in *Cap A97, Laws of the Federation of Nigeria 2010*.

⁴⁶ Otubu, A. 'The Regulator and the Regulated: An Examination of the Legal Framework for Telecommunications in Nigeria'.

⁴⁷ Ibid. See also section 88(3) NC Act.

The ISA established the Investment and Securities Tribunal. The tribunal is an independent specialised judicial body established by Section 244 of the Investments and Securities Act, 1999⁴⁸ to interpret and adjudicate on all capital markets, investment and other related matters. This is said to be a multiplicity of the system and an aberration of the powers of the Federal High Court, which ordinarily should hear such cases. Furthermore, expatriate quota and resident permit are presently the duty of the NIPC. This is supposed to be an immigration procedure as it was hitherto under the Immigration Act.⁴⁹

♦ **Foreign Investment and Fundamental Human Rights**

With the emergence of telecommunications and internet facilities, privacy of individuals is at stake. Also, the integration of the telecommunications into information highway brings more treats to privacy of the people. This is so with the use of smart phones which allows easy access to the internet.

Section 39(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) provides for right to freedom of expression, freedom of opinion, information and privacy.⁵⁰

By the provision of section 106 of the NCA, the issue of consumer information is left in the hands of the service providers. This is not in line with the international standard as practiced in the USA and even Uganda.⁵¹ Though section 34 of the NCC Consumer Code of Practice provides for the protection of the consumers information, this is also subject to the powers of interception under section 147 of the NCA.

Foreign Investment and Criminal Law

There are many communications crimes to which no law or regulation of the NCC has addressed. Crimes like theft of service, communication in furtherance to conspiracies, information privacy dissemination of offensive materials etc. There is need for a regulatory standard on this,

⁴⁸ Now Section 247 of ISA.

⁴⁹ Onjefu Adoga-Brooke Chambers, 'Guidelines to Nigerian Immigration Laws and Procedure' <<http://www.hg.org/article.asp%3Fid%3D7344>> accessed on 18 June 2022.

⁵⁰ See sections 37 and 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as altered).

⁵¹ Otubu.A, 'The Regulator and the Regulated: An Examination of the Legal Framework for Telecommunications in Nigeria'.

especially on the specification of international standards. The Nigerian Criminal Codes are not adequate to address the recent trends in the scheme of crimes prominent in the telecommunications sector. This is due to the fact that they were promulgated decades back and seem outdated to adequately address the emerging challenges. Chapter 17 of the Criminal Code Act⁵⁴ on offences relating to post and telecommunications cannot adequately address the emerging cyber-crimes. Obviously, the Penal Code Law⁵⁵ is in the same category. Also, the Advanced Fee Fraud and other Fraud Related Offences Act⁵⁶ does not specifically address telecommunications crimes as it is only limited to fraudulent use of communications devices for economic fraud or exploitation. There is, therefore, a need for cybercrime bill that will address all areas of crimes in this regard.⁵⁷

Foreign Investment and Land Law

A foreign telecommunications company must comply with Land Law and Land Use policy on the installation of telecommunications masts and towers. It is, therefore, a residual matter and all issues of leases and sub-leases are subject to the provisions of the Land Use Act. Governor's consent is required in cases of leases and subleases.⁵⁸

Worthy of note is the fact that telecommunications operators, including foreign telecommunications operators, obtain their licenses from the government but subject to states land policies and local authority requirements for the erection of masts. That is aside the requirement of NESREA Act. This can result in conflict between the three arms of government as seen in the case of *Registered Trustees of Licensed Telecommunications Operators of Nigeria & Ors v. Lagos State Government & Others*⁵⁹ where the Lagos State law regulates the installation of masts in the state but upon its challenge by the applicants in court, the state law was struck out for the reason that telecommunications matters fall under the exclusive legislative list of the Federal Government of Nigeria.

⁵⁴ Cap C38, *Laws of the Federation of Nigeria, 2010*.

⁵⁵ The Penal Code Law applies to the Northern States of the Federation.

⁵⁶ Cap. 46 *Laws of the Federation of Nigeria, 2010*.

⁵⁷ Daily Independent, 'Tackling Cyber Security Threats in Nigeria' <

<http://dailyindependentnig.com/2014/06/tackling-cyber-security-threats-in-nigeria/>> accessed on 25 June 2022.

