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Convergence in the Nigerian Communications Sector: A Case for Legal and Regulatory Reforms

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Abstract

The reform in the communication sectors as a result of liberalization and digital technology in the hitherto analog sector has brought in its wake a new phenomenon called Communication Convergence. Digital technology in the communications sector has converged the distinct communication subsectors into one. This has caused overlap of regulatory functions among the distinct regulators, collision in the regulatory bodies, ineffective or over regulation, inefficient use and allocation of scarce resources and making most provisions in the enabling Act obsolete. This poses some legal and regulatory challenges to the regulators. In this regard, the paper using the doctrinal methodology analysed the Nigerian Communications Act 2003, other relevant legislations, policies, case law and literatures on communications. The study finds out that the existing Nigerian Communications Act 2003 is inadequate to engender an efficient and effective regulation of the sector in an ICT convergent era as the Act made provisions for only telecommunications and its specific regulator. It recommended that, the various policies and laws in the communications subsectors in Nigeria should be reviewed, harmonised and a converged law enacted. It concludes that the Nigerian Communications law should be reviewed constantly and made more flexible because of the evolving nature of convergence.

Keywords: Communications Act, Convergence, Telecommunications, Digital Technology.

1. INTRODUCTION

The telecommunications industry globally is regulated by the International Telecommunications Union and at the continental level, the African Telecommunications Union.¹ This industry has experienced reforms in the sector globally as a result of liberalization, deregulation and privatisation policies spearheaded by the World Trade Organisations (WTO) at the twilight of the 20th Century. This has brought in technological innovation and the deployment of digital technology in the distinct communications sub sectors have ushered in a new phenomenon called “Convergence.” Convergence has created a borderless medium, removed the distinction and joined the hitherto distinct sectors into one. This has posed challenges to regulators globally as some have adopted different strategies and models to conform to this phenomenon.

Convergence in the ordinary parlance is the integration, joining, merging, union or coming together of distinct things into one. The International Telecommunications Union describes convergence as ‘*the technological, market, legal or regulatory capability to integrate across previously separated technologies, markets or politically defined industry structures.*’² The Australian Convergence Review defines the concept as ‘*the restructuring of the services sector enabled by digitization*’.³

Convergence is defined in Newton’s Telecom Directory as:

the word to describe a trend, now that most media can be represented digitally, for the traditional distinctions between industries to blur and for companies from consumer

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¹At the regional level, the West African telecommunication regulation regulates the industry while domestically; the industry is regulated principally by telecommunications-specific legislation, the Nigerian Communications Act 2003 – and telecommunications specific regulator: the Nigerian Communications Commissions.

²International Telecommunications Union, Trends in Telecommunication Reform: Convergence andRegulation (1999) 2<www.itu.org>.Accessed 10th July 2019.

³Australian Convergence Review (2000) <<http://www.noie.gov.au>>accessed 10th September, 2019.

*electronics, computer and telecommunications industries to form alliances, partnerships and other relationships, as well as to raid each others' markets.*⁴

The European Union describes it as *the ability of different network platforms to carry essential and similar kinds of services.*⁵ Generally, it could be said to be the integration of information technology, telecommunications, broadcasting, postalservice and other media, publishing, technology, market, services, network, policy, law, regulatory institutions into one. The global trend is towards convergence of the ICT, Telecom and the media industries. It is reputed to even hold the key to the full integration of the world economy. Convergence has however, brought new challenges as systems adopt a common technology and assumes common capabilities which have made some services to fall within the remit of more than one regulator creating a risk of excessive and/or inconsistent regulation.

The two most important drivers towards Convergence are the technological drive towards digitization and the economic drive towards liberalization.⁶ Together the two drivers — digitisation and liberalization — are globally and locally shaping and forging a new world of communications, and eroding the traditional notion of the separation of the industries of information technology, telecommunications and broadcasting. Digital technology has merged the various aspects of electronic communications making the three sectors to merge into a single entity known as Communications.

Convergence has made the communication sector a one stop supermarket as multiple kinds of services are delivered with a single medium. For instance with the cell phone one can have access to voice call, data, video, and other multimedia

⁴H. Newton, *Newton's Telecom Dictionary* (18thedn, Miller TreemanInc2002) 300 .

⁵European Union, <https://www.itu.int/.../Session1-1_Scott_Mine>accessed 10th June, 2019.

⁶ A. Gillwald, 'National Convergence Policy in a Globalised World: Preparing South Africa for Next Generation Networks, Services and Regulation' (2019) <<http://link.wits.ac.za>>accessed 18th June 2019.

services which was not possible a few years back. Presently, this is possible and more will certainly unfold in the future.

Historically, legislation was enacted to be technology-specific and service specific. In a technology and service specific regime, a licence is needed for every type of recognized service provided. Convergence, however, allows for the provision of multiple services over different networks. Before the liberalization of the sector in the 1990s, the sector was under the monopoly of government as government was seen as the best manager of the sector.⁷ Global paradigm shift recognized that government by its nature was not a good manager, and monopoly was ill – equipped to treat important issue of service innovation, customer service, financial reforms efficiency, the type of risk that can spur developmental growth in the sector. Moreover, technological advances ushered in a higher price – performance ratio with infrastructural deployment which significantly eroded the basic logic that justified monopoly belief.

In compliance with the global trend toward liberalization and deregulation, the Nigerian government took some bold steps towards fully liberalizing the sector which hitherto was partially liberalized by the Nigerian Communications Commissions Act 1992. A new Policy, the Nigerian Telecommunications Policy (NTC) was formulated. The overriding objectives of the NTC are geared towards achieving a rapid expansion and modernization of telecom network and services.⁸ As a result of the rapidly changing nature of technology in the telecommunications, long term policy objectives could be difficult to set; therefore, short to medium term policy objectives were set, with the following time frame; short term 3years and medium term 5years.⁹ The Policy directed that the sector should be fully liberalized in line with the World Trade Organization and GATS commitment, in preparation for complete deregulation and

⁷ I. Ocha, *The Making of Nigerian Telecom Industry*(Interrversal Publication 2012). 301-345.

