

## AN EVALUATION OF THE IMPACT OF COMPETITION IN THE NIGERIAN TELECOMMUNICATIONS INDUSTRY

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### **Abstract**

*As an essential factor in the efficient working of markets, competition in an emerging economy such as Nigeria is central not only to the operation of the markets but also the efficient expansion of the market. Before now, government regarded the telecommunications market as a monopoly and perhaps, for this reason it was operated as such with NITEL having the monopoly of the industry. The industry was later liberalized and opened to competition. The impact of the competition policy in the industry is therefore too visible to be discounted. Competition undoubtedly played key roles in transforming the Nigerian telecommunications industry into an efficient and effective one it is today. Divided into seven parts, this paper evaluates the impact of competition in the Telecommunications Industry in Nigeria. Using a doctrinal approach, the paper evaluated the impact of competition, discussed competition law, various types of competition, the legal and regulatory framework for competition in the telecommunications industry in Nigeria as well as the Porter Five Forces Model of competition. The paper further examined how competitive the industry is and concluded that the telecommunications market in Nigeria is oligopolistic in nature even though it has recorded a progressive but significant growth now - especially in the areas of market penetration,*

*subscriber growth, number of operators, and cost of service among others - than it did when it was under a monopoly. This growth, the research found, was influenced by the competition policy which has led to an improved market penetration with resultant increase in private investment and reduced cost of service. The paper recommended, inter alia, constant market assessment, reduced fees for internet subscription for the industry to take advantage of VoIP as a substitute product as well as an implementation of the Porter's model of competition to the industry's advantage.*

## **1.0 Introduction**

Competition is not a new concept in the telecommunications industry in the world. For instance, the United State's free market approach to commerce has always held that competition allows the market to most creatively meet the needs of customers, at the best prices and in the most efficient manner.<sup>[1]</sup> Competition is a factor that affects the business environment in any industry. It has been defined as the rivalry or individual effort of two or more parties acting independently which result in a competitive business environment.<sup>[2]</sup>

In a competitive business environment, prices tend to remain relatively low as the power of bargaining is usually in the hands of the buyers.<sup>[3]</sup> In his process of buyer-seller interactions, a lot of information is signaled through product/service prices and most sellers would have no alternative but to cut prices to attract buyers.<sup>[4]</sup> Thus, competition plays an inevitable role in almost every efficient and effective business environment;<sup>[5]</sup> and it is good for business.<sup>[6]</sup> It does not only encourage different suppliers to contend with one another in offering their goods/services to consumers, it

also compels such offer to be made at relatively low prices without depreciation in quality.<sup>[7]</sup> Every business enterprise in operation with a profit oriented goal must therefore be made to face competition as long as the market is not a monopolistic business enterprise and the Nigeria communications market should not be an exception.<sup>[8]</sup>

As an essential factor in the efficient working of markets, the importance of competition in an emerging economy such as Nigeria is therefore central to the operation of the markets.<sup>[9]</sup> Hence, the role competition plays in the efficient and effective transformation of the Nigerian telecommunications industry from the monopolistic enterprise it was to a liberalized sector, can never be overemphasized.<sup>[10]</sup> This is particularly so when it is examined against the background of what the industry was in the light of the resultant effect of its monopoly before it was liberalized and opened to competition.

An examination of the industry now, in juxtaposition with what it was prior to the enactment of the Nigerian Communications Act (NCA) 2003 and the establishment of the Nigerian Communications Commission (NCC) with the mandate to promote fair competition and prevent misuse of market power, reveals a significant growth in the sector which lends credence to the supposition that competition is good for the economy.<sup>[11]</sup> Competition fosters innovation and productivity as it also encourages growth.<sup>[12]</sup> Competition has therefore greatly impacted the Nigerian Telecommunications Industry in terms of market penetration, subscriber growth, private sector investment, and the number of operators and participants. Accordingly, the government's competition policy which seeks, *inter alia*, to ensure fair competition in all sectors of the Nigerian

communications industry, encourage participation of Nigerians in the ownership, control and management of communications companies and prevent abuse of market power and dominant position has helped the growth of the industry. It has brought important benefits to consumers by encouraging wider choice among the telecom operators/service providers, thereby enabling the consumers to get access to quality services delivery at prices which truly reflect the interplay of demand and supply in the market.<sup>[13]</sup>

This paper traces the development of the telecommunications industry in Nigeria from monopoly to competition and evaluates the effect competition has in its growth since the industry become liberalized. Divided into seven parts, the first part contains the introduction; the second part discusses the need for competition and competition law; and different types of competition. While part three of this paper examines the Nigerian telecommunications industry from monopoly to competition with focus on the legal and regulatory regime for competition in the industry both under the NCA and NCC regulation, part four probes how competitive is the telecoms industry in Nigeria using the Porter's Five Forces Model of Competition. Part five examines the impact of competition in the industry especially in relation to market penetration, subscribers' growth, the number of operators, cost of service, size as well as private investment in the industry. Part six concludes the paper with part seven containing recommendations.

## **2.0 The Need for Competition and Competition Law**

### **2.1 Why competition?**

Ostensibly, one cannot purport to be discussing, extensively, the impact of competition in the telecommunications industry without having first understood the need for competition in the sector, hence the question; why competition? The need for competition is borne out of the fact that competition is central to the operation of markets, and fosters innovation, productivity and growth.<sup>[14]</sup> However, sometimes, markets do not always work well and uncompetitive markets creates monopoly with a resultant abuse of market power. Without competition in the telecommunications industry, the ‘robber barons’<sup>[15]</sup> will engage in all sorts of uncompetitive market practices which may include rate fixing, market sharing, boycott of another competitor, boycott of a supplier of apparatus or equipment; all to the detriment of the consumers and the sector. Competition, being the process of rivalry between firms striving to gain sales and make profits,<sup>[16]</sup> is the driving force behind markets and this is also so for the telecommunications market.

Generally, economic competition usually takes place in markets where the sellers compete to attract offers from prospective buyers. It is therefore posited that in a competitive business environment, prices tend to remain relatively low because the power of bargaining is usually in the hands of the buyers.<sup>[17]</sup>

While competition is the process of trying to win something that is at a higher success level in a business enterprise or industry which someone else is also trying to win or achieve,<sup>[18]</sup> a competitor refers to an individual or group that an enterprise is trying to succeed against.<sup>[19]</sup> Nonetheless, competition breeds an efficient and fair market which, in

turn, is essential for catalyzing private sector development and economic growth,<sup>[20]</sup> hence the need for competition.

