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CHALLENGES IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY: THE NEED FOR POLICY CHANGES

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This paper will highlight some of the challenges affecting investments in the Nigerian Electricity Supply Industry (**NESI**) and proffer possible solutions.

One of the most challenging problems is the licensing process. The current licensing regime is epileptic and does not encourage the flow of investment into the sector. For instance, it could take well above 3 (**Three**) years to obtain a generating license. This dissuades investors from investing in the sector.

An investor or financier would expect an investee to have an operating license in the industry, by way of a generating or distribution license, before investing in the latter's business. It is impractical for an investor to keep its funds for 3 years or more, while waiting for a license to be obtained without diverting the funds elsewhere.

The long and unascertainable licensing procedure is inconsistent with the Federal Government's rhetoric on its commitment to an improved electricity power sector. Similarly, the timeline is inconsistent with the urgent need for funding and investment in the power sector. Interestingly, some independent power plants are built without licenses but officials of the Nigerian Electricity Regulatory Commission **(NERC)** often attend the commissioning of the power plants; and deliver speeches in some instances. This makes for policy uncertainty as to whether the license is required, in reality, before the power plant is built or afterwards.

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THE EFFECT OF THE PROPOSED VALUE ADDED SERVICE REGULATION OF THE NIGERIAN COMMUNICATION COMMISSION ON SMALL AND MEDIUM ENTERPRISES

- Chinenye Ajayi and
Oghenekevwe Okpobia

This paper discusses the proposed Value Added Service Regulation and its effect on Small and Medium Enterprises (SMEs). These effects range from the tendency to stifle competition, the domination of SMEs by the mobile network operators, high licensing fees and its effect on employment, amongst others.

The telecommunication industry has witnessed substantial growth following the emergence of mobile operators like MTN Nigeria and Econet Wireless Nigeria (now Airtel). These companies initiated voice services and short message service (SMS) through the digital mobile service.

In recent times, Nigeria's telecommunication market has been expanded to cover other services known as Value Added Services (VAS), which have now been subsumed into its array of service offerings. In simple terms, Value Added Services (VAS) is a telecommunication industry term for non-core services i.e. all services beyond the standard voice call service offering ("basic service"). On a conceptual level, VAS adds value to the standard service offering. Specifically, VAS includes, but is not limited to, mobile banking, mobile education, mobile marketing, caller tunes, voice mail, ring back tone, balance checks, Top-ups, SMS voting, SMS lotteries and the various mobile applications. Some of the industry players include Cellulant Nigeria Ltd, Funmobile Ltd, Mtech Communications Plc, Rancard Mobility Nig. Ltd, Tavia Technologies Ltd, Vanso Ltd and Cellcast Nigeria Ltd.

Following the astronomic growth of the VAS subsector, its effect on SMEs is undeniable. However, the proposed regulation of the VAS subsector by the Nigerian Communication Commission (NCC) has drawn considerable criticism from SMEs, which constitute a bulk of participants in the subsector. The NCC in March 2016, unveiled a new procedure and guideline for the provision of VAS in Nigeria.

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It is recommended that upon submission of all documents required for obtaining a license, scrutiny of the said documents and issuance of the license should be completed within a period of 3 to 6 months. Thus, an application for license should not be accepted by the NERC, where an applicant does not provide all the required documents.

Another challenging issue is the duration of a generating license. The current 10 (**Ten**) years term does not align with financing requirements of the investors. The breakeven period of certain investments in the power sector is beyond the ten years license period. This is not to mention the period required to generate sufficient return on investment. The duration of a generating license should be extended to give investors the assurance that an investment will not be affected by non-renewal of license before the investment is recouped with a reasonable return thereon.

Thirdly, there is a needless requirement for the approval of the Securities and Exchange Commission (SEC) for investments, acquisition, and restructuring of all companies including the entities operating in the Electricity Supply Industry. Section 424 of the Securities and Exchange Commission Rules and Regulations, 2013, provides that the review and approval of SEC is required for investments, acquisition and any form of business acquisition or restructuring of Companies in Nigeria with assets and turnover of N500,000,000.00 (**Five Hundred Million Naira**) and above. This is regardless of whether the company is a private or public company or a partnership. The underlying basis for such review and approval is the protection of the interest of the Public.

Sections 5 and 15 (ii) of the NERC Regulations for the Investment in Electricity Networks 2015, provides that the approval of NERC must be obtained prior to any investment in the NESI. The effect of the foregoing is that investments in the NESI are subjected to the approval of SEC and NERC. This is a duplication of role and process at the expense of investments.

> "NERC should be the sole approving authority for investments in the NESI."