⁵⁸ See sections 21 and 22 of the Land Use Act., Cap. L5 *Laws of the Federation of Nigeria 2010*

⁵⁹ (2007) (Unreported) Suit No. FHC/L/CS/517/2006. This decision was appealed to the Court of Appeal in *Lagos State Government v. Registered Trustees of ALTON (CA/L/769/2009)* where the Court of Appeal struck down certain sections of the Lagos State Infrastructure Maintenance Law on grounds that the Lagos State Government was using the pretext of urban planning to regulate matters relating to telecommunications. In this case, the Court of Appeal held that issues relating to telecommunications falls exclusively within the purview of the National Assembly and that no State House of Assembly can validly make laws regulating same.

Section 135 of the NC Act recognises the constitutional legislative powers vested in the states to exercise over land. It is contended that states have a stake in the mounting of masts within its vicinity. Hence, it is out of place to disregard the interest of the state based on the provisions of sections 4(2) of the Constitution and items 46, 68 and 66 of the Exclusive Legislative List in the Constitution. Furthermore, foreign investor will have to comply with the regulations of NCC, especially the Guidelines on Technical Specification on the Installation of Telecommunication Masts and Towers, 2009. This is to say that while foreign investors must comply with the federal laws and regulations, they also stand to abide by series state and local laws.

Foreign Investment and Environmental Standards

The general protection of the environment in Nigeria has hitherto been emphasised in the 1999 Constitution.⁵⁸ Furthermore, the NESREA Act provides an obligation on NESREA to prohibit processes and use of equipment or technology that undermines environmental quality.⁵⁹ Also, section 136 of NC Act provides that a licence holder shall take precautions on environmental safety while installing masts.⁶⁰ The Civil Aviation Authority Establishment Act, 1999 empowers the authority to prohibit the installation of structures which by its height is considered to endanger the safety of air navigation.⁶¹ It is, therefore, required that towers are constructed at least 5 metres or 10 metres from residential houses. Obviously, a foreign company has series of regulations to satisfy and this is argued often to result in non-compliance.⁶²

Foreign Investment and Taxation

The most common taxes are the companies' income tax. Also, a company may be given pioneer status and thereby enjoy tax reliefs by the provisions of the Industrial Development (Income Tax Relief) Act,

⁵⁸ Section 20 of the Constitution of the Federal Republic of Nigeria, 1999.

⁵⁹ NESREA Act, section 8.

⁶⁰ See also Section 2 of the Environmental Impact Assessment Act, *Cap E12, Laws of the Federation of Nigeria, 2004*.

⁶¹ See section 7(1) of the Act.

⁶² National Environmental Standard for Telecommunications/Broadcasting Facilities <www.ife.org/wpc/wcm/connect/telecommunication> accessed on 14 June 2022.

1970⁶¹ of which certain businesses are listed as qualified or eligible for pioneer status. The key benefit of the pioneer status is that it gives a tax holiday of up to five years to companies that hold the pioneer status certificate. Fortunately, by item 33 of the Schedule⁶⁴ manufacture of telecommunications equipment, cables, etc makes the list of pioneer industries. The grant of pioneer status is aimed at enabling the concerned industry to make a reasonable level of profits within its formative years. The profit so made is expected to be ploughed back into the business.⁶⁵ The problem of multiple taxation is a serious one that telecommunications operators had to contend with.

Foreign Investment and Local Content

Local content, within the Nigerian context, is defined as a reference to the value received from utilisation of Nigeria's human, material resources and services.⁶⁶ The Nigerian Oil and Gas Industry Content Development Act⁶⁷ provides for the establishment of the Nigerian Content Monitoring Board which is to co-ordinate and ensure compliance with the Local Content Act.⁶⁸ The compliance with the local content specifications is a prerequisite even for the issuance of licence, of which the expatriate quota and other documents are not issued unless the compliance with the provisions of the Act is ensured.⁶⁹ It is an offence not to abide by the provisions of the Act and any operator, contractor or sub-contractor who carries out any project contrary to the provisions of the Act commits an offence and is liable to a fine of five per cent of the project sum for each project in which the offence is committed or cancellation of the project.⁷⁰

The three common services under the Act are legal, financial and insurance services.

⁶¹ Now *Cap. 17 Laws of the Federation of Nigeria, 2010*.

⁶² A Subsidiary Legislation made pursuant to the Industrial Development (Income Tax Relief) Act.