## **2.2 The need for competition law**

Competition laws, also known as anti-trust laws, are meant to provide a level playing field and adequate legal protection for competition among businesses.<sup>[21]</sup> Such rules form the foundation of the Nigerian free market economy.<sup>[22]</sup> While not fully developed, Nigerian anti-trust laws, like its counterparts in other climes, seek to promote the interests of consumers, support unfettered markets, which may result in lowering prices and more choices. Competition laws also seek to enhance access to products, reduce costs, improve quality, and increase varieties/choices.<sup>[23]</sup>

Without regulations, businesses may enter into anti-competitive agreements, or take actions that constitute abuse of market power, or create monopolistic market conduct and market structure.<sup>[24]</sup> An abuse of market power takes place where one of the market suppliers possesses enough market power to undercut the other suppliers and to make it difficult for the latter to operate in the market.<sup>[25]</sup> The powerful supplier may outright force others to go out of business and, following this, it may take control of the entire market and so exact exorbitant prices on the consumers.<sup>[26]</sup> Along the same line, anti-competitive agreements take place when all, or most, suppliers in a geographical area or within a specific market sector come together and enter into agreements by which they can sell their products at artificial practices.<sup>[27]</sup> A fall out of this will lead to the creation of highly concentrated markets in the hands of few which will in turn induce anti-competition behavior and the possibility of new businesses entering the market would be nil,<sup>[28]</sup> with the attendant

consequence of manufacturing alternative products stifled out of existence.<sup>[29]</sup> The Nigerian telecommunications industry, having been liberalized and opened to competition needs certain legal protection to fully blossom. As noted earlier, Nigeria has no single harmonized enactment governing competition and to guarantee the continuous growth of the telecommunications industry in Nigeria, competition alone, without more, cannot deliver the needed result. Hence the need for anti-trust or competition law even if it is sector based as it is presently the case.

### **2.3 Types of Competition**

There are broadly 2 major types of competition in the business environment namely; pure/perfect competition and imperfect competition. There are however different degrees of imperfect competition, ranging from what is called ‘monopolistic competition’ to ‘simple monopoly’ and in between these two forms of imperfect competition are ‘oligopoly’ and ‘duopoly’.<sup>[30]</sup> However, some authors recently added another concept known as monopolistic competition which invariably still relates to the degree of imperfect competition and not another separate type of competition in itself.<sup>[31]</sup>

#### **2.3.1 Pure/Perfect competition**

In an environment of pure/perfect competition, there are no barriers to entering the market.<sup>[32]</sup> There are multiple sellers and no single company or group of companies dominates the market.<sup>[33]</sup> Consumers can buy the products or services easily and choose from a number of different suppliers.<sup>[34]</sup> The products or services themselves are easily replaced by

those of another competitor and prices are set by what the market is willing to pay.<sup>[35]</sup> Small businesses such as convenience stores are an example of this type of competition. Its common features being; low barriers to entry, many choices, no business has dominance, many companies competing and nobody has a significant advantage.

### **2.3.2 Imperfect competition**

An imperfect competition is similar to perfect competition in that there are multiple sellers and no barriers to entering the marketplace.<sup>[36]</sup> The difference is that the sellers are offering essentially the same product with variations in quality and price. Restaurant business is an example of this type of competition. It should, however, be noted that in real life, pure/perfect competition is seldom seen.<sup>[37]</sup> On the other hand, it is imperfect competition which is the rule, and perfect competition is the exception.<sup>[38]</sup>

### **2.3.3 Duopoly and Oligopoly**

In an oligopoly, a limited number of companies compete for clientele. The word 'oligopoly' itself is rooted in Greek with 'olig', meaning 'a few' and 'poly' meaning 'sellers'. Thus, a market form, in which there are only a few sellers, usually more than two, is called oligopoly.<sup>[39]</sup> It is 'duopoly' if the sellers are two as the term implies. In an oligopoly, the sellers may be producing and selling either a homogeneous or a differentiated product, the former is called perfect oligopoly and the latter is regarded as imperfect or differentiated oligopoly. The product in question may be differentiated between companies or exactly the same.<sup>[40]</sup> There are significant barriers to entering the marketplace which keep



most other companies out. It also means that most companies will be large and similar in size.<sup>[41]</sup> The common features of oligopoly are; many barriers to establishing a business so only the oldest and biggest businesses are operating, all the businesses are big and of equal size. The banking industry is an example. Other examples include automotive manufacturers, gasoline, retail companies, insurance companies, and telecommunications companies etc.<sup>[42]</sup>

### **2.3.4 Monopoly**

A monopoly is where there is only one business operating in a sector without any competition.<sup>[43]</sup> This may be based on ownership of resources or a patent.<sup>[44]</sup> Monopoly involves a market dominated by one large company but there may be other smaller companies as well.<sup>[45]</sup> The definition of a monopoly, some authors say, is that it is bigger than all other competitions combined: one single large seller with no close competition and no alternate substitutes.<sup>[46]</sup> Examples of this are software companies like Microsoft. However, some are of the opinion that monopoly means only one business operating in a sector without any competition. Of the two positions nonetheless, monopoly is regarded as a direct consequences of market failure.<sup>[47]</sup>

Furthermore, it is possible in a monopolistic competition to have a situation in which sellers feel they do have some competitions, there is one big company dominating the market with a few medium or smaller sized companies. (Example: there used to be "pure competition" until Google grew very big and became dominant).<sup>[48]</sup>

### **3.0 The Nigerian Telecommunications Industry: From Monopoly to Competition**

Globally, the telecommunications industry has witnessed rapid growth and innovation over the past three decades. The significance of telecommunications to globalization, internationalization and effective coordination of economic activities over very far distances and across national borders is unarguable.<sup>[49]</sup> The importance of telecommunications today goes well beyond facilitating business activities and interaction to making substantial contribution to the national incomes, as well as engendering many diverse and novel job opportunities.<sup>[50]</sup>

#### **3.1 Evolution of the telecommunications industry**

The revolution in the telecommunications industry that has resulted in today's highly dynamic information age began in the mid-1980s. As a result of changing ideology on how best to organize markets, the state monopoly in the telecoms industry was ended in the US, UK and Japan.<sup>[51]</sup> By the late-1990s, there was a widespread consensus<sup>[52]</sup> that the liberalization of telecoms is essential to industry efficiency.<sup>[53]</sup> Further, innovative developments in this regard in the 1990s brought about fundamental changes that further transformed the telecoms industry into the info-communications industry it is today.