The aforesaid approval needlessly prolongs the process of investments, acquisition and restructuring of companies. NERC already assumes the role of protecting the interest of the public in relation to quality, standard, investments, acquisition and restructuring of companies in the electricity supply industry. Thus, investment in the NESI should be excluded from receiving the approval of SEC, particularly if the target entity is not a public company. NERC should be the sole approving authority for investments in the NESI. In the alternative, NERC can make provision for a SEC desk and desks for other governmental agencies relevant to investment in the NESI such that NERC becomes a one-stop shop for licensing and regulating investments in the NESI.

Another challenge bedevilling the NESI is the process for fixing electricity tariff. Currently, the Joint Tariff Design Process (JTDP) is in operation with respect to fixing electricity tariff. Electricity tariff paid by consumers of electricity is determined jointly by the Distribution Companies (DISCOs) and the consumers/end users. NERC is to only play the role of an independent adjudicator in reviewing the tariff agreed upon between the DISCOs and consumers within the DISCO's concession area.

The disadvantage of this is that the highly informed, sophisticated and profit oriented DISCOs are left to bargain tariff with (in most cases) a group of uninformed consumers, who cannot understand the complexities of the power industry.

Also, the JTDP promotes unionisation of consumers. This could make the sector, particularly the distribution segment, unattractive to a lot of investors, who are wary of the activities of the unions. This may limit their ability to earn an acceptable return on investment.

The current dispute in relation to the fixing of electricity tariff also calls to question the quality of consultation made with respect to the JTDP in fixing tariff.

We recommend that NERC with its knowledge of the industry and the consumer, should reverse the JTDP policy. Alternatively, NERC should design a tariff structure based on consultations with the DISCOs and consumers. NERC should also assume the responsibility of informing and enlightening the consumers of how power tariffs are arrived at. That way, consumers will be enlightened without the need for confrontations that may arise from meeting with the DISCOs.

Another issue is the restrictive concession granted to successor distribution companies. The distribution companies have concessions over different areas. Thus, Independent Power Projects that have generation licenses have to obtain a no objection from the distribution companies before they can distribute electricity generated to the concession areas. It is noteworthy that all the concession areas are currently (and always) under-served or un-served as the distribution companies do not have sufficient electricity to distribute to consumers.

> “The ambiguities in the NERC Operating Fees Regulation is another challenge.... This ambiguity should be clarified and the cost of gas should be expressly excluded from the annual operating fees computation.”

Nonetheless, the distribution companies are unwilling to allow distribution of electricity by Independent Power Producers (IPPs). Also, some consumers within the concession areas are often desirous of purchasing electricity from the IPPs. Even worse, is the fact that the IPPs cannot sell the electricity to the distribution companies because the tariff proposed by the distribution companies are usually below the cost of generating the electricity.

We recommend a position where the IPPs can pay a stipulated fee to the distribution companies to cede part of their concession areas to the IPPs; on the condition that the IPPs can establish that residents of the proposed ceded areas do not enjoy sufficient electricity and are willing to purchase power from them. This will enable the IPPs to distribute the electricity generated to under-served or un-served but willing consumers.

The implementation of the Regulation on National Content Development for the Power Sector is another challenge affecting the NESI. The underlying objective of the regulation is the promotion of National Content in the Power Sector and reducing foreign participation.

In as much as the participation of Nigerians is key in the power sector, the current form of the Regulations on National Content Development is premature for the current state of the NESI. The sector is seriously in need of significant investments, whether foreign or local. The poser is, why discriminate against assistance when in need?

Thus, it is proposed that the Regulations on National Content Development for the Power Sector be kept in abeyance and the industry should be open for both national and foreign participation until the industry has experienced sufficient growth.

Finally, the ambiguities in the NERC Operating Fees Regulation is another challenge. Currently, the annual operating fees payable by operators in the NESI is 1.5% per KWh. The basis for computing the 1.5% is not clear. For example, with respect to generation companies, it is not clear whether the 1.5% is to be computed exclusive or inclusive of the cost of gas which is ordinarily passed through to the power purchaser. This ambiguity should be clarified and the cost of gas should be expressly excluded from the annual operating fees computation.

Conclusion

In sum, the development of the NESI should be given the priority it deserves and necessary reforms should be undertaken to attract investments into the NESI. A roundtable discussion of the issues raised in this paper will be a step in the right direction. This will enable relevant stakeholders come up with well-articulated solutions to improve the state of the power sector.

THE EFFECT OF THE PROPOSED VALUE ADDED SERVICE REGULATION OF THE NIGERIAN COMMUNICATION COMMISSION ON SMALL AND MEDIUM ENTERPRISES

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According to the NCC, the introduction of the new regulatory framework arose from the numerous complaints received from consumers concerning unsolicited VAS marketing messages, the use of short codes for fraudulent purposes, fake bank credit alerts and anti-competitive practices. Another reason being that the VAS market is approaching maturity and the new framework is intended to stimulate growth and innovation in the market.