⁸ O. Hassan, 'Evaluation of Nigeria's Telecommunications Policy' (2009) (3) (1) *Journal of Mobile Communication*; 1-7

⁹Paragraph 2.0 to2.2 of the National Telecommunications Policy (NTP) 2000

privatization. The policy direction was given force of law in 2003 with the enactment of the Nigeria Communications Act 2003 (NCA) which fully liberalized the sector.¹⁰

However, the Nigerian Communications Act 2003 is legislation specific as it only provides for telecommunications law and its sector specific regulator NCC despite the fact that there has been evolution of communication convergence as at the time the Act was enacted into law. By this provision, the three distinct communications sectors; telecommunications, broadcasting and information and communications technology have their separate laws and regulators and are service specific and technology specific ignoring convergence in the sector. The overview of the Nigerian Communications Act, 2003 will buttress this fact.

2. OVERVIEW OF THE NIGERIAN COMMUNICATIONS ACT, 2003

Legislative efforts and processes to confront the dynamic challenges and reforms in telecommunications sector culminated in the signing into law on the 8th of July 2003, the Nigerian Communications Act by the administration of President Olusegun Obasanjo. The key word is “Communications” rather than “Telecommunications”. The Nigerian Communications Act, 2003 fully liberalized the Communications sector in Nigeria and gave the Nigerian Communications Commission enormous power to regulate the fully liberalized sector in line with the reforms in the sector.¹¹

In the Objectives, Application and Scope of the Act,¹² specifically, section 1 of the Act, provides that the primary objective of this Act is to create and provide a regulatory framework for the Nigerian communications industry and all matters related thereto. Additionally, section 2 provides that the Act, applies to the provision and use of all communications services and network, in whole or in part

¹⁰ A.M Mohammed, ‘Liberalisation of the Nigerian Telecommunication Sector: A Critical Review’ (2009) (7) (2) *Journal of Research In National Development*, 1-10

¹¹ Sections 3 and 4 of the Act.

¹² Sections 1 and 2 of the Act.

within Nigeria or on a ship or aircraft registered in Nigeria. Section 3 establishes the Nigerian Communications Commission as a corporate body responsible for the regulation of the communications sector in Nigeria¹³. Section 4 generally and in particular, Section 4(1)(w) of the NCA, vests regulation of the communications industry in the Nigerian Communications Commission. Thus, the major regulator is the Nigerian Communications Commission. This has been affirmed by the Court in the case of *Lagos State Government & 4 ors v Registered Trustees of ALTON & 6 ors*.¹⁴ In this case, the Registered Trustees of ALTON (Association of Licensed Telecommunications Operators of Nigeria) had approached the Federal High Court for a declaration that the infrastructure Maintenance Law (IMRA) enacted by Lagos State in 2004, to the extent that it sought to regulate telecommunications, was unconstitutional and in excess of the State's legislative competence. The Court held that the enactment of IMRA Law encroaches on the powers of the NCC and that the Lagos State Government was camouflaging under urban planning to delve into telecommunications. Accordingly, the relevant portions of IMRA Law were struck out as *ultra vires*, unconstitutional null and void.

In its explanatory memorandum, it provides that the communications legislation repealed an earlier Act, which had established the Nigerian Communications Commission. Generally, regulatory duty covers protection of the public and consumer interests, licensing and permits, management of radio frequencies; management of competition; development of incentive for investments in the communications industry; managing disputes; data gathering and research; advising government in policies; standardizing use of technology by approving communications standards (such as GSM) and equipment to be used (type approval of equipment), etc. The NCC is empowered by the Act to make Rules,

¹³Chapter 11 provides for these. It has 4 Parts and contains Sections 3 to 22.

¹⁴Appeal No. CA/A/M/2004.

Guidelines Regulation for the sector. NCC thus, has primary oversight function of Universal Service Provision Board.

The limitation period of suits against the commission is within 3 months after the act, neglect or default complained of; or in the case of a continuous damage or injury, within 6 months next after the ceasing thereof.¹⁵ No suit shall be commenced against a commissioner, the secretary or any official employee of the commission before the expiration of a period of 1 month after a written notice of intention to commence the suit shall have been served on the commission by the intending plaintiff or his agent.¹⁶ Finally, there are transitional provisions relating to the protection of existing rights and modification of licenses to conform to the Act.

The major Institution regulating the Telecommunications sector in Nigeria is the Nigerian Communications Commission. Other regulatory Institutions that have oversight functions are: The Federal Ministry of Communications; The National Frequency Management Council; The National Assembly and the Court. The Court has given judicial affirmation of the NCC's independence from the Ministry of Communications in *Mobitel Ltd v The Honourable Minister of Information and Communications and others*¹⁷.

3. ADVANTAGES OF COMMUNICATIONS CONVERGENCE

Communication convergence has led to a homogeneous consumer needs, tastes and lifestyles. Consumers determine the time, place and the devices they want to use to view or listen to content. Convergence offers massive opportunities for the development of new value-added services, convenience, efficiency and the expansion of markets and consumer choice.

¹⁵Section 142 (2) (a) (b) of the Act

¹⁶Section 143 (3) of the Act

¹⁷ Unreported Suit No: FHC/ABJ/M/312/09

Convergence in the communication sector can play an important role in national economic and social development of every nation.¹⁸ Convergence is driven by growth in the penetration of broadband Internet services and competition from new service providers, which often results in the prevalence of IP-based networks.¹⁹ ICT convergence has become part of our daily life. It has made it possible to have various innovative services using one device. With the cell phone always connected to the internet one can transact business online. One can know when one's favourite team is leading and can also watch how they are playing. One can speak a command into the cell phone and a high definition television transmission comes up on the screen. One can have access to online shopping and banking transaction. With broadband connection on any compatible device; including television, cell phone, laptop, and satellite phone, with free television content; one can have access to all these services as well as free online services from various vendors.

The consumer benefits more in the convergence bargain because he is in an era of ubiquitous connectivity, where his connectivity device and his entire life are tied together. According to Danbatta, *with more broadband deployment, the potential for enormous economic, social benefits and better convergence services can be achieved, regardless of the technology used to deliver the services.*²⁰

Convergence in the sector has led to increased in Market Competition. It has lowered barriers of entry to the market for new operators and service providers.²¹

¹⁸S. Papadakis, 'Technological Convergence: Opportunities and Challenges' (2007) <<https://www.itu.int/osg/spu/youngminds/2007/essays/PapadakisSteliosYM2007.pdf>. > accessed 18th June 2019

¹⁹Convergence what does it mean to the consumers (2013) <www.jayantrana.com/2013/08/global-convergence-of-consumer-tastes.html> accessed 10th June 2019.