Nigeria, being an offspring of the British colonialists, evolved from the colonial and post-independence period, during which the Nigerian government maintained a monopoly of the fixed telephone-based telecommunications industry.<sup>[54]</sup> The old era was one of exclusion of

private investors, absence of competition, non-accountability, and indeed an unquestionable governmental regulation.<sup>[55]</sup>

The present Nigerian telecommunications industry/market can be linked to two unrelated events namely; the passing of the 1997 World Trade Organization (WTO)'s General Agreement on Trade and Services (GATS)'s Agreement on Basic Telecommunications,<sup>[56]</sup> which demanded structural reforms and amendment in member-states' telecommunications laws and secondly, the return to democratic government in Nigeria, in May 1999, after which the federal government embarked on privatization, commercialization, liberalization of public companies to private ownership.<sup>[57]</sup> Following the inauguration and subsequent recommendation of the technical committee on privatization and commercialization of NITEL, the Nigeria telecommunications industry benefitted from this new perspective/approach to the telecom business. Thus, the industry has therefore somewhat toed the path of development of the global telecommunications industry - from state monopoly to liberalization, then to weak competition to growing competition and to growing service innovation.<sup>[58]</sup>

### **3.2 The history of the Nigerian telecommunications industry: NITEL in focus**

The history of the Nigerian telecommunications industry dates back to 1886 when the first telegraphic submarine cable was laid by the British firm, Cable & Wireless Ltd. From this time up till independence in 1960, Nigeria had 18,724 fixed telephone lines.<sup>[59]</sup> Then, the telecommunications industry was dominated by the Nigerian Telecommunications Limited (NITEL), a government-owned monopoly operator.<sup>[60]</sup> NITEL's services include the

provision of Fixed Telephone, Telegraph (gentex), and Payphone etc;<sup>[61]</sup> its main objective was to harmonize the coordination of the external and internal telecommunications services, rationalize investments in telecommunications development and provide easy access, efficient and affordable services.<sup>[62]</sup>

Between 1987 and 1992, no remarkable improvement was recorded in the performance of NITEL, and consumer demands were largely unmet.<sup>[63]</sup> This, perhaps, prompted the Federal Government to embark on market oriented reforms by partially liberalizing the telecommunications industry in Nigeria.<sup>[64]</sup> This Liberalization actually began in 1993, with the establishment of the Nigerian Communications Commission (NCC) as prescribed by Decree 75 of 1992. However, some segments of the market were still restricted to the monopoly of NITEL.<sup>[65]</sup> This ceased to be the case in 2001 when NITEL came under the regulatory oversight of NCC, and was formally licensed as an operator.

Nigeria's return to democracy in 1999 brought full liberalization of the telecommunications industry, and necessitated the strengthening of the power and independence of the industry regulator, NCC.<sup>[66]</sup> Consequently, a new telecommunications law was enacted in 2003.<sup>[67]</sup> This law specifically empowers the NCC to make regulations and guidelines for the industry.<sup>[68]</sup> The period from 2000 till date, could be described as the period of Nigeria's telecommunications revolution, given the enormous growth and innovation registered in the industry.<sup>[69]</sup> The major auctioning of digital mobile licenses in 2001 spurred many activities in the sector: active subscription grew from 400,000 lines in

2001 to 89.8 million in 2011, resulting in a tele density of 0.4 and 64.16 per cent in both years respectively.<sup>[70]</sup>

### **3.3 Legal and regulatory regime for competition in the Nigerian Telecommunications Industry**

Historically, one of the earliest recorded attempts at general regulation of competition can be traced to the common law doctrine of restraint of trade, which remains relevant in Nigerian legal jurisprudence.<sup>[71]</sup> In general terms, this doctrine renders provisions which impose restrictions on a person's freedom to engage in trade or employment illegal, and therefore unenforceable at common law, *unless* they are demonstrated to be reasonable, both in the interests of the parties and in the interest of the public.<sup>[72]</sup> This doctrine thus provided the foundation for an attempt by courts to reconcile the well-established principle of freedom to contract with freedom to trade, with the resultant effect of encouraging competition.<sup>[73]</sup>

The first jurisdiction to put in place a framework similar to the various forms of competition law in existence in recent times is the United States of America.<sup>[74]</sup> Then in the United States industries such as petroleum, railroad, steel, cotton, sugar and whiskey all had robust competition early in their histories until some individual (robber barons) emerged to individually lead their companies into dominance in their industries after which they cut down prices to drive their fellow competitors out of business and thereafter bought the failing competitors, forming 'trust' and once in control, raised prices. This form of anticompetitive practice resulted in a huge profit for the controlling companies, however with time, quantity, quality, and affordability of available products to the

public decreased. This uncompetitive behaviour resulted in public outcry which necessitated the passage of ‘anti-trust’ legislations.<sup>[75]</sup>

The USA passed into law the Sherman Antitrust Act of 1890 on the understanding that markets needed some forms of protection from the activities of large firms particularly as against small firms.<sup>[76]</sup> As noted above, the common trend at that time was for shareholders to transfer shares held in competing companies to trustees who then controlled the activities of those competitors as a result of which competition was lessened between them,<sup>[77]</sup> hence, the name “antitrust law” in the United States.

The UK’s development of the area, in comparison to the US, was slow with no urgency for the need of black and white competition law.<sup>[78]</sup> This was because the common law of restraint of trade (the predecessor to modern competition law) served its purpose for their economy at that time. After several legislative twists and turns, the UK finally settled on the Monopolies and Restrictive Trade Practices Act of 1969. The United Kingdom joined the European Community (now the European Union) with the European Community Act of 1972, and through that became subject to EC competition law, thus going on to pass the Competition Act 1988 in order to harmonize with the European policy.<sup>[79]</sup>

Whilst most other common law jurisdictions where the doctrine of restraint of trade applies have proceeded to enact specific laws dealing with competition (for example the 1998 Competition Act of the United Kingdom), there is yet to be a specific but harmonized competition or anti-trust law in force in Nigeria. This is despite the several competition bills that have been forwarded to the National Assembly for

consideration, till date.<sup>[80]</sup> Nigeria is yet to have a codified but harmonized set of rules promoting competition in the marketplace.

Accordingly, what operates in Nigeria is a sector-based approach to competition whereby the laws regulating certain industries or subject matter contain provisions regulating competition as far as it relates to the subject matter of such laws. Specifically, the Investments and Securities Act 2007, the Nigerian Communications Act 2003 (NCA), the Electric Power Sector Reform Act 2005, among other laws, contain provisions dealing with competition as it relates to matters within the purview of such laws. Therefore the competition regime in the Nigerian telecommunications industry is regulated by the Nigerian Communications Commission empowered by the NCA 2003.<sup>[81]</sup>

### **3.3.1 Competition Regulation in the Nigerian Telecommunications Industry**

Competition in the Nigerian telecommunications industry is governed essentially by the NCA and the Competition Practices Regulations (Competition Regulations) issued by the Nigerian Communications Commission (NCC) in 2007.<sup>[82]</sup> Section 4(d) of the NCA, imposes responsibility on the NCC to promote fair competition in the communications industry and protect communications services and facilities providers from misuse of market power or anti-competitive and unfair practices by other service or facilities providers or equipment suppliers. It therefore follows that by section 90 of the NCA, the NCC has the exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and

regulations, whether of a general or specific nature, as it relates to the industry.<sup>[83]</sup>

### **3.3.2 Competition under the NCA**

In ensuring that competition continues to exist in the industry, section 91(1) of the NCA prohibits a licensee from engaging in any conduct which has the purpose or effect of substantially lessening competition in any aspect of the Nigerian communications market. The relevant portion of section 91(1) NCA reads thus:

A licensee shall not engage in any conduct which has the purpose or effect of substantially lessening competition in any aspect of the Nigerian communications market.