It is important to note that prior to the proposed regulatory framework, the VAS industry was minimally regulated by the *License Framework for Value Added Services* introduced in April 2011. The core objective of the License Framework of 2011 amongst others was to implement appropriate safeguards for the use of VAS, provide for the issuance of license to VAS providers, and prohibit unsolicited messages as well as other provisions to protect the consumers.

Whilst the proposed framework may be applauded for its attempt to provide a holistic approach to the regulation of the industry, its provisions have raised quite a number of issues especially as it relates to SMEs. These SMEs constitute a huge number of participants in the VAS industry of the telecommunication sector. This is evident from the membership of the Wireless Application Service Providers' Association of Nigeria (WASPAN), an industry body for VAS Licensees in Nigeria.

The proposed framework provides for a new market structure made up of VAS Content Developers, VAS Hosting Service Providers (VHSP) and Network Operators. It allows for multiple players across the various segments such that a company can be a content developer and a VAS Hosting Service Provider or a Network Operator. This provision contradicts global best practices. It has a tendency of not only stifling competition, but also encourages the domination of SMEs by the big players who have the capacity of playing across all segments.

For instance, the network operators already provide the channel through which the VAS is offered to consumers, hence where they are permitted to also provide VAS, they will surely run the SMEs out of business. More so, the network operators are able to provide VAS at less cost compared to the SMEs. The regulation provides that companies operating in one segment may be barred from operating in other segments of the market if it will compromise competition. It is suggested that such option should not be given at all as same will compromise competition.

Secondly, the proposed regulation reserves certain VAS such as ringtones, caller ring-back tunes, and location-based services for network operators only. This was done on the basis that these VAS are network dependent or best provided by a network operator. It is noteworthy that all VAS are network dependent. Thus, this distinction is unfounded. In addition, these network operators are permitted to enter the VAS market in full by registering subsidiary companies to carry on such business. There is no doubt that the big network operators are capable of establishing subsidiaries but this will have the effect of pushing out the existing SMEs in the industry. The network operators already earn a huge income from the content developers. Thus, giving them a leeway to participate fully by establishing subsidiaries will only result in evicting the SMEs from the industry.

Thirdly, the new framework placed the license fee for VHSPs at an all-high amount of N10,000,000 (**Ten Million Naira**) for a five-year license, as against the current license fee of N2,000,000 (**Two Million Naira**). This fee in addition to being exorbitant, is also outrageous. As observed above, most companies engaged in this segment are SMEs who are barely struggling to survive in the unfriendly Nigerian economy. The obvious consequence of this prohibitive fee is that only a few of the current licensees will be able to obtain the license thereby reducing competition and creating room for monopoly.

Also, the proposed regulation introduces a short code fee and a short code renewal fee. This is in addition to the annual operating levy, licensing and type approval fees already payable by the VHSPs. Thus, the introduction of the short code fee and short code renewal fees is an

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MANDATORY BUY-OUTS OF MINORTY SHAREHOLDERS - TENDER OFFER SITUATIONS

- 'Wale Irokosu

This paper will discuss the mandatory buy-outs of dissenting minority shareholders in tender-offer situations in Nigeria as well as the topical issues arising therefrom.

The ultimate objective of some bidders in a takeover is to acquire 100% control of the target company. However, in a successful takeover offer, there may be a few target shareholders who, intentionally or otherwise, fail to accept the offer.

Mandatory buyout also known as 'squeeze-out' is a procedure that allows an offeror who has acquired a stipulated quantity of shares to compel the remaining shareholders of the target company to transfer their shares to him, at a fair price.[1] It is invariably a 'hostile' acquisition of shares. This may be aimed at securing enough votes to pass a resolution to make a significant change in the direction of a company. Also, it may be inspired or encouraged by the need to deprive or squeeze out the minority from the fruit of an anticipated windfall.

As a corollary, the Investment and Securities Act (ISA)[2] provides a detailed procedure for undertaking a mandatory buy out of minority shareholders, who may not consent to the offer made by the bidder.[3] The essence of these provisions is to ensure that there is fair play and transparency during the process.

An offeror may make a bid or an offer with respect to a particular class of shares of the offeree company or with respect to all the shares of a company. However, where the shares of a company are not divided into two or more classes, those shares shall be deemed to constitute a class.[4]

Thus, where an offeror intends to take over all the shares of a class in an offeree company, a bid is sent to all the shareholders of that class. Upon receipt of the bid, a shareholder who does not accept the bid is entitled to dissent. In such situation, the bidder (who has met the required threshold) is allowed to acquire the shares of the dissenting minority shareholders in accordance with the provisions of the ISA.