²⁰Umar Danbatta, 'Regulation, Technology Neutrality and New Telecom Services in the Era of Convergence' (A paper presented at the 8th West Africa Convergence Conference (WACC) that held in Lagos 2016). WACC is the annual stakeholders' forum on convergence trends in West Africa, organized by Knowhow Media & Market Intelligence International Limited.

²¹G.O. Ajayi, 'Towards New Strategy for the Utilization of Emerging Skills in the Telecommunications Industry in Nigeria'. In U. Ayanwu, and E. Ukpong, (eds), *Human Capital*

The emergence of new market players intensifies competition, giving consumers an extensive pool of providers and services to choose from and lower communication costs.²² Additionally in a technological convergent environment industry boundaries become blurred, allowing service providers to offer services in multiple markets.

According to Mr. IkechukwuNnamani:²³

With convergence, players in the telecom and broadcast industry can easily share infrastructure. The industry has moved on from the era of competition to co-petition. Convergence thrives in a friendlier regulatory environment. The regulator must look at new ways of guiding people to do things that give them comfort, but will not give discomfort to other people.

He believed that convergence allows GSM companies to provide broadcast content on mobile services, even without a broadcast authorization.

Convergence has led to the emergence of new services and applications. Established companies find in convergence an opportunity to operate more efficiently, increase returns on technology investments and realize other business benefits through development of new services and rapid market expansion.²⁴ Convergence brings about simplicity at device level. Consumers find in convergence an opportunity to enjoy the convenience of having many devices all in one, saving on both size and ownership costs.

Development and Global Opportunities in Information Technology in Nigeria. (Sibson Books Limited 2002) , 70-80

²² C.C.Anene, 'Enhancing Investment in Nigeria: Assessing the Role of GSM and Fixed Wireless Operators in the Telecommunications Industry' (2006) (I) *Journal on Communications Law and Policy*, 32 – 44

²³ IkechukwuNnamani, "Imperatives of Convergence in ICT Regulation". (Paper delivered at the 7th West Africa Convergence Conference organised by Knowhow Media & Market Intelligence International Limited 2015 Lagos).

²⁴ S. Papadakis, *Technological Convergence: Opportunities and Challenges* (2007) <<https://www.itu.int/osg/spu/youngminds/2007/essays/PapadakisSteliosYM2007.pdf>> accessed 18th June, 2019

4. CHALLENGES OF CONVERGENCE

Technological convergence has raised a number of issues that needs adjustment to the new environment by telecom operators, service providers, policymakers, regulators, and users.

The challenge before the regulator in a converged environment is enormous bearing in mind that the internet which convergence is subjected to is not amenable to certain rules and regulations that the regulatory bodies will want to enforce. The combination of services over the same platform is challenging common perceptions about the best means to license and regulate providers. Many set rules and standards have become obsolete. Convergence requires new ways to cope with this reality. The fast technological changes are forcing policy makers and regulators to review their policies, the challenge for the policy makers and regulators is how to promote competition for this radically changing market structure.

Commenting on the regulatory challenges posed by convergence to the regulators globally, Umar GarbaDanbatta opined that; *convergence poses a unique challenge to all regulators and increasingly, they must adopt positions that best serve all interests.*²⁵

Traditionally, regulatory frameworks were designed for an era when clear functional differences existed between services and infrastructure, but these regulations are increasingly inadequate for dealing with today's world. At first glance, interoperability, interconnection, consumer protection and universal access appear as the most relevant challenges. Existing interconnection mechanisms focus basically on interconnection of telecom networks based on circuit switching technologies, while for instance broadcasting networks are either unregulated or subject to different types of regulation. Additionally, in a

²⁵Umar Danbatta, 'Regulation, Technology Neutrality and New Telecom Services in the era of Convergence' (A Paper Presented at the 8th West Africa Convergence Conference (WACC) that held in Lagos 2016).

convergent environment, which relies greatly on packet switched networks; circuits are neither connected nor provided. In this way distance and time become less determinants as cost factors, requiring adoption of new units of measurement. Thus, the services are not linked to a specific infrastructure anymore, and this makes it more complicated for the regulatory authorities to identify what kind of service is at hand in order to apply the appropriate regulatory system. What is more challenging is the convergence process at the content level. There have been massive changes in consumer preferences.

Convergence gives rise to new services and applications which are bandwidth intensive, requiring an existence of broadband infrastructure. This new services and application leads to Bandwidth shortage and needs upgrade of infrastructure. Only with broadband access is the use of complex services like multimedia services attractive or possible in the first place. While developed economies may not face a bandwidth shortage dilemma, the same may not be said about most of the developing economies where telecommunication infrastructures are still relying on narrowband technologies. These countries face the challenges of having to upgrade their infrastructure or miss on the benefits of the technological convergence.²⁶ In meeting this challenge, financial constraints may be a problem.²⁷

Established operators and services providers are required to reassess their business models and strategies not only to face these new providers, but also to upgrade their networks to integrate it into their own offering.²⁸ Another challenge lies in convincing consumers of the value added by the new services for which

²⁶R. Briton, 'Challenges and Opportunities of Meeting Infrastructural Requirements of the Telecommunications Industry in Nigeria: A Review of Backbone Infrastructure Initiatives' (2006). (1) *Journal on Communications Laws and Policy*, 62-71.

²⁷E.O. Ekpo, 'Telecommunications Financing: Some Key Issues' (1998). (3) (2) *Modus International Law & Business Quarterly*, 62-72

²⁸C.R.Blackman, 'Convergence Between Telecommunications and Other Media: How Would Regulation Adapt?' (1998) <www.econpapers.repec.org/RePEc:eee:telpol:v:22:y:1998:i:3:p:163-170>accessed on 18th June, 2019.

they must pay. Meeting the challenges of providing human capital needs for the sector in this era is paramount.²⁹

Technological changes such as Over the Top (OTT) services are competing with traditional services, for example, voice calls are routed differently from the existing system which used structured numbering plan developed for routing and billing purposes, for technically different platform which establishes call using applications sitting on phones connected through the internet to their hosting servers.