Section 91(3) of the NCA further prohibits licensees from entering into agreements or arrangements which provide for rate fixing, market sharing, or any boycotting of a competitor, supplier or licensee, whilst section 91(4) of the NCA prohibits licensees from requiring any person that acquires communications products or services, to acquire any other product or service, either from the licensee or another person, or directing them not to acquire any other product or service either from the licensee or another person. Also, section 92(1) allows the NCC to determine whether a licensee is in a dominant position in any aspect of the Nigerian Communications market.

### **3.3.3 NCC empowered to publish a guideline**

Sections 91(2) and 92(2) of the NCA separately empower the NCC to publish guidelines and regulations which clarify the meaning of



‘substantial lessening of competition’ in the Nigerian Communications market and how it shall apply the test of ‘dominant position’ to licensees, respectively. In furtherance of the above, the NCC has issued the Competition Regulations which, *inter alia*, outlines the standards and procedures which the NCC will apply in determining whether a particular conduct constitutes substantial lessening of competition for the purposes of the NCA, as well as whether a licensee has a dominant position in one or more communications markets.

### **3.3.4 Competition Regulation**

Part II of the Competition Regulations specifies the standards and procedures which the NCC should apply in determining whether particular conducts constitute substantial lessening of competition. In this regard, regulation 6 of the Competition Regulations identifies market circumstances and other matters that might be considered by the NCC to include the: (a) definition of the relevant market or markets; (b) impact of the conduct on existing competitors in the identified markets; (c) impact of the conduct on further market entry; (d) impact of the conduct on consumers, including the availability and pricing of products and services; and (e) degree of interference with competition that results in identifiable injury to competitors or consumers.

Furthermore, regulation 8 of the Competition Regulations contains conduct or practices which are deemed to result in a substantial lessening of competition. Thus, it specifies conduct such as; failing to supply interconnection or other essential facilities to a competing licensee, discriminating in the provision of interconnection or other communications services or facilities to competing licensees, offering a

competing licensee more favourable terms or conditions that are not justified by cost differences, if it acquires another service that it does not require, among others; are deemed to result in substantial lessening of competition unless the applicable licensee demonstrates otherwise. Regulation 9 further expands the power of the Commission to, from to time, specify other conduct or practices that shall be deemed to result in substantial lessening of competition, including those that arise pursuant to Part III of the Regulations.

### **3.3.5 Determination of dominance**

As regards to licensees holding dominant positions in the telecommunications industry, the Regulation in its Part IV, specifies the standards and procedures which the NCC will apply in determining whether a licensee has a dominant position in one or more communications market. As a further extension of this, the Commission will examine if a licensee has the ability to unilaterally restrict output, raise prices, reduce quality or otherwise, act independently of competitors or consumers. While Regulation 8 deals with substantial lessening of competition, Regulation 20 of the Competition Regulations provides to the effect that any licensee whose gross revenues in a specific communications market exceed forty per cent (40%) of the total gross revenues of all licensees in that market, shall be deemed to be in a dominant position in that market. Regulation 21 also provides that the NCC may determine that two or more licensees, acting jointly or collectively, are in a dominant position, notwithstanding that the licensees have no common ownership, are not parties to any formal agreement or operate in different markets.

### **3.3.6 Competition and the practical example of determination of dominant position in the telecommunications industry**

The practicality of competitiveness of the telecommunications industry was tested and brought to the fore in 2012 when the NCC carried out an assessment of the level of competition in the communications industry in Nigeria.<sup>[84]</sup> Prior to this, the Commission had carried out a Determination of Dominance in 2010 which considered two markets, namely the mobile telephony market and International Internet Connectivity (IIC) market and found that no company occupied a dominant position in respect of the two markets<sup>[85]</sup> Thus, unlike in 2010, the NCC, at the end of the said assessment, issued the Determination of Dominance in Selected Communications Market (“DDSM”) in Nigeria on April 23, 2013. In terms of the DDSM, the NCC determined that the mobile voice market in Nigeria was not effectively competitive. MTN Nigeria was identified as the “Dominant Operator” having about 44% market share of subscribers, which is the benchmark. In its further determination, the NCC noted that MTN Nigeria had a wide differential (of about 300%) between on-net and off-net calls with the effect of a likely establishment of a calling club for its subscribers. Having regard to the provisions of Regulation 20 of the Competition Regulations, the conclusion was unarguable in relation to the DDSM.<sup>[86]</sup>

By virtue of section 92(4) of the NCA and Regulations 25 and 34 of the Competition Regulations, where the NCC has determined that a licensee is in a dominant position in the industry, the NCC may, among other options, direct such a licensee to cease a conduct in that market which has or may have the effect of substantially lessening competition in any

communications market “immediately or at a time specified in the directive”. Accordingly, the NCC resolved, under the DDSM, that the differential between MTN Nigeria’s on-net and off-net retail tariffs be immediately collapsed to bring MTN Nigeria’s tariff for on-net calls at par with its tariff for off-net calls. The NCC further resolved that the DDSM was to take effect from May 1, 2013 and remain valid and binding on MTN Nigeria until reviewed by the NCC.<sup>[87]</sup>

### **3.3.7 Interconnection**

As an extension of the power of the NCC to regulate competition in the industry, sections 96 - 100 of the NCA makes regulations in relation to interconnection. Section 96(1) requires that if a network service or facilities provider receives a request for interconnection from another licensee, then the service or facilities provider shall have an obligation to interconnect its communications system with the other licensee’s network at technically feasible locations, in accordance with the principles specified in section 97 of the NCA and pursuant to terms and conditions negotiated between the parties in good faith. Section 97 regulates interconnection agreements among the operators including the requirement for the Registration of interconnection agreements<sup>[88]</sup> with further condition that notwithstanding the terms and conditions of any interconnection, a party thereto shall not at any time and in any circumstance disconnect or discontinue interconnection to any interconnecting party without the prior written approval of the Commission.

## **4.0 How Competitive is the Telecommunications Industry in Nigeria?**

Having examined the legal and regulatory frame work for competition in the telecommunications industry, the next thing to determine is to what extent is the Nigerian telecommunications market/industry competitive? Using the Porter's Five Forces Model of Competition,<sup>[89]</sup> is the Nigerian telecommunications market competitive? If the answer is in the affirmative, does competition have any impact at all in the industry?

#### **4.1. Porter's Five Forces Model of Competition**

According to Porter, the nature of competition in any industry is personified in the following five forces:

1. Threat of new potential entrants
2. Threat of substitute product/services
3. Bargaining power of suppliers
4. Bargaining power of buyers
5. Rivalry among current competitors

##### **4.1.1 Threat of new potential entrants**

According to Porter,<sup>[90]</sup> risk of entry by potential competitors goes a long way to determine if an industry is competitive and its impact. How does the risk of entering by potential competitors come into play? Potential competitors refer to the firms or companies not currently competing in the industry but have the potential to do so if given a choice. Thus, entry of new players into the telecommunications industry increases the industry capacity.<sup>[91]</sup> This will in turn begin a competition for market share and lowers the current costs. The threat of entry by potential

competitors is partially a function of extent of barriers to entry. Thus, this barrier is determined by the regulatory frame work put in place by the regulator of the industry, in this case the NCC. The various barriers to entry may include economies of scale, brand loyalty, government regulation, customer switching costs, absolute cost advantage, ease in distribution and strong capital base.