It is noteworthy that Transactions on Mandatory Takeover (MTO) is not common. As an indication, the Nigerian Stock Exchange (NSE) received only 5 (five) applications from 2013 to date.

Procedure for the Acquisition of Shares of Dissenting Shareholders

According to the ISA, all the shares included in a class of shares in respect of which a take-over offer is made are referred to as the " shares subject to acquisition". It is important to note that "shares subject to acquisition" does not include shares to which the bidder or offeror is entitled to before the take-over bid.

Similarly, the shares subject to acquisition in respect of which a take-over bid was rejected are referred to as "outstanding shares" and persons entitled to be registered as holders of outstanding shares are referred to as "dissenting offerees".[5]

Requirements

For an offeror/bidder to successfully acquire the shares of dissenting offerees, it must:

i. Ensure that not less than ninety percent of the shares subject to acquisition have been accepted.

ii. Within one month after the date on which acceptance of the shares (representing not less than ninety percent) is completed, issue a notice (Squeeze out notice) to each dissenting offeree:

a. To the effect that the take over bid has been accepted by such number of shareholders of not less than ninety percent of the shares

subject to acquisition;

b. To the effect that the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take over-bid;

c. Informing the dissenting shareholder with full particulars of the election he is required to make in the circumstance;

d. Informing the dissenting shareholder of the effect of the failure to make an election[6] within the stipulated time as well the duty bestowed on such dissenting shareholder in the event of his failure to make an election.

The offeror is mandated to send a copy of every notice sent to a dissenting shareholder to the offeree company and the Securities and Exchange Commission. The notice to be sent to the Securities and Exchange Commission must be sent not later than one month after the date on which it was sent to the dissenting shareholder.[7]

Also, the offeree company will be notified of the election made by a dissenting shareholder or deemed to have been made by him.[8]

It is noteworthy that the mandatory buyout of the shares of dissenting shareholders is not peculiar to Nigeria. Similar procedures are applicable in other jurisdictions such as the United States of America[9], Germany[10], India[11] and Japan[12]. The procedure and circumstance of a squeeze-out in these countries are materially the same with the procedure in Nigeria.

However, in Germany, a second procedure for executing a squeeze out is allowed by way of resolution.[13] This procedure is available independent of a takeover or mandatory bid. The procedure is available if a controlling shareholder holds at least 95% of the total issued share capital of a Stock Corporation and sends a notice to the company requesting a shareholder resolution on the 'squeeze-out'. Upon the passing of the resolution, the controlling shareholder is required to pay cash compensation to the minority shareholders, which reflects the fair value of their shares. Minority shareholders may challenge the shareholder resolution in court or may apply to the court to determine a fair value of the shares.

Options Available to Dissenting Shareholders[14]

Dissenting shareholders may within 20 (Twenty) days of receiving the offeror's notice make an election to either:

i. Transfer his shares to the offeror on the terms on which the offeror acquired the shares of the shareholders or offerees who accepted the take-over bid; or

ii. Demand payment of the fair value of his shares.

A dissenting shareholders who exercises option (ii) above is clearly not satisfied with the terms on which the offeror acquired the majority shares and would therefore prefer that value of his shares be determined separately.

> "It is noteworthy that the mandatory buyout of the shares of dissenting shareholders is not peculiar to Nigeria. Similar procedures are applicable in other jurisdictions such as the United States of America, Germany, India and Japan.."

It is pertinent to state that a dissenting shareholder is expected to exercise his option by a written notice sent to the offeror and such notice must be sent within the stipulated time.

Effect of Failure to Make an Election by Dissenting Shareholder

Where a dissenting shareholder fails to make an election, he shall be deemed to have elected to transfer his shares to the offeror on the same terms on which the offeror acquired the shares of other shareholder or offerees who accepted the take over bid. This accords with reason and logic, as the offeror company cannot wait ad infinitum for the dissenting shareholder to make an election.

Such dissenting shareholder who fails to make an election shall within 20 (Twenty) days after receiving the notice sent by the offeror, forward his share certificate to the offeree company.[15]

Offeror's Payment for the Outstanding Shares of Dissenting Shareholders[16]

Within 20 (Twenty) days after the offeror sends a notice to the dissenting shareholders, the offeror shall pay or transfer to the offeree company[17] the amount of money or other consideration which the offeror would have to pay in the event that the dissenting shareholders make an election to accept the offer on the same terms on which the shares of the other shareholders were acquired.

Upon payment, the offeree company shall be deemed to hold that amount or consideration in trust for the dissenting offerees and shall pay the amount into a bank account established for that purpose.