Convergence has also posed challenges in the area of Privacy, Security and Reliability. As society becomes increasingly interconnected and dependent of ICT networks, cybercriminals continue to invent increasingly cunning ways to exploit human and computer vulnerabilities to their malicious benefits. This, challenges operators, service providers and users to take measures to minimize risks of network intrusions, attacks and viruses.³⁰ Regulators will thus have to balance privacy rights with law enforcement or surveillance objectives in other to ensure that citizen's right to privacy is protected and at the same time it does not constitute security threat. As a result, many set rules and standards have become obsolete as a result of convergence and needs constant upgrade in the technology deployed. Convergence requires new ways to cope with this reality. The fast technological changes are forcing policy makers and regulators to review their policies.

²⁹M. Jibril, 'Meeting the Challenges of Providing Nigeria's Human Capital Needs for Information and Communication Technology' In U. Ayanwu, and E. Ukpog, (eds) *Human Capital Development and Global Opportunities in Information Technology in Nigeria*. (Sibson Books Limited 2002),83-90.

³⁰S. Papadakis, *Technological Convergence: Opportunities and Challenges* (2007) <<https://www.itu.int/osg/spu/youngminds/2007/essays/PapadakisSteliosYM2007.pdf>> Accessed 1st July, 2019.

With converged content delivery mechanism, content formerly dedicated to specific networks now can be conveyed on different infrastructures and delivery platforms. This poses a potential conflict in regulation as governments usually apply different standards of content regulation to telephony, sound and television broadcasting, print media and the Internet. With convergence, policies may need to be changed to achieve the common rule.

As the process of convergence continues, it raises specific regulatory challenges given the merging of firms, sub-sectors, and facilities between telecommunications and broadcasting this affects not only the carriers, but also regulatory authorities. The challenge is the need to reconcile different regulatory philosophies in the sub-sectors of both industries. Broadcasting is heavily regulated, and is less competitive, and often has a merged content carriage setup. Telecom services, on the other hand, are regulated to a lesser extent, with little to no control exerted over content, a greater emphasis on carriage regulation, and with competition in most markets.³¹

Convergence has blurred distinction between communications delivery and types of service operation, eroding the technological distinctions between text, audio, and video which has caused overlapped of regulatory functions and collusion among the distinct regulators making regulation ineffective creating a risk of excessive and/or inconsistent regulation. It also made some provisions in the extant Act, obsolete.

Convergence of technology has been a fundamental law problem for the legal practitioners and case law because in practice communication services has been converged but in theory the Communication Law as found in the Statute book is largely “unconverged”. It is instructive to note that while digital technology has converged the various modes of communications, Communications Law and regulation is not. An analysis of the law establishing and regulating the Nigeria

³¹ Y. Maikori, ‘Policy and Regulatory Challenges Posed by Convergence in the Broadcasting Industry’ (Being a Paper delivered at the Commonwealth Broadcasting Summit 2016 held in Lagos 11 - 13 May 2016).

Communications Act, 2003 shows that the Law is “unconverged” and only provides for telecommunications in Nigeria an aspect of communications.

The former Director General of Nigerian Broadcasting Corporation; Mba, E³² has rightly admitted that:

Convergence places a regulatory dilemma on the regulators. Balancing the need to employ regulations to achieve a fully competitive multiplatform market, and consumer protection against the need to protect and promote investment and competitiveness in the sector has become more difficult.

He therefore advised the government not to impede convergence if there is no undesirable concentration of market power, saying there is a need to avoid different treatment of competitors. He advised regulators to “*reduce regulation if competition increases, reconsider the need for regulation when new services emerge and consider how to treat new substitutes for regulated services*”.³³

A major challenge of the current regulatory effort is therefore to establish and maintain a technology-neutral regulatory framework that will ensure a level playing field for all competitors. In canvassing the policy direction adopted by Nigeria in the communications sector, the Executive Vice Chairman of NCC; Umar GarbaDanbatta expressed that:

The Nigeria Communications Commission had opted for technology neutrality convinced that technology cannot be regulated but operators could be regulated to comply with the policy goals of the country as it concerns the telecom sector...We are all witnessing different technological changes and also observing convergence of services and their resulting effects on regulations especially, technology dependent

³²EmekaMba, ‘Imperatives of Convergence in ICT Regulation’ (Paper delivered at the 7th West Africa Convergence Conference organize by Knowhow Media & Market Intelligence International Limited 2015) Lagos.

³³ ibid

*regulations which are made obsolete by these changes. We have learnt from these experiences that, in developing regulations, we need to consider technology neutrality.*³⁴

All these developments pose challenges to the industry and it is important to ensure that policy and regulatory regimes are able to respond in a timely fashion to new technology and market developments and to promote the flexibility of technology choice and service provision for the consumer. The benefits of a converged ICT environment have been limited by the absence of a converged regulatory environment as well as a binding legal framework.³⁵

5. A CASE FOR CONVERGENCE

The Communication sectors in Nigeria have three major sectors; the Telecommunications sector, the Broadcasting sector and the Information and Communication Technology sectors.³⁶ For more than two decades, these sectors have been governed by numerous and disparate pieces of legislations. This legislation is industry-specific and ignores the strong trend of combining the three. Telecommunications and broadcasting in particular are subject to a high degree of regulation that is specific to each. The existing legislation in Nigeria does not take cognizance of convergence as telecommunications and broadcasting are clearly defined in accordance with the type of signal that they deliver — telecommunications is defined in terms of sound or voice while broadcasting refers mainly to pictures. These pieces of legislation address their various sectors as distinct silos of activity.

³⁴ Umar Danbatta, 'Regulation, Technology Neutrality and New Telecom Services in the Era of Convergence' (A Paper Presented at the 8th West Africa Convergence Conference (WACC) that held in Lagos 2016).

³⁵ Peter Chukwumma Obute, 'ICT Laws in Nigeria: Planning and Regulating a Societal Journey into the Future'. (2014) (17) (1) *Potchefstroom Electronic Law Journal*, 419-612.

³⁶ Although the Nigerian Postal Service is among the Communications sector and other Media but the three greatly affected by convergence are the Telecommunications, the Broadcasting and the Information and Communications Technology sectors.