For instance, the licensing of Interconnect Clearing House Nigeria Ltd by the NCC following its incorporation on 24<sup>th</sup> September, 2003 to provide and operate Interconnect Exchange Services throughout Nigeria increases the competitiveness of the telecoms industry in Nigeria.<sup>[92]</sup> This means that customer/consumers of the telecom service providers can now switch from one service provider to the other at relatively low cost. This will further put the service providers on their toes to ensure increase in the quality of their service delivery to their consumers/customers or risk losing their consumer/customer to their competitors.

#### **4.1.2 The threat of substitute products**

The threat of substitute products is another factor. Substitute products refer to the products having the ability of satisfying customers' needs effectively. Substitutes pose a ceiling (upper limit) on the potential returns of an industry by putting or setting a limit on the price that firms can charge for their product in an industry. Lesser the number of close substitutes a product has, greater is the opportunity for the firms in industry to raise their product prices and earn greater profits (other things being equal). In Nigeria, a number of unconventional internet-based services are in existence, which although are not yet widely used due to, say, lower internet usage by the populace, is actively draining the market

for long distance and international calls of the network service operators. Yahoo Messenger, Skype, Nimbuzz, Viber, and more recently Whatsapp Calls are the major VoIP services used as substitutes for traditional telephony in Nigeria. These services are in most cases free, and, where not, are largely cheaper than telephone calls. They are mainly used by the literate population who of course are the majority of people who make long distance and international calls. The implication is that mobile network operators in Nigeria tend to lose a large chunk of their customers to VoIP services and these substitute products forces network providers/operators to further lower their prices in terms of telephone services without depreciation in quality or risk losing their respective consumers/customers. The cheaper and equally efficient call quality these VoIP services offer is a threat to network operators in the Nigerian telecommunications industry.<sup>[93]</sup>

#### **4.1.3 The bargaining power of buyers**

Buyers refer to the customers who finally consume the product or the firms who distribute the industry's product to the final consumers. Bargaining power of buyers refer to the potential of buyers to bargain down the prices charged by the firms in the industry or to increase the firms cost in the industry by demanding better quality and service of product. Strong buyers can extract profits out of an industry by lowering the prices and increasing the costs. They purchase in large quantities. They have full information about the product and the market. They emphasize upon quality products. They pose a credible threat of backward integration. In this way, they are regarded as a threat. Notwithstanding the above, the fact that in Nigeria there are mainly four

major operators in the industry namely Airtel, Etisalat (now 9mobile), Globacom and MTN which do not have very distinct quality of service, suggests limited incentive for buyers to switch supplier in the face of even pricing. This, alongside the earlier considerations, leads to the conclusion that there is moderate buyer power in the Nigerian telecommunications industry.

#### **4.1.4. The bargaining power of suppliers**

Like the buyer, the bargaining power of suppliers is also another factor to be used to measure the competitiveness of the industry and the impact it has on the growth of the industry. Suppliers refer to the firms that provide inputs to the industry. Bargaining power of the suppliers refer to the potential of the suppliers to increase the prices of inputs or the costs of industry in other ways. Strong suppliers can extract profits out of an industry by increasing costs of firms in the industry. Suppliers' products have a few substitutes. Strong suppliers' products are unique. They have high switching cost. Their product is an important input to a buyer's product. They pose a credible threat of forward integration. Buyers are not significant to strong suppliers. In this way, they are regarded as a threat. In Nigeria suppliers have been shown to have a less power in the telecommunications industry.<sup>[94]</sup>

#### **4.1.5 The rivalry among current competitors**

This last model can be used to determine how competitive an industry is. Rivalry refers to the competitive struggle for market share between firms in an industry.<sup>[95]</sup> Extreme rivalry among established firms poses a strong threat to profitability. The strength of rivalry among established firms



within an industry is therefore a function of the following factors namely: extent of exit barriers; amount of fixed cost, competitive structure of industry; presence of global customers; absence of switching costs; growth rate of industry; demand conditions. Using this model and the determining factors, one can conveniently say that the market share of GSM network operators in Nigeria is not even. In 2014, the statistics available suggests a high operator dominance in the Nigerian telecoms industry, with MTN having almost 50 percent of the market share (Airtel has just 20%; Globacom 19%; and Etisalat 15%) in the GSM segment; Visafone Limited has 98% market share in the CDMA segment, while Multilinks Telcom has only 2%; 21st Century Technologies and VGC/MTN both has 74% of the market share in the Fixed/Fixed Wireless segment of the market, while Globacom, Multilinks, Visafone Limited and IPNX all share 26%.

It has been demonstrated above that the NCC structure in the telecoms industry in Nigeria is such that it encourages rivalry/competition among the current competitor. For instance, regulation 20 of the Competition Regulations empowers the NCC to determine when a company or firm is in a dominant position in the industry including the power to direct that a competitor should cease a particular act that can amount to substantially lessening competition. However, the latest attempt that the NCC carried out on the assessment of the competitiveness of the telecom market that this author found was in 2012 when the Commission issued the paper on determination of dominance in selected communications markets.

From all the above analysis, it can be submitted that the competition that exists in the Nigerian telecommunications industry is an imperfect

competition because it does not or completely meet the Porter's Five Forces Model of Competition. In terms of degree, the imperfect competition that exists in the industry is an oligopoly. This is because there are only few major operators/companies competing in the industry. However, this is not to say that the industry or its market is not competitive or that competition does not have impacts in relation to the growth of the industry. Since it became liberalized, the competition that exist is an imperfect oligopolistic competition

### **5.0 The Impact of Competition on the Growth of the Nigerian Telecommunications Industry**

Before now, NITEL was the only national carrier.<sup>[96]</sup> However, in 2002, Globacom was named the second national carrier with license to provide national and international long distance services and mobile services.<sup>[97]</sup> The mobile telephony operator increased to 3 in 2001 from 1 in 1999. This has much to do with the licenses granted to MTN and Econet Wireless, which pioneered private mobile operation.<sup>[98]</sup> The growth in the number of operators and increasing competition in the industry has translated to more employment opportunities.<sup>[99]</sup> The increase in the number of operators is due to the government's favourable and fair policy of competition as well as creation of a level playing field and removal of bottlenecks hitherto created by the monopoly operator.<sup>[100]</sup>

The entrance of multiple operators in the telecom sector, particularly the mobile segment coupled with intensifying competitive rivalry, has had resounding success in the industry in terms of growing the subscriber base, decreasing tariff, widening the coverage area, improving quality of service levels, expanding the product range and innovativeness. For

instance, subscriber market penetration increased from 20% in 2007 to 45% in 2016. Growth of the market penetration in Nigeria was in line with other countries in the region (CAGR around 10%), and higher than in some of the more mature North African markets but lower than in Ghana and Tanzania.