⁶³ Lovells, H. 'Foreign Investments in Nigeria-Preliminary Legal Issues'

<<http://www.google.com/url?q=http://www.lexology.com/library/detail.aspx>> accessed on 07 June 2022.

⁶⁴ Akindelano Legal Practitioners, 'Review of Nigeria's Local Content Act'

<<http://www.akindelano.com/11/OD%2520-%2520Local%2520Content%2520Act.pdf>> accessed on 14 June 2022.

⁶⁵ *Cap. N1244 Laws of the Federation of Nigeria, 2010* (Otherwise known as 'the Local Content Act'). Sections 4, 68 and 69 of the Act.

⁶⁶ Section 3 of the Act.

⁶⁷ Sections 68 of the Act. ₦5 Million Naira is to be paid in case of a company. But an individual shall be liable to ₦500,000 or to a fine or both. The Schedule to the Act provides for the specified quota required.

For legal services, Section 51 of the Local Content Act mandates all operators, contractors and other entities engaged in any operation, business or transaction, which require legal services to retain only the services of a Nigerian legal practitioner or a firm of Nigerian legal practitioners. The Schedule to the Act contradicts this by stating that only 50% Nigerian content is required for legal consultancy services. In respect of financial services, by section 52 (1) of the Act, only the services of Nigerian financial institutions or organisations are to be retained except where, to the satisfaction of the Nigerian Content Monitoring Board, this is impracticable. But the Schedule also contradicts this by dictating different percentage for different financial services. For example, only 50% Nigerian content is required for credit granting services. In respect of insurance services, section 49 (1) requires that all insurable risks in Nigeria are to be placed with insurance companies licensed in Nigeria. The Schedule contradicts this by dictating that only 70% Nigerian content is required for non-life insurance services.⁷¹

4.0 Challenges to Foreign Investment in Nigeria

Despite the strategic nature of Nigeria which is said to be conducive to attract foreign investment in the telecommunications sector, series of challenges are encountered even by the foreign telecommunications investors, aside those encountered in the series of regulating instruments stated above. Prominent among them are:

1. Bribery and Corruption: Nigeria has been ranked 150 among 180 countries on the 2022 Corruption Perception Index released by Transparency International. Although the country maintained its previous year's (2021) score of 24 out of 100 points, there was a change in rank from 154 to 150, in the released index. The Transparency International's tool for measuring the level of corruption in the systems of the 180 countries across the world was based on certain prevalent indices, such as bribery, diversion of public funds, public officials using public office for private gain without consequences, ability of governments to contain corruption and enforce effective integrity mechanisms in the public sector, red tape and excessive bureaucratic burden which may increase opportunities for corruption, meritocratic versus nepotistic appointments in the civil service.⁷²

⁷¹ Local Content Act, sections 49, 50 and 51. See also Lovells, H, 'Foreign Investments in Nigeria'. Abiodun Sanusi, 'Nigeria Ranks 150, Scores 24 on Corruption Index' <<https://punchng.com/nigeria-ranks-150-scores-24-on-corruption-index/>> accessed on 11 December 2023.

2. **Slow Judicial System:** The court system is not as effective or fast as expected. Although, many states of the Federation have put in place rules of court that seek to reduce the time spent in the resolution of disputes within certain monetary threshold. Despite this, the judicial system is still slow.
3. **Change in Laws and Government Policies:** The government can sometime be slow and inconsistent in its policies and delays are often encountered in passing some important laws. Change in law and policies often affect the stability of company's viability. For instance, despite many Acts of the National Assembly on Oil and Gas, such as Petroleum Act⁷³ and Nigerian National Petroleum Corporation Act,⁷⁴ the Nigeria's Senate officially passed the Petroleum Industry Bill in July 2021, which seeks to provide legal and fiscal framework for the Nigerian Petroleum Industry and development of host communities.
4. **Political Instability and Insecurity:** The activities of fundamentalists like Boko Haram in the Northern part of Nigeria and cases of kidnapping in certain parts of Southern Nigeria are issues that bother foreign investors even in the telecommunication sector.
5. **Epileptic Power Supply:** The challenge of erratic power supply usually leads to high cost of doing business. This is said to be the greatest cause of poor quality of service (QoS) offered by all operators. The power source generated unilaterally by the operators adds a significant cost to their overhead costs, and this is passed on to the consumers.⁷⁵
6. **Other Challenges:** There are other challenges like high tariffs, poor quality of service, including dropped calls, poor voice signal quality, high operating costs, constant threat of vandalism to equipment and reduction in the Average Revenue Per User (ARPU), lack of adequate interconnectivity and poor penetration - serving only a third of the Nigerian population.