These three sectors are essentially regulated by three separate regulators; the Nigerian Communications Commission, for telecommunications; the Nigerian Broadcasting Commission for Broadcasting and the Nigerian Information Technology Development Agency for the ICT sector. With the emergence of convergence in the sector, these three distinct sectors have prima facie been converged with the deployment of digital technology in the sector which hitherto was analogue.³⁷

The current Communications Act 2003 in Nigeria is largely ‘unconverged’ even though market is converged. It provides for only Telecommunications and its facilities, broadcasting and ICT are not included. National Broadcasting Commission Act 1992 as amended and National Information Technology Development Agency Act 2007 still regulate Nigerian Broadcasting and Information and Communication Technology sectors respectively.

The Communications Act in Nigeria though took cognizance of convergence of technology in the sector before the Act, was enacted by naming the Act; Communications Act³⁸ but failed to include other forms of communications in the Act, or provide for a converged regulatory system. The Act was enacted without taking into cognizance the effect of convergence of technology in the sector. The Act was named Communications Act, this presupposes that the drafters of the Act were aware of convergence in the sector making the Act to be named Communications Act, instead of Telecommunications Act, but ironically the ‘supposed’ Communications Act, only made provision for one aspect of communication called Telecommunications excluding Broadcasting and Information Technology.

³⁷ Peter ChukwummaObutte, &Chinenye Joy Mgbeokwere, ‘Reforms in the Nigeria Telecommunications Sector: Locating the Role of the Universal Service Provision Fund’(2012) (1) (1)*Igbinedion University, Journal of Business and Contemporary Issues*, 76 - 107.

³⁸Chapter 16 of the National Telecommunications Policy 2000.

Again these three basic communications subsectors, Broadcasting³⁹, Telecommunications⁴⁰ Information and Communications Technology⁴¹ have different regulatory Institutions and separate Act, establishing it. This reflected on the time when these subsectors were created which provided relatively distinct type of services but now technological convergence has closed these three gaps. When the National Assembly enacted the Act in 2003, it did not focus on the other types of communications, it only provided for the Telecommunications subsector hence Broadcasting, Information technology were not provided in the Communications Act 2003. The Act, lacks any comprehensive treatment of Broadcasting and Information Technology and the National Assembly has not reviewed or amend the Act since its inception. Since the Act was enacted more than a decade ago, technologies and market perception have changed greatly in Nigeria and the world.

The extant law on communications did not provide for some of the new changes in technology which can undermine the effectiveness of the Act. Some jurisdictions have introduced technology-neutral Unified Access Service Licences (UASL).⁴² The Nigerian Communications Commissions introduced it in 2006 so that providers can offer fixed, mobile and data services using the technology of their choice. The introduction of number portability and the reduction of interconnection charges; registration of SIM cards and unified licensing; Data protection provisions; interception of private communication provision; cyber crime provisions were not provided in the Act.

Convergence of technology and services has made some provisions in the Act,

³⁹ National Broadcasting Commission regulates this subsector. It is established by the National Broadcasting Act of Nigeria 1992 as amended by No 55 of 1999 LFN.

⁴⁰The Nigerian Communications Commissions regulates this subsector. It is established by the Nigerian Communications Act 2003.

⁴¹The National Information Technology Development Agency regulates this sub sector. It is established by the National Information Technology Development Agency Act 2007. Available at <<http://www.placng.org/lawsofnigeria/node/342>>accessed on 5th July, 2019.

⁴² Jurisdiction like The United Kingdom

obsolete as strict adherence to such provisions in the Act will run counter to the purpose and intendment of the Law. For instance the Act provided for two major types of licensing; the individual and class licensing.⁴³ Some jurisdictions have done away with the traditional licensing in the telecommunications services as a response to change in digital technology. These jurisdictions have modified their licensing frameworks to address this new situation by simplifying their licensing regimes.⁴⁴ The licensing regime requires that the class or individual licensee provide a specific activity and subject to a particular condition, the general authorization removes the protective bottle neck and reduces administrative procedure thereby encouraging competition.⁴⁵

Again the traditional interconnection policies were mainly used to facilitate competition by requiring incumbent telecommunications operators (or dominant suppliers) to provide interconnection to competing operators.⁴⁶ Services based on IP protocol, however, do not fit within the traditional schemes of switched voice interconnection and requires different kinds of access and different kinds of charges.⁴⁷ Convergence has also has its effect on numbering. Nigeria has typically implemented numbering plans that establish different numbering ranges for fixed line and mobile voice telephony, often divided into geographic areas.⁴⁸ However, with the advent of convergence, modifications to such policies and regulations are necessary.

⁴³Section 32 of the Act. At this time, Service-specific authorizations were practical and logical given that there was a narrow scope of services available to end users and given the limits of technology at the time. The need for neutrality in licensing was not pressing when it was not yet possible to deliver multiple, diverse services over one platform or to deliver key services such as basic telephony using different kinds of technology.

⁴⁴ Legal and Institutional Framework, <www.ictregulationtoolkit.org>accessed on 18th June, 2019. Some of the countries are Malaysia, United Kingdom South Africa.

⁴⁵ Although the Nigerian Communications Commission has reduced this hardship by amending the Act through the provision of Unified Licensing in the regulation

⁴⁶ Section 96-100 of the Act and Regulation and the Interconnection Rate made pursuant to the Act.

⁴⁷ Interconnect rates are the charges which one operator charges another for terminating calls on its network.

⁴⁸Section 128 and 129 of the Act

The NCC has been able to respond to some of the changes in technology in the sector through secondary legislation to remedy the defect. The NCC also undertook the review of the old interconnect rates, following their expiration in 2013. The commission explained that due to market evolution and technological changes the cost based interconnection rate regime issued December 21st 2009 has to be reviewed in the light of current information in the sector; the NCC adopted the asymmetric rates for the new interconnect regime.⁴⁹ The adoption of Mobile Number Portability (MNP), an initiative that allows subscribers the freedom to move their telephone numbers to any network of choice in search of better service quality in April 2013 by the Commission was also a response to convergence in communications services.