### **5.1.1 Impact of competition on cost of services for consumers in the telecommunications industry in Nigeria**

The cost in the prices and services in the telecom sector have shown a continuous decrease since 1999 until to date. Both the cost of connection and airtime charges for both fixed and mobile telephone has significantly reduced. The cost of acquiring new fixed lines now has dropped from N100,000 to an average of N20,000 or even lower, a reduction of about 80%. For mobile telephony, since the inception of private operators in 2001, the cost of pre-paid SIM packs has dropped from N20,000 to between N1,000 and N2,500. and now it is almost distributed free.<sup>[101]</sup> At times, during the period of promotion, the starter pack sells for as low as N100.<sup>[102]</sup> Similarly, voice termination rates per minute for new entrants and small operators was N6.40 (Six Naira Forty Kobo) as at 1<sup>st</sup> April, 2013 but N5.20 (Five Naira Twenty Kobo) on April 1<sup>st</sup>, 2014 but reduced to N3.90 (Three Naira Ninety Kobo) on 1st April, 2015. This significant reduction owed much to an effective regulation including the competition policy of the Commission in the industry.

### **5.1.2 Impact of competition on private investment in the Nigerian Telecommunications Industry and the contribution to GDP**

There has been a significant increase in the level of private investment in the Nigerian telecommunications industry, especially since 1999 and especially 2003 when the industry was opened to competition following the enactment of the Nigerian Communications Act.<sup>[103]</sup> It was a mere US\$50 million at the end of 1999, but total private investment in the sector has risen to about US\$6 billion as at 2004; 120 times more than the figure for 1999. The improvement in private investment can be partly explained by an increase in Foreign Direct Investment (FDI) and partly by liberalization of the sector through competition and other policies. In 2004 alone, two leading private equities in the world, ACTIS and Emerging Market Partnership, invested US\$43.2 million into Starcomms, one of the private telephone operators.<sup>[104]</sup> This is one of the notable FDI in the sector. The growth in FDI is underscored by government removal of restrictions on the level of Foreign Equity Participation. Also the reduction in the level of import duties on telecommunications equipment from 25% to 5%, an 80% downward review, had led to inflow of capital equipment. It should be noted, however, that more than half of the investment represents mobile network.<sup>[105]</sup> Today we have not less than 37 different telecom companies (internet service operators) dealing only in the provision of internet to at least 286,046 subscribers at 927 different points in the country making a total connection of 390,794.<sup>[106]</sup> Also, as at the fourth quarter of 2018, the contribution of the telecommunications industry to GDP stands at 9.85%.<sup>[107]</sup>

### **5.1.3 Effect of competition policy on market penetration and subscribers growth**

The market penetration of the telecoms industry is measured by the teledensity within a territory. Teledensity is the number of lines available to 100 inhabitants (ITU definition).<sup>[108]</sup> According to the statistics obtained from NCC's website as at September 2012, the teledensity in Nigeria was 76.69%. In October 2012, the figure rose to 78.21% while in November and December 2012, the teledensity stood at 78.82% and 80.85% respectively.<sup>[109]</sup> As at October, November and December 2013, the teledensity rose from 80.85% to 87.06%, 88.39% and 91.15% respectively.<sup>[110]</sup> In October, November and December 2014, the teledensity was 96.87%, 97.60% and 99.39% respectively. In January, February and March 2015, teledensity according to the statistics, it rose to 100.59%, 101.85%, and 102.81% respectively. Similarly, in October, November and December 2016, teledensity rose to 109.65%, 109.96% and 110.38% respectively. As at March 2018, the number of GSM active lines in Nigeria was 148,854,338, mobile CDMA active lines was 217,566 while that of VoIP was 85,185 thereby making a total of 149,293,870. Thus, the latest statistics available indicates that as at January 2019, the teledensity stood at 124.29 while the number of subscribers stood at 174,012,136.<sup>[111]</sup>

If the above results are compared with the achievement when the telecommunications sector was under the NITEL's monopoly, there is no need for a binocular to see the wide gap in terms of growth and development of the sector. NITEL came into operation on 1<sup>st</sup> January 1985 as a dominant provider of telecommunications services in Nigeria and between the period to 1990 when the Technical Committee on Privatization and Commercialization was inaugurated which

recommended commercialization of NITEL, the sector could only boast of about 1 line per 250 inhabitants as against the International Telecommunications Union (ITU) recommendation.<sup>[112]</sup> Without the competition policy, would these achievements have been possible? The answer is, not in the least possible.

## **6.0 Conclusion**

Although, the Nigerian telecoms industry does not completely meet all the requirements of Porter's Five Forces Model of Competition, it does not mean that the industry is not competitive. Indeed, the industry is competitive but it is not a perfect competition. The competition policy of the government in the telecommunications industry in Nigeria has brought more encouraging results. The policy has resulted in growth of the industry in terms of number of subscribers, market penetration; industry's productivity and enhanced service delivery. Today, Nigeria is the fastest growing telecommunications market in Africa, rising from a meager 500,000 telephone subscribers in 2001 to over 149,293,870 (149.2) million as at March 2018 and now to 174,012,136 while teledensity stands at 124.29.<sup>[113]</sup> The giant strides in the telecommunications industry over the last decade were the direct effects of an enabling regulatory environment created by the Commission and the competition policy encouraged by the Act. This exponential growth of the industry has led to the increased maturity and sophistication of individual networks and has also ushered in intense competition amongst the industry players. There is free entry for new entrants in virtually all subsectors of the industry. Even though the market structure reflects an

oligopolistic competition, the impact of the competitiveness is visible and the potential is nevertheless huge and growing.

## **7.0 Recommendations**

Based on the findings of this study, we recommend the following to further enhance the telecommunications industry:

1. The NCC should ensure that each of the Porter's Five Competitive Forces remains very potent and effective in the telecommunications industry in Nigeria.
2. Since the telecoms market in Nigeria is an oligopolistic one, the NCC should ensure that Dominant Operators do not use their advantage to suppress industry improvement and benefits to consumers. Stricter sanction should therefore be put in place against defaulters to ensure that established standards are met.
3. The growing popularity of Voice over Internet Protocol (VoIP) would, in no time, dampen the profit of mobile network operators as regards voice calls. This would soon force the network/service operators/providers to reduce the cost for their services, improve the quality of long distance calls, or lose customers to VoIP. NCC should therefore put measures in place to hasten high-speed internet penetration in both urban and rural areas in Nigeria and ensure reduced fees for internet subscription so as to ensure that the industry gains from high substitute pressure are not undermined.

NCC should embark on constant but consistent market assessments (Determination of Dominance) with a view to ascertaining whether any

operator is in a dominant position in any sector of the telecommunications market.

In sum, the Nigerian telecoms industry is growing. The competitive forces analyzed have great impact on the future sustainable growth of the industry. Efforts on the above lines could be very helpful in unleashing the great potential of the industry, as well as creating much greater value for consumers. The regulator has a big role to play in ensuring that each of the five competitive forces remains very potent and to the industry's advantage.