Nigeria has bilateral and multilateral relations with various countries, hence naturally, a foreign participating company is to subject to the multilateral/bilateral relations of the Association of Licenced Telecommunications Operators of Nigeria (ALTON),⁷⁷ International

Cap. P10 Laws of the Federation of Nigeria, 2010.

Cap. N123 Laws of the Federation of Nigeria, 2010.

Adedeji, L., 'Telecommunications and the Nigerian Economy', *The Lawyers Chronicle: The Magazine of the African Lawyers* <<http://thelawyerschronicle.com/telecommunications-and-the-nigerian-economy/>> accessed on 14 June 2022.

Ibid.

Templars Law, 'Investing in Nigerian Telecommunications Sector'.

Telecommunications Union (ITU),⁷⁹ a UN Agency founded in 1865 as the International Telegraph Union with the aim of coordinating telecommunications operations and services throughout the world⁷⁹ and African Telecommunications Union (ATU),⁸⁰ among other telecommunications organisations. In line with this, foreign participation can be in the form of financial and legal influence. Financial influence refers to international organisations or countries to facilitate liberalisation. Legal influence is in form of modelling the normative rules of international organisations into the Nigerian context of telecommunications framework. This may include the provision of expertise.⁸¹ The World bank as a catalyst often provides financial assistance and also has series of publications that can help in policy reforms. Preconditions are often given for the grant of assistance.⁸²

Nigeria Telecommunications Fact Sheet released by the United States Embassy in Nigeria has noted that the ICT sector is the fastest and most robust sector of the Nigerian economy, contributing more than the manufacturing, banking and solid minerals sectors combined.⁸³ There is need to enhance the laws especially on foreign participation to foster the growth of the sector.

5.0 Conclusion

Nigeria's promising outlook for investment and future growth makes Nigeria a strategic and viable place for telecommunications industry. Nigeria is said to be among the countries with the potentials of becoming one of the largest economies in the 21st century, and the telecommunications sector stands as an important sector that can ensure this growth. The telecommunications sector is said to be the world's fastest

⁷⁹ ITU, 'Agencies of the UN: ITU' <<http://www.google.com.ng/url?q=http://www.un.org/agency-itu.php>> accessed on 01 June 2022.

⁸⁰ WhatIs.com, 'International Telecommunication Union (ITU)' <<http://whatls.techtarget.com/definition/International-Telecommunication-Union-ITU>> accessed on 14 June 2022.

⁸¹ The African Telecommunications Union is a specialised agency of the African Union (AU) and is a leading organisation fostering the development of information and communications technologies infrastructure and services throughout Africa. ATU has been an active Sector Member of ITU-D activities. See Internet Society and African Telecommunication Union <<http://www.internetsociety.org/ISOC-ATU-Sign-MoU>> accessed on 14 June 2022.

⁸² Opata B. C. 'Transplantation and Evolution of Legal Regulation of Interconnection Arrangement in the Nigerian Telecommunications Sector' *Journal of Communication Law & Policy* <<http://ijclp.net/ojs/index.php/ijclp/article/download/1777>> accessed on 14 June 2022.

⁸³ Ibid.

⁸⁴ Adedeji, L. 'Telecommunications and the Nigerian Economy'.

growing sectors, and it provides the enabling technology for information economy.⁸⁴

Regulation is, regarded as part of the traditional roles of government in which public officials set standards and rules to guide the operators. It is a specific kind of policy making which can take different detailed form in the way of standards and set of compliance obtained.⁸⁵ It is stressed that Nigeria has a relatively liberal environment for investment, and the government continues to develop initiatives aimed at streamlining existing processes and costs to further facilitate effective way of doing business in Nigeria.⁸⁶

The liberalisation or deregulation of virtually all sectors of the Nigerian economy has resulted in the attraction of foreign investors, at least since 1992, when the laws of foreign ownership of Nigerian enterprises and on the repatriation on money invested in Nigerian were being liberalised. The regulatory environment in Nigeria is one that is good enough to attract foreign investors and sufficient enough to attract FDI.⁸⁷ FDI is the investment undertaken by an enterprise that is either wholly or partly foreign owned and as at year 2010, it is estimated at \$67.23 billion.⁸⁸ The telecommunications sector is among the largest sectors that have traditionally attracted FDI in Nigeria.⁸⁹ The liberalisation of the telecoms sector in Nigeria allows the inflow of foreign investors to offer managerial and technical assistance and thereby increasing the FDI.⁹⁰ The Nigerian telecommunication sector, being one of the sectors liberalised, has experienced tremendous growth with the regime of foreign investment in the country which brought about the likes of MTN, which is now a major

⁸⁴ Adeyinka F.M. 'Technological Response to Telecommunications Development: A Study of Firm and Institutions in Nigeria' <http://www.atpsnet.org/Files/working_paper_series_22.pdf> accessed on 13 June 2022.