Undoubtedly, the essence of this provision is to show commitment on the part of the offeror that he/it is willing and able to pay for the shares of the dissenting shareholders.

Procedure where Dissenting Shareholders Make an Election to Demand Payment of the Fair Value of their Shares

Section 147 of the ISA clearly shows that a dissenting shareholder in a Nigerian company is allowed to exercise his or her appraisal rights within the purview of the ISA, where he objects to the terms on which the offeror acquired the majority shares.

Further to the foregoing, where the dissenting offeree elects to have his share paid for by the offeror at a fair value, the offeror shall within 20 (Twenty) days after he had paid the required sum to the offeree company bring an application before the Court. The application will be praying the Court to determine and fix the fair value of the shares of the dissenting shareholders[18].

In the event that the offeror fails to so

apply, a dissenting shareholder may within a further period of 20 (Twenty) days apply to the Court for the same purpose. By virtue of the exclusive jurisdiction of the Federal High Court[19], the application may be brought before the Federal High Court by way of an originating summons or originating application.

All dissenting shareholders who made an election for payment of the fair value of their shares shall be joined as parties and shall be bound by the decision of the Court. The dissenting shareholders shall not be required to give securities for costs in such an application. The offeror is also expected to notify each affected dissenting shareholder of the date and place of the application and of his right to appear and be heard in person or by counsel.

The court in considering the application may in its discretion appoint one or more independent valuers to assist the court. In Nigeria, there are no express rules guiding the court in the determination of fair value for a company's shares. This will be a matter of expert evidence adduced by the dissenting shareholder in support of his/its claim when asserting a given price as fair value.

Upon hearing the application, the Court shall then proceed to make an order in favour of the dissenting shareholders stating the value for which their shares are to be acquired by the offeror. The Court may proceed to make consequential orders that a person other than the offeree company hold the money paid by the offeror in trust. Also, the Court may order that interest at current bank rate on the amount be payable to each dissenting shareholder from the date he sends his share certificate to the offeree company[20] until the date of payment.

In determining the fair value of the shares, the Court may arrive at a sum higher than the amount already deposited by the offeror with the offeree company. In such situation, the offeror shall be obligated to make additional payment to comply with the Court's order. This payment may be made to the offeree company or the person appointed by the Court.

Duties of the Offeree Company Upon Payments by the Offeror

The offeree company upon being satisfied that the dissenting shareholders have made an election either to be paid off as other shareholders or as determined by the Court, the offeree company shall issue to the offeror a share certificate in respect of the shares held by the dissenting shareholders.[21]

On the other hand, the offeree company shall pay the dissenting shareholders the money to which they are entitled to receive by virtue of their election to be paid as others or based on the amount fixed by the order of Court. Where the money is in custody of another person other than the offeree company, the latter shall authorize such person to make the required payments to the dissenting shareholders.[22]

The trustee (offeree company or person appointed by the Court) shall only disburse monies to dissenting shareholders who are entitled to it. Where there is a dispute as to who is entitled, the Court is empowered to reach a decision on whether a person is entitled to be paid as a dissenting shareholder.[23]

Where any money in the custody of a trustee remains unclaimed for a period of 3 (Three) years after the bid process, the Court may direct that such monies be paid and transferred to the Commission. In that case, an application by any person claiming to be entitled shall be made to the Commission for determination.

Procedure when Dissenting Offeree Fails to Deposit Share Certificate

Once the target company is aware that the offeror has made available sufficient consideration for the acquisition of all shares belonging to dissenting offerees, it must issue a notice to each dissenting offeree who has failed to deposit his share certificates within the prescribed period informing him as follows:

- that his shares have been cancelled;
- that the offeror has deposited sufficient consideration for the acquisition of the shares of all dissenting offerees; and
- that he will become entitled to receive consideration for his cancelled shares when he submits

the share certificates to which such consideration relates.

It is noteworthy that sometime in 2014, the Commission made certain amendments to its Rules. Section 448 (8) of the SEC Rules, requires the offeror company to disclose to the Commission the entire process taken in the acquisition of the shares of dissenting shareholders and this is to be supported by documentary evidence. Where the Court determines the fair value of the shares, such order must be made available to the Commission together with an evidence of payment.

Furthermore, where a shareholder of the offeree company is aggrieved, a complaint may be lodged with the Commission.

This is a commendable amendment as it improves the regulatory function of the Commission by ensuring that the minority/dissenting shareholders are not unfairly treated during a mandatory buy out.

Rights of Remaining Shareholders under Section 150 of the ISA

This section becomes applicable where the aggregate number of shares held by the offeror prior to the issuance of the take over bid and that which the offeror becomes entitled by virtue of the take over bid is not less than ninety percent of the issued shares in that class.