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[<sup>1</sup>] Sharon. K. B., *Telecommunications Law in the Internet Age* (Morgan Kaufmann Publishers, 2002) 12.

[<sup>2</sup>] Beato P, and others, *Competition Policy in Regulated Industries: Approaches for Emerging Economies* (Washington, D.C. Inter-American Development Bank, 2002) 12.

[<sup>3</sup>] *Ibid.*

[<sup>4</sup>] Carlton, D. W. and others, *Product Variety and Demand Uncertainty*, (Cambridge, Mass.: National Bureau of Economic Research, 2004) 12.

[<sup>5</sup>] *Ibid.*



[6] Joekes, S. P. and others, *Competition and Development: The Power of Competitive Markets* Ottawa: International Development Research Centre 2008) 12.

[7] *Ibid.*

[8] *Ibid.*

[9] Debbie A. 'Developing a Knowledge-Driven Nigerian Economy: An Economic Framework for the 21<sup>st</sup> Century' (1999) African Economic Analysis <http://www.afbis.com/analysis/knowledge.htm>. Accessed on 10<sup>th</sup> May 2018.

[10] Before now, the government regarded the telecommunications market as a monopoly and was operated as such with only NITEL having the exclusivity of the industry until the industry was later liberalized and opened to competition which then transformed the industry into an efficient and effective one that it is today. For an extensive discourse on this point, See Ologunde and others, 'The Effects Of Privatization And Deregulation Policies On Nigerian Telecommunications Industry' (2006) 10 (1) Journal of Nigerian Academic Forum <http://www.globalacademicgroup.com/journals/the/nigerian/academic/forum/Ologunde60.pdf>. Accessed on 10<sup>th</sup> May 2018.

[11] See 1(e) and s 4(d) NCA 2003.

[12] *Ibid.*

[13] *Ibid.*

[14] Nick G., 'Why is competition important for growth and poverty Reduction?' A paper presented at OECD Global Forum on International Investment, OECD Investment Division on 27-28 March 2008 [www.oecd.org/investment/globalforum/40315399.pdf](http://www.oecd.org/investment/globalforum/40315399.pdf). Accessed 20<sup>th</sup> May 2018.

[15] This term was first used in the telecommunications sector in the United States in connection with individuals who engaged in uncompetitive business practices. What the Rubber Barons did was that they emerged to lead their companies into

dominance in their industries after which they cut down prices to drive their fellow competitors out of business and thereafter bought the failing competitors, forming ‘trust’ and once in control, raised prices. This form of anticompetitive practice resulted in a huge profit for the controlling companies. See Sharon. K. B., *Telecommunications Law in the Internet Age* (Morgan Kaufmann Publishers, 2002) 13.

[16] Nick G, (Footnote 14) 2.

[17] Beato P. (foot note 2).

[18] Joeke, S. P. (footnote 6).

[19] *Ibid.*

[20] Nick G, (*Footnote* 14) 2.

[21] American Bar Association (2008) *Issues in Competition Law and Policy*, Volume 1.

[22] *Ibid.*

[23] Obayemi, O. K. *Legal Validity of Tax Opinions/Advance Tax Rulings in Nigeria: Revisiting Saipem Contracting Nigeria Ltd & Ors vs. Federal Inland Revenue Service & Ors, Suit No.: FHC/L/CS/1081/09*. (This Day Lawyer, 30 September 2014), 12.

[24] Shaffer, S. ‘Competition in the US Banking Industry’ (1992) 29, *Economics Letters*, 321-323. Shaffer, S. ‘Patterns of Competition in Banking.’ (2004). 56, *Journal of Economics and Business*, 287-313.

[25] *Ibid.*

[26] A practical illustration of this kind of abuse of market power was demonstrated in the United States prior to the enactment of a series of anti-trust legislations to curb the abuse. See footnote 13. For a detailed discussion on this point see Sharon.

K. B., *Telecommunications Law in the Internet Age* (Morgan Kaufmann Publishers, 2002) 13-16. See also Aihevba, F. 'A Critique of The Nigerian Competition Bill 2005' <http://www.aalex.com/media/archive/a/critique/of/the/Nigerian/competition/bil1/2005/revised.pdf>. Accessed on 11<sup>th</sup> April 2018.

[27] De Pempilis and others, *Mergers, Acquisitions, and Other Restructuring Activities* (5<sup>th</sup>ed, Academic Press Advanced Series 2013) 12.

[28] Pan African Capital Plc (2011). Industry Report, *Nigerian Cement Industry: A Review of Opportunities and Recurrent Price Hike*. <http://www.panafrican-capitalplc.com/downloadi.php?id=3>. Accessed on 11<sup>th</sup> May 2018.

[29] Ugwunta, D.O., and others *The Structure of the Nigerian Banking Sector and Its Impact on Bank Performance*, (2012) 3, *Journal of Economics and Sustainable Development* 30.

[30] *Ibid.*

[31] <http://www.witiger.com/ecommerce/competition.htm> Accessed on 7<sup>th</sup> May 2018.

[32] Tushar S., 'Market Forms: Pure Competition, Perfect Competition and Imperfect Competition' <http://www.economicdiscussion.net/articles/market-forms-pure-competition-perfect-competition-and-imperfect-competition/1685>. Accessed on 10<sup>th</sup> May 2018.

[33] *Ibid.*

[34] *Ibid.*

[35] This is regarded as homogeneous products. Homogenous products are products that cannot be distinguished from competing products from different suppliers. In other words, the product has essentially the same physical characteristics and quality as similar products from other suppliers. One product can easily be substituted for the other. For a full discourse on homogenous product, see *Rodney Michael*,

Homogeneous Products: Definition & Overview <https://study.com/academy/lesson/homogeneous-products-definition-lesson-quiz.html>. Accessed on 10<sup>th</sup> May 2018.

[36] *Ibid.*

[37] *Ibid.*

[38] Tushar S., 'Market Forms: Pure Competition, Perfect Competition and Imperfect Competition' <http://www.economicdiscussion.net/articles/market-forms-pure-competition-perfect-competition-and-imperfect-competition/1685>. Accessed on 24<sup>th</sup> May 2018.

[39] *Ibid.*

[40] *Ibid.*

[41] Oligopoly Market <https://businessjargons.com/oligopoly-market.html>. Accessed on the 10<sup>th</sup> May 2018.

[42] Smriti C., 'The Oligopoly Market: Example, Types and Features and Micro-Economics' <http://www.yourarticlelibrary.com/oligopoly-market/the-oligopoly-market-example-types-and-features-micro-economics/9140>. Accessed on 10<sup>th</sup> May 2018.

[43] Prateek A., 'Monopoly Market Structure' <https://www.intelligenteconomist.com/monopoly-market-structure/>. Accessed on 10th May 2018.

[44] *Ibid.*

[45] four-types-competition-business-<https://www.reference.com/business-finance/four-types-competition-business-98a2b65b29e2d083#>. Accessed on 7<sup>th</sup> May 2018.

[46] *Ibid.*

[47] Asagh J., 'Nigerian Telecommunications Law and Practice' 120.