Some jurisdictions have responded positively to convergence by reforming its laws to address the challenges posed by convergence. Malaysia is the first country to have provided for a converged legal and regulatory framework for convergence in the communications sector in 1998. The Communications and Multimedia Act 1998 sets out the regulatory framework for telecommunications, radiocommunications, broadcasting and online activities in Malaysia.⁵⁰ Malaysia also passed the Communications and Multimedia Commission Act in 1998, creating a new converged regulator to administer the converged Act.

The United Kingdom enacted the Communications Act 2003 which provides for a single regulatory body overseeing both Telecommunications and Broadcasting. The Communications Act 2003 established the Office of Communication (OFCOM) and transferred the earlier functions and powers of several bodies and office holders that regulate telecommunications, broadcasting and manage radio

⁴⁹Determination of Voices Interconnection Rates issued by the Commission.<[⁵⁰MCMC website,](http://www.ncc.gov.ng/...determinations/...determination-of-voice-interconnection-rates.../fi...> accessed 30 June, 2019.</p>
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‘Legislation.<[121](http://www.skmm.gov.my/index.php?c=public&v=art_view&art_id=30.> accessed 25th July, 2019.</p>
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spectrum to OFCOM. This is a departure from the former Telecommunications Act, 1984, which covered only Telecommunications.⁵¹

In Africa, South Africa has a single regulatory Institutions regulating and supervising the telecommunications and broadcasting sectors. The Independent Communications Authority of South Africa Act, 2000⁵² established the Independent Communications Authority of South Africa (ICASA) to regulate the telecommunications and broadcasting industries in South Africa. The Act in its preamble recognized that technological and other developments in the field of broadcasting and telecommunications are responsible for rapid convergence in these fields and also acknowledges that the establishment of an independent body to regulate broadcasting and telecommunications is required. The ICASA Act, provided for dissolution of the Independent Broadcasting Authority and the South African Telecommunications Regulatory Authority and consequently transferred their functions to ICASA to facilitate effective and seamless regulation of telecommunications and broadcasting.

Botswana is another country in Africa that has a single regulatory institutions regulating and supervising the telecommunications and broadcasting sectors. The Botswana Telecommunications Authority Act 1996⁵³ established the Botswana Telecommunications Authority whose mandate is to promote the development and provision of efficient telecommunications and broadcasting services in Botswana, under the terms of the Telecommunications Act. The government agency is saddled with the regulation of the telecommunications and

⁵¹ Ian Walden, and John Angel, *Telecommunications Law and Regulation* (2ndedn, Oxford Press 2005)13

D. Gillies, and R. Marshall, *Telecommunications Law*. (Butterworth1997).

⁵²N0 13 of 2000 as amended by Broadcasting Amendment Act NO 64 of 2002
<<http://www.internet.org.za/icasa-act.html>>accessed 7th July, 2019.

⁵³As amended by Telecommunications Amendment Act 2004 No 15 of 2004.

broadcasting, allocating and managing radio spectrum, type approving terminal equipment and protecting consumers.⁵⁴

Nigerian response to convergence generally is poor as the Communications Act which was supposed to provide for all electronic communications provided for just a separate sector; telecommunications and its facilities. This has resulted to an unconverted Act, an unconverted regulatory system in a converged market. The existence of this disequilibrium in the market has led to shoddy protection of the subscribers and negates the effect and purpose of the Act on the subscribers and Nigeria as whole. More than a decade the present Act was enacted, a lot of legal issues and changes in technology in the sectors have arisen which the present Act did not envisage or provides for.⁵⁵ The evolution of convergence, combined with the uncertainty about which technologies and services will succeed in the marketplace, requires a continuous review of the applicable legislation.

The National Telecommunications Policy recognises this global trend and provides that law be reviewed to meet the challenges in communications and information technology. It provides thus:

the global trend is to evolve telecommunications policies that integrate the advantages of rapid technological developments in telecommunications, broadcasting and the global information super-highway. Consequently, Nigerian Communications Laws will be reviewed and made more all-encompassing in line with the international best practices, towards convergence of

⁵⁴ <[www.unesco.org/Botswana%20Telecommunications % 20 pdf](http://www.unesco.org/Botswana%20Telecommunications%20pdf),> accessed 10th July, 2019.

⁵⁵ Stephen A. Bello, 'The Impact of ICT Infrastructure on Economic Development-An Appraisal of Existing Infrastructure'. (in "ICT Infrastructure As a key Role Driver for Economic Development: What Role for the Legislature?" A Paper Presented at a workshop organized by the NCC in Lagos 17th March 2014).

<http://www.nigeriancommunicationsweek.com.ng/telecom/blame-e-banking-other-services-for-deteriorating-qos-bello#sthashNWP9NFuz.dpuf> accessed June 10th 2019.

*technological and market forces in the communications and information technology.*⁵⁶

During the Goodluck Jonathan administration, an attempt was made to converged the various policies in the communications sub sectors. The administration created a new Ministry; the Ministry of Communications Technology out of the then Ministry of Information and Communications in 2011. This was as a result of the development in the Information and Communication Technology sector brought about by digital technology and market liberalization that urgently needed to be addressed in Nigeria.

By June 2012, a National Information and Communication Technology Policy was released by the Ministry of Communication Technology. In August, the Approved National Information and Communication Technology Policy (Final Draft) was released by the ministry after the approval by the Federal Executive Council.

In the background to the policy, the Minister noted thus:

*Over the years, the Federal Government of Nigeria has initiated or adopted several related policies and laws aimed at guiding the development of the ICT sector and harnessing its huge potential for national development. But Nigeria, like other nations, faces the inevitability of the technical, content, economic, institutional and regulatory convergence in a digital era of the global ICT industry. Nigeria must therefore continue to evolve new ICT policy frameworks to accommodate convergence and maximize the potential of ICT for national development.*⁵⁷

The goal of the Approved ICT Policy was to provide a framework for streamlining the ICT sector, and enhancing its ability to catalyze and sustain

⁵⁶(Emphasis added). Chapter 3 of the National Telecommunications Policy 2000.