It is important to note that this scenario is different from that stated in Section 146. The ninety percent threshold referred to in section 146 does not include the shares owned or belonging to the offeror prior to the take over bid[24] while the ninety percent threshold under section 150 includes the shares owned by the offeror prior to the take over bid.

An offeror in this circumstance shall within 2 (Two) months of attaining the aggregate shareholding of not less than 90 percent, give notice of that fact (i.e that it had met the required threshold to the remaining shareholders. The shareholder shall within 2 months give notice to the offeror to acquire his shares and the offeror shall be bound and entitled to so acquire.

This is another point of divergence from the provision of section 146. Upon meeting the required threshold under section146, the offeror becomes bound to take up and pay for the shares of the dissenting shareholders (the dissenting shareholders are bound to sell). On the other hand, Section 150 provides that the offeror will only be bound and entitled to acquire the shares of the remaining shareholders where such shareholder by notice requires the offeror to do so.[25]

This means that where the shareholder does not notify the offeror to buy its shares, the offeror is not bound or entitled to do so. Unlike Section 146, the shareholder is not mandated or compelled to sell his or her shares under Section 150.

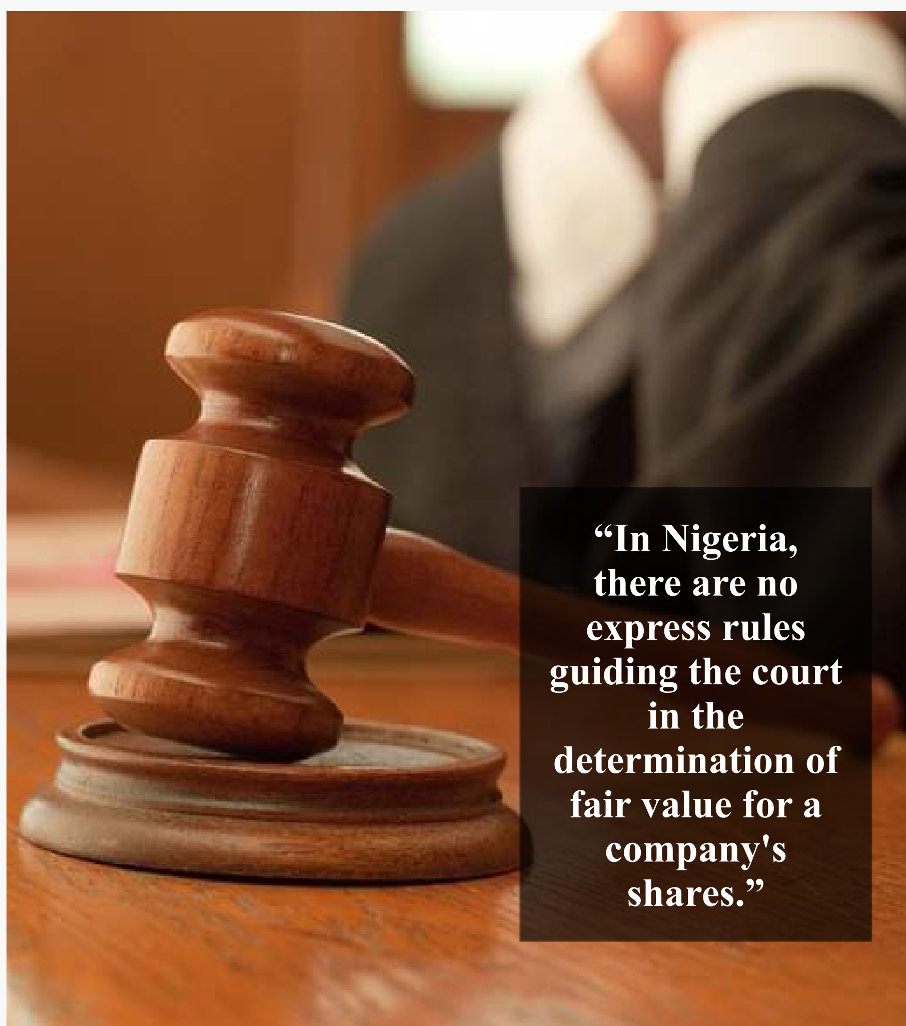
Where the shareholder requires that his shares be acquired by the offeror, the shares may be acquired on the same terms on which the shares of other shareholders were acquired; or on such terms as are agreed between the offeror and the shareholder; or as determined by the court on the application of the offeror or the shareholder.

Conclusion

As inherent above, various factors may influence the mandatory buyout of minority shareholders of a company by a bidder. These factors range from the offeree's desire to buy out unwanted persons as shareholders or the desire to deprive minority shareholders of some anticipated windfall or a strategy for restructuring.