⁸⁵ Osei P. D. 'Regulation in a Flux: The Development of Regulatory Institutions' <<http://www.caribank.org/uploads/publications-reports/research/conference-papers/development-strategy-forum/Regulation%20in%20a%20Flux.pdf>> accessed on 14 June 2022.

⁸⁶ IFLR, '2014 FDI Report: Nigeria' <<http://www.iflr.com/Article/3306936/2014-FDI-Report-Nigeria.html>> accessed on 10 June 2022.

⁸⁷ Omuere I. J. 'Foreign Direct Investment Environment in Nigeria: A Survey of the Mobile Telecommunications Companies' <<http://www.theseus.fi/bitstream/handle/10024/31874/FDI%20Environment%20in%20Nigeria%20Final%20Thesis%20copy.pdf>> accessed on 13 June 2022.

⁸⁸ Ibid.

⁸⁹ IFLR, '2014 FDI Report: Nigeria'.

⁹⁰ Gochukwu S. C. 'The Impact of Foreign Direct Investment on the Nigerian Economy' <<http://www.iiste.org/Journals/index.php/EJBM/article/viewFile/3927/3985>> accessed on 14 June 2022.

telecommunications service provider in the country and the largest in size and market share.⁹¹

The competition in the telecommunications sector is not as strong as expected. The sector is said to be oligopolistic in nature because there are few dominant players having control of the market.⁹² However, the laws of local incorporation, investment securities and cash flows, NCC laws and regulations etc, must be satisfied by the foreign investors. While some of the laws seem outdated, some substantially cannot address the recent trends and challenges right from the process of incorporation, even till the installation of mast and towers. NCC has wide discretionary powers which lack specificity and transparency. NCC's claim of viable regulations especially on licencing is alleged of want of transparency.⁹³

Additionally, the lack of clear and transparency regarding the internet has undermined consistency in the NCC's operations and created uncertainty in the industry.⁹⁴ There is also the issue of multiplicity of laws especially on environmental standards and land regulation, which often results in non compliance. Hence, there is need for an enhancement and expansion of laws to address this.

6.0. Recommendations

- **Transparent telecommunications policies and regulations.** The importance of telecommunications cannot be over emphasised in the economic development of any nation. This is so because ICT infrastructure has a viable linkage with other sectors and can help to improve all other facet of the economic strive of a nation. To achieve this however, telecommunications policies and regulations must be transparent, stable and conducive for foreign investment to thrive.

⁹¹ Consumer Empowerment Organisation of Nigeria, 'Competition Regime Scenario in Nigeria' <<http://www.cuts-ccier.org/7up4/pdf/PCP-Nigeria.pdf>> accessed on 13 June 2022.

⁹² Ibid.

⁹³ Media Right Agenda and Article 19, 'Broadcasting in Nigeria: Unlocking the Airways' <<http://www.article19.org/pdfs/publications/nigeria-broadcasting-in-nigeria.pdf>> accessed on 13 June 2022.

⁹⁴ Ibid.

- **Improve security system in the country.** Thus, the Nigerian political climate must be made conducive to foreign investment. Obviously, the present situation of insecurity in the southern and northern Nigeria must be addressed and lasting solution strategised.
- **Enhancement of some provisions in CAMA.** The provisions of the laws especially CAMA, the Land Use Act, etc which seem outdated should be enhanced and made compatible with modern trends.
- **NCC powers needs to be subjected to court's supervision.** The powers of the NCC needs to be made subject to the supervision of the court by allowing parties to seek redress in court, upon adequate information to be passed to the NCC or other parties of the intention to seek redress from the court without any clog. The regulations need to be co-ordinated and organised to ensure accuracy of what is to be done and to avoid non compliance due to the multiplicity of regulations that is often confusing and seems un-coordinated.



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