⁵⁷ Approved National ICT Policy (Draft)

socioeconomic development critical to Nigeria's vision of becoming a top 20 economy by the year 2020. At the same time, the policy thrusts will facilitate the transformation of Nigeria into a knowledge-based economy and will be used to develop action plans, sub-sectorial policies and specific implementation guidelines as appropriate. It also identified areas where there will be need for new legislation to give effect to the policy's vision such as cybercrime, privacy and more importantly an enabling law for a converged regulator.⁵⁸

It identified areas of interest and growth for the communications sector such as outsourcing, The converged regulator according to the National ICT policy will include the Nigerian Communications Commission (NCC), the Nigerian Broadcasting Commission and the Nigerian Information Technology Development, in addition to that the Regulatory functions exercised by Nigerian Postal Service will be separated from the business operations of that body and added to the converged regulator.

It is interesting to note that the various sectors under the communications sub sectors mostly affected by convergence are under different Ministries. The then Ministry of Communication Technology now Ministry of Communication oversees Telecommunications, information Technology Development, Nigeria Communication Satellite, Nigerian Postal Services while the Ministry of Information and Culture oversees Nigerian Broadcasting, Nigerian Press , Film Division and National Orientation Agencies in Nigeria.

However, the converged policy for the ICT sectors was not implemented by Mobolaji Johnson the then Minister of Communication Technology before MuhammaduBuhari Administration took over in 2015 and changed the nomenclature of the Ministry to Ministry of Communications which was then headed by Barrister Adebayo Shittu. Nothing was said of a converged communications policy in the four years of Adebayo Shittu as the Minister of

⁵⁸B.C. Opat, 'Regulatory Convergence: Reflections from Nigeria'. *Computer and Telecommunications Law Review*, (2013) (19) (15) 1-12.

Communication. It is hope that the new dispensation that just started in 2019 with Dr. Ali Isa Pantami as the Minister of Communication; a technocrat and expert in the industry will bring his experience to bear and see the need for a converged communication policy. He should kick start the policy by setting up an Adhoc Committee to review and harmonise the various policies for the different sub-sectors in the ICT industry that will result to a converged communications Policy. The Term of Reference for the Committee would be to harmonise all existing Policies in the Information and Communications Technology sector into a single converged Information and Communications Technology Policy. Better still, the Minister could adopt albeit modify the Approved ICT Policy 2012 for its implementation. The political will to make the change must be there because we are all faced with communications convergence and the earlier there is policy direction in this regard the better for the sector and the economy and of course policy direction in this sector may bring about enactment of a converged Communications Act. If the prospect and advantages of convergence is to be felt in Nigeria as highlighted in this article, government must reform the sector to incorporate a single converged policy, law and regulatory framework in the communications sectors.

In the event of reforming the Nigerian communications policy, law and regulation to a converged one, the UK model of communications convergence is canvassed for Nigeria to adopt because UK has the most coherent and well-developed regulatory approach to convergence. It adopted a converged legislative and regulatory model in response to convergence. UK's communication convergence represents an evolutionary approach to regulation of communication convergence that can serve as a practice model for countries to adopt.⁵⁹

⁵⁹ The EU's converged legislative framework is often considered a best practice model. The ITU considers the EU's electronic communications regulatory framework (the ECRF) to be the 'paradigm legislation aimed at addressing convergence and its challenges'.

RECOMMENDATIONS

Some of the recommendations are discussed below:

1. Review of Various Policies in the Communications Subsectors.

The various policies in the Communications sectors should be harmonization to bring about seamless policy direction in other to respond adequately to the challenges of convergence in the communications sub sectors. The Telecommunications Policy 2000, a Policy direction for the telecommunications sector envisages this global trend as it provides that the Policy shall be reviewed from time to time by government to take cognizance of changes in standards, technologies, markets and any other matters that may arise from its implementation. It further provides that Nigerian Communications Law shall be reviewed and made more all-encompassing in line with the International best practices, towards convergence of technological and market forces in the communications and information technology. The National Information Communications Technology Policy (Final Draft) 2012 harmonises the policies and adopted a converged legal and regulatory regime for the sector although this policy did not get the approval of the then President Goodluck Jonathan. There is therefore the need for government policy on convergence. As it is presently, convergence policy is still cloudy.

2. Enactment of a Converged Communications Act and Regulatory Agency.

This now makes the enactment a converged Communications Act by the National Assembly necessary to make it more effective. The Act, should provide for a converged regulatory regime to take into account the changing nature of modern media, into one communication specific regulator. The new statutory instrument could still retain the name Communications Act of Nigeria with an independent single regulator for all the communications sectors. It should be mandated to regulate and supervise cross sectoral activities for Telecommunications, Broadcasting and Internet services. It would be departmentalised to take care of

the different sectors within the industry. Expectedly, each department should be administered by a Head of Department in that sector and answerable to the single overall regulator. Stakeholders in the industry including regulators, operators and experts have insisted that regulatory framework and legislations must continuously support innovation and competition for convergence to be successful.⁶⁰ The President of the Association of Telecommunications Companies of Nigeria recommended a policy framework that will bring about the establishment of a converged law in Nigeria. “*There must be a policy for the regulatory bodies to converge*”⁶¹. Pantami, Isa urge that the potentials inherent in convergence should be utilized to promote local content online, our culture and heritage and leverage on converged platform.⁶²

3. Repeal of the Various Acts in the sub sectors affected by Convergence.

The laws establishing the Nigerian Communications Act 2003; National Broadcasting Act 1992 as amended in 1999 and National Information Technology Development Agency Act 2007 and other relevant law affected by convergence should be repealed to reflect changes in the sector. The evolution of convergence, combined with the uncertainty about which technologies and services will succeed in the marketplace, requires a continuous review of the applicable legislation. Some jurisdictions, such as the EU and Malaysia, have established a permanent legislative review process to address convergence.

⁶⁰ErnestNdukwe, ‘Furthering the Digital Revolution in Nigeria in the Era of Technology Convergence’ A Paper Presented at the occasion of the induction into the Technology Hall of Fame of ObafemiAwolowo University Ile-Ife. 2005 p. 1-14. Available at www.ncc.gov.ng/.../OAU%20SPEECH.pdf. Accessed 14th April

2016. Also UmarDanbatta, ‘Imperatives of Convergence in ICT Regulation’ Paper presented at the 7th West Africa Convergence Conference organize by Knowhow Media & Market Intelligence International Limited held in Lagos (2015).