Whatever the reason, it is clear that a mandatory buy out especially as envisaged by Sections 146 – 149 of the ISA is hostile in nature in that the dissenting shareholders are forced to give up their shares whether they like it or not in exchange for consideration. Conversely, under Section 150 of the ISA, the majority is mandated to acquire the shares of the minority, if the minority requests same.

Also, in addition to complying with the provision of the ISA for executing a mandatory buyout, it is equally important that the offeror complies with the corporate governance rules of the offeree company, SEC and the NSE Rules. This is to ensure that dubious means are not adopted to



force out other members of the company.

In the event that the offeree company is a listed company, it is expedient to ensure that the requisite number of shareholders does not fall below 300.[26]

Finally, it is noteworthy that the major issue under this procedure has been the inability of companies that make mandatory takeover offers to achieve their target threshold due to unwillingness on the part of shareholders to take up the offer. Conversely, where the threshold of the company making the offer is met, it may lead to a free float deficiency and a contravention of the Nigerian Stock Exchange's Rule 17.21, which requires that a minimum of 20% of the issued share capital of a listed company must be held by the Public.

[1]J. McCahery et al. in G. Fererini et al. (eds.), "Reforming Company and Takeover Law in Europe", p.635

[2]Investment & Securities Act, 2007

[3]ISA, s. 133 (4)

[4] ISA, s. 132 (4)

[5]In this paper, dissenting offeree shall be used interchangeably with dissenting shareholders.

[6] as provided in ISA, s 146 (3-5)

[7]ISA, s. 146(8)

[8]ISA, s. 146 (7) (b)

[9]Cravath, Swaine & Moore LLP "United States of America- Takeover Guide"- www.ibanet.org

[10]Allen & Overy "Guide to Public Take overs" www.allenovery.com/Guide%20to%20public%20takeovers%20in%20Germany%2

[11]Cyril Shroff " India- Takeover Guide. www.ibanet.org/Document/Default.aspx?

[12] Price Water House Coopers - " An Overview of Tender Offers in Japan" www.pwc.com/jp/ja/advisory/research-insights-report//tra_0706_01.pdf

[13]The Stock Corporation Act. See Generally: Allen & Overy-A guide to public takeovers in Germany

[14]ISA, s 146 (3)

[15]ISA, s 146 (5)

[16]ISA, s 146(6)

[17]Offeree company refers to the company whose shares is being acquired by the offeror or bidder.

[18]ISA, s. 147 (2-3)

[19]Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 25

[20]Under s. 146 (5), ISA

[21]ISA, s. 148 (1)

[22]ISA, s. 148(2-3)

[23]ISA, s. 149

[24]ISA, s 146 (1)

[25]ISA, s. 150 (4)

[26]Chapter 1 of the Nigerian Stock Exchange Listing Requirements (Green Book)

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unnecessary financial burden and will act as a disincentive to existing and prospective investors in the VAS industry.

Undoubtedly, the VAS industry has been a source of succor to small and medium enterprises in using mobile platforms as part of their everyday business activities thereby developing their enterprises. The industry has a minimum of 50 (**Fifty**) active companies and other smaller players like Individual Application developers. One cannot therefore underestimate the importance of the VAS industry in economic and social development in that, the industry has a huge potential for boosting the Nigerian economy. Asides creating job opportunities and revenues for investors in Nigeria, the VAS market has been a source of revenue for the government especially by enlarging its tax base.

One of the most advocated government policies in Nigeria relates to the encouragement and support of SMEs. Thus, this policy should form the ideology or basis for every regulation made by any regulatory agency in Nigeria including NCC. A regulation that seeks to suppress and stomp out small businesses is not in the interest of the economy. The highlighted provisions of the proposed regulation has a tendency to stifle competition and to give room for only the "big players" to take over the industry to the detriment of the indigenous SMEs.

Although, the main purpose of the regulation as stated by the NCC is to curb the menace of unsolicited messages, anti-competitive activities and the likes, the proposed regulation is an over-regulation. It is also counter-productive to the fundamental objective of NCC, which is to promote competition. In fact, the existing *License Framework for Value Added Services* will do the job if it is adequately enforced. Whilst it is agreed that the issues of competition, spam SMS and unauthorised billing are paramount and must be dealt with, the proposed regulation should have been more focused on that.

Conclusion

In sum, the VAS industry has created millions of jobs for Nigerians without forgetting that it has been a source of income for SMEs who use the platform to market their products. Thus the proposed regulation if implemented will lead to loss on investments, business and jobs to the SMEs in the VAS industry. The NCC needs to remain mindful of its duties to facilitate investments in the Nigerian communications industry and to protect consumers. Lastly, over-regulating the VAS industry, which is largely made up of SMEs, will only stifle competition and discourage investments.