⁶¹OlusholaTeniola, is the incumbent President of the Association of Telecoms Companies of Nigeria. He gave this view at the 8th West Africa Convergence Conference (WACC) in Lagos organised by Knowhow Media & Market Intelligence International Limited on July 2016.

⁶² Ali Isa Pantami, Convergence, IT Regulation and the Promotion of Local Content. Paper delivered at the 8th West Africa Convergence Conference organize by Knowhow Media & Market Intelligence International Limited. Held in Lagos. (2016). He was then the Director- General of NITDA.

1. Enactment of Relevant Related ICT Laws

These are laws that are not directly regulating the communications sectors but which are related and the absence of such law in any country can affect the robust regulation of the sector. These laws include Data Protection Act, Lawful Interception Act and Electronic Communications Act to mention a few. These Laws have not been enacted into law in Nigeria.

2. Increase Deployment Of Broadband

Broadband development remains key to driving convergence by getting policy and actions right to attract private sector investment in broadband infrastructure.⁶³ The deployment of broadband infrastructure has been slow in most developing countries, including Nigeria.⁶⁴ This has been caused largely by the absence of adequate funding for such initiatives, as well as government insincerity.⁶⁵ Government had created the USPF to pursue the initiative and to deal with the cost implications of ensuring high speed applicable services. In view of this, the National Broadband Plan Commission set 30% penetration target from 2013 – 2018, and has committed resources and efforts towards deployment of its services across the country. It is therefore recommended that government should come out with incentives that stimulate broadband infrastructure rollout across the country by reducing import duties on devices.

3. Reform In The Power Sector

Epileptic power supply mar development in any country. Incessant power failures should be addressed by the government. This will stop the overdependence on generators for power supply. There is therefore the urgent need for the Nigerian

⁶³LanreAjayi, 'Broadband Development Key to Convergence' the presenter gave this submission at the 7th West Africa Convergence Conference (WACC) in Lagos organised by Knowhow Media & Market Intelligence International Limited on July 2015. He was the former President of the Association of Telecoms Companies of Nigeria.

⁶⁴ C. Bustani, and others 'Telecommunications Reform in Developing Countries' In Ian Walden, and John Angel, (eds) *Telecommunications Law and Regulation* (2ndedn, Oxford University Press 2005).

⁶⁵Ibid .

government to address the epileptic power supply. The sure way to achieve this is to further deregulate the power sector and add renewable energy to the energy mix⁶⁶. Access to renewable energy supply will enhance sustainable development and reduce emission of carbon dioxide in the environment.⁶⁷ It will to a large extent bridge the access gap between the developing and developed economies of the world, which is one of the aims of the Sustainable Development Goals.

4. Provision And Maintenance Of Base Stations

The Nigerian Communications Commission and the National Environmental Standards and Regulations Enforcement Agency established environmental standards in 2009 and 2011 respectively to regulate the installation of Base Transceiver Stations and Telecommunications Masts.⁶⁸ However, Operators should upgrade and optimize all existing base stations. If this is done, it will stem call set up failures due to increase in traffic volumes. Upgrading and optimizing existing base stations across the country would create room for the network to handle more traffic and enhance convergence in the sector.

CONCLUSION

The emergence of convergence in the communications sectors and the serious legal and regulatory challenges it poses to the law and regulation bring to the fore whether the policy and law regulating the communications sectors are adequate in view of the recent changes, reforms, technological convergence, development and realities in the sectors; and protection of the consumers?

The answer is in the negative. The current state of the Nigerian law on communications law falls short of an efficacious system and does not adequately address the problems and challenges brought about by convergence. In fact it has

⁶⁶YinkaOmorogbe, 'Sustainable Development Through the Use of Renewable Energy: The Role of Law' In D.D Zillman, and others (eds) *Beyond the Carbon Economy: Energy Law in Transition*. (Oxford University Press, 2008).39-59.

⁶⁷YinkaOmorogbe, 'Kyoto Protocol and the Implementation of Kyoto in Nigeria' In P.D Cameron, and D.Zillman, (eds) *Kyoto: From Principles to Practice*.(Kluwer Law International 2002). 343

⁶⁸ C.GOgbonna, and others 'Telecommunication Masts/Base Transceiver Stations and Regulatory Standards in Abia State, Nigeria'. *Journal of Sustainable Development (2016) (9) (6) 46 -57*.

made the enabling Act obsolete and a relic of the past as it is no longer in tune with present challenges in the sector. The need for a legal regulation that can respond to this phenomenon and keep abreast with the trend in the sector is necessary not only to stakeholders within Nigeria but internationally. This is because one of the first areas which any investor that wants to do business in the telecommunications industry in Nigeria will acquaint himself with is the sector policy and the legislation.

The necessity for the enactment of a new encompassing law for the industry is hinged on the fact that the purpose and intendments of the Act may be eroded if the various sub sectors continue to retain its separate laws and regulators. This will adversely affects consumers' protection and quality of service and ultimately the development of the economy. Since the market, technology, services, network and ICT sectors have converged; it therefore only makes common sense that the policies, laws and regulators should be converged for seamless, effective and centralized regulation. The theory behind converged legislation is that regulation should follow the logic of technological change and converge into one unified structure.⁶⁹

Given the fact that the Communications sector is an evolving one, continuous review of the applicable policy and legislation is necessary to adequately respond to convergence; hence the distinct communications laws and regulators should be converged for unified, seamless and effective regulation. There is therefore the need to streamline the various policies in the sub sector into a single converged communications Policy or the adoption albeit modification and implementation of the National ICT Policy 2012. With a National converged ICT Policy in place, the Ministry of Communications in collaboration with stakeholders in the sectors should sponsor a Bill for the enactment of a converged law. This article is

⁶⁹ErnestNdukwe, 'Furthering the Digital Revolution in Nigeria in the Era of Technology Convergence' (A Paper Presented at the occasion of the induction into the Technology Hall of Fame of ObafemiAwolowo University Ile-Ife. 2005) P. 1-14.<www.ncc.gov.ng/.../OAU%20SPEECH.pdf> accessed on 25th June 2019.

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therefore a call for the adoption of converged communication policy, law and regulatory framework in our communications sector. The future is convergence and the need for Nigerian government to adopt a converged legal and regulatory regime for the communications sectors is now.