1. LAGOS STATE EMPLOYMENT TRUST FUND LAW 2016

On 5th January 2016, the Executive Governor of Lagos State, His Excellency, Governor Akinwunmi Ambode signed the Lagos State Employment Trust Fund Bill into Law.

The law is aimed at tackling unemployment in Lagos State. This is to be achieved by making funds available for the granting of soft loans to individuals to carry out business activities, thus, making them self-employed.

Highlights of the Law

- Establishment of an Employment Trust Fund which shall be the depository of all monies received under the law.
- Provision of financial support to residents in the state, for job and wealth creation in order to tackle unemployment, and give equal opportunities to all citizens in a conducive environment.
- Establishment of the Board of Trustees which shall be a body corporate with perpetual succession and whose functions include:

  i. Devising ways and means of raising contributions and donations for the fund;

  ii. Managing the fund established under this law in accordance with the objective;

  iii. Sensitizing the generality of the people of the state towards the cause of the Fund;

  iv. Acquiring and maintaining assets for or on behalf of the fund; and

  v. Disbursing funds to beneficiaries for the purpose of carrying out activities in line with the objectives of the fund.
- Persons eligible to benefit from the Fund shall include:

  i. Residents of Lagos State with evidence of a Resident Identity Card from the Lagos State Resident Registration Agency (LASRRA);

  ii. Entrepreneurs desirous of starting and expanding their businesses;

  iii. Persons who are interested in acquiring and upgrading their skills or Skilled persons interested in re-skilling from informal to formal sector.

2. LAGOS STATE PROPERTY PROTECTION LAW 2016

On 15th August 2016, the Executive Governor of Lagos State, His Excellency, Governor Akinwunmi Ambode signed a bill titled "The Law Prohibiting Forceful Entry and Illegal Occupation of Landed Properties, violent and fraudulent conducts in relation to landed properties in Lagos State and For Connected Purposes" into Law.

This Law is to protect the proprietary rights of Land and Property owners in Lagos State. The Law also criminalizes actions of forceful and unlawful entry or occupation of premises. Also, it establishes a task force to enforce the law and grants jurisdiction to the Special Offences Court and other Courts for the enforcement of the Law.

Highlights of the law

- Prohibition of the use of force or self-help to take over any landed property and engaging in any act inconsistent with the proprietary right of the owner in the State.
- Prohibition of the use of threats or violence to secure entry into any landed property for personal use notwithstanding the existence of a lawful right of entry.
- Prohibition of illegal occupation of premises as well as an encroacher who keeps firearms or dangerous/offensive weapon on the premises.
- Prohibition of encroachers from attempting to sell, or selling a property he has no lawful authority to sell.
- Prohibition of persons from selling family property without the authority of the family head or selling government land without the authority of the relevant government authority.
- Prohibition of professionals from aiding any conduct on whatever constitutes an offence under the law.
- Prohibition of harassment by Hoodlums (referred to as Omo Onile) who act as agents and demand a fee in regard to construction on properties.

WEIRD CASES

A fistful of damages

In Melbourne Australia, Mathew Styles was injured in a more unusual way. While working as a restaurant manager at a Red Rooster fast food outlet, he injured his hand while repeatedly punching a customer in the face. Mathew Styles brought an action in a magistrate court for a claim for compensation. Dismissing the claim, Red Rooster argued that he had not honoured its "employee behavior standards" and therefore wasn't entitled to any compensation. The Magistrate, however, found that Mr. Styles' injuries arose "out of or in the course of the employment", and that the customer "was the verbal and physical aggressor". The Magistrates' Court ruled that Styles was entitled to compensation for wrist and fist injuries suffered while demonstrating his opinion that the customer is not always right.[27]

There is no place like Prison

In 2009, Holy Gambino, a 30 year –old builder, was convicted and sentenced to prison for dumping hazardous waste after being caught by police unloading dangerous materials from a lorry onto a public ground. After serving some of his sentence, he was then released back into the community to live at home under house arrest in Villabate, near Palermo. After suffering what he described as relentless nagging by his wife about his defects as a husband and father, Gambino went back to the police station to hand himself in and requested to return to prison.

A Sicilian Magistrate heard his plea to be sent to jail instead of living with his wife. The Magistrate after hearing his plea, simply cited him for summary offence of breaking a condition of his house arrest (in travelling to the station) and sent him directly back home with an order to try to get along with his wife.[28]

[27] Weird Cases by Gary Slapper
[28] Weird Cases by Gary Slapper

EDITOR'S NOTE

"Probitas Partners LLP Journal is published to provide insight into topical issues of law, business and policies.

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