[48] *Ibid.*

[49] Ndukwe, E., ‘An overview of evolution of the telecommunications industry in Nigeria and challenges ahead (1999-2003)’. Paper presented at the Telecom Summit 2003, viewed 12 August 2014.

[50] Fransman, M., ‘Evolution of the Telecommunications Industry into the Internet Age’ (2001) 43 *Communications & Strategies*, 57 - 113.

[51] Mawoli, M, ‘Liberalization of the Nigerian Telecommunications Sector: a Critical Review’ (2009) 7(2), *Journal of Research in National Development*, 102-124.

[52] With the agreement of the European Union to fully liberalize its telecoms markets and the similar agreement of the World Trade Organization (WTO).

[53] *Ibid.*

[54] Bongo A., ‘Evaluation of the Nigerian Telecommunications Industry Competitiveness: Application of Porter’s Five Forces Model’ (2015) 5(3), *World Journal of Social Sciences*, 15 - 36.

[55] *Ibid.*

[56] (WTO Background Documents 1997).

[57] Awosika, E., & Obayemi, O. K. “Technology, Media and Telecommunications Review in Nigeria” in ‘*The Technology, Media and Telecommunications Review*’ (5<sup>th</sup> ed. (2014) 19. London: Law Business Research.

[58] *Ibid.*

[59] Okonji, E., ICT Sector at 53: Tremendous Growth, Poor Services, (*This Day, 1 October, viewed 18 August 2014*), <http://www.thisdaylive.com/articles/ict-sector-at-53-tremendous-growth-poor-services/160371/>.

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[64] *Ibid.*

[65] *Ibid.*

[66] See for more details: Olawale I., 'The evolution of the telecommunications Industry in Nigeria' [https://www.Ncc.Gov.Ng/Archived/Speeches/Telecomevolution-Olawale\\_Ige170402.Pdf](https://www.Ncc.Gov.Ng/Archived/Speeches/Telecomevolution-Olawale_Ige170402.Pdf). Accessed 10<sup>th</sup> May 2018.

[67] Nigerian Communications Act, 2003 Act No. 19, 2003.

[68] Mawoli, M., 'Liberalization of the Nigerian Telecommunications Sector: a Critical Review' (2009) 7(2). *Journal of Research in National Development*, 102-124.

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[71] Phil Weiser, *Antitrust Doctrine, Competition Policy, and International Dialogue* <https://www.justice.gov/atr/speech/antitrust-doctrine-competition-policy-and-international-dialogue>. Accessed on 7<sup>th</sup> May 2018.

[72] *Ibid.*

[73] *Ibid.*

[74] Eleanor F., 'US and EU Competition Law: A Comparison' [https://piie.com/publications/chapters\\_preview/56/10ie1664.pdf](https://piie.com/publications/chapters_preview/56/10ie1664.pdf). Accessed on 7<sup>th</sup> May 2018.

[75] See Sharon. K. B., *Telecommunications Law in the Internet Age* (Morgan Kaufmann Publishers, 2002) 13.

[76] *Ibid.*

[77] See also Sharon K. B., *Telecommunications Law in the Internet Age* (Morgan Kaufmann Publishers, 2002) 12.

[78] Eleanor F., 'US and EU Competition Law: A Comparison' [https://piie.com/publications/chapters\\_preview/56/10ie1664.pdf](https://piie.com/publications/chapters_preview/56/10ie1664.pdf). Accessed on 7<sup>th</sup> May 2018.

[79] Available on [www.legislation.gov.uk/ukpga/1998/41/pdfs/ukpga\\_19980041\\_en.pdf](http://www.legislation.gov.uk/ukpga/1998/41/pdfs/ukpga_19980041_en.pdf). Accessed on 7<sup>th</sup> May 2018.

[80] Till date, the Federal Competition and Consumer Protection Bill currently before the National Assembly is yet to be passed into law.

[81] See s. 33, ss. 90-95 of the NCC Act.

[82] Some drafts regulations are currently under consideration by NCC. For instance, Consumer Code of Practice Regulations 2018 is currently under consideration.

[83] See s. 90 NCA.

[84] Prior to this, the Commission had carried out a Determination of Dominance in 2010 which considered two markets, namely the mobile telephony market and International Internet Connectivity (IIC) market.

[85] Considering the available evidence and submissions of stakeholders, the NCC determined that no licensee held a position of market dominance in the Mobile Telephone Services market. The Commission also determined that no group of two or more licensees held a position of joint or collective dominance in that market. With respect to the International Internet Connectivity market, the Commission also determined that though this market had been traditionally dominated by NITEL, the proposed entrance of at least four players in this market indicated that the IIC market was becoming highly competitive and will remain so on a prospective basis. Thus, the Commission concluded that NITEL was not in a dominant position in the International Internet Connectivity market and that there was no conclusive evidence of collective dominance among NITEL and any or all of the new IIC market entrants.

[86] See Determination of dominance in selected communications markets in Nigeria issued by Nigerian Communications Commission <https://www.ncc.gov.ng/docman-main/legal-regulatory/legal>. Accessed on 11<sup>th</sup> May 2018.

[87] These directions are contained in Paragraph 6.1 (Determination) of the DDSM which provides as follows: As a result of the determination outlined above, the Commission has resolved that the Dominant Operator in the Mobile Voice market shall be required to adhere to the following obligations: (a) Accounting Separation: The Commission will immediately enforce and implement Accounting Separation on the dominant operator (b) Collapse of On-net and Off-net Retail Tariffs: The differential between the on-net and off-net retail tariffs will be immediately collapsed. The tariff for on-net and off-net will be the same, and subject to periodic review; and (c) Submission of Required Details: The Commission may require the dominant operator to submit details on specific aspects of its operations from time to time as the need arises. The determination shall take effect from May 1, 2013 and remain valid and binding on Licensees for the services specified in relevant markets segments of this Section, until further reviewed by the Commission.



[88] s. 98 NCA.

[89] Michael Porter (Harvard Business School Management Researcher) designed various vital frameworks for developing an organization's strategy. One of the most renowned among managers making strategic decisions is the Five Competitive Forces model that determines industry structure.

[90] Available at <https://www.managementstudyguide.com/porters-model-of-competetion.htm> accessed on 7th May 2018.

[91] Michael Porter (footnote 78), 78.

[92] See for more details: <http://interconnectnigeria.com/about-icn/> accessed on 7<sup>th</sup> May 2018.

[93] Bongo A., (footnote 54) 27.

[94] *Ibid.*

[95] Michael Porter (footnote 81).

[96] Okonji, E. Footnote. 54.

[97] Adenikinju, D., 'Review of the Impact of Deregulation in the Telecommunications Industry' (Nigerian Tribune August 23) 19.

[98] *Ibid.*, in August 2003, a license was issued to Glomobile (the mobile arm of Globacom) to commence GSM telephony. In fixed telephony, additional 13 operators have commenced operations since 1999. This represents 1.4 times the number of fixed operators available in 1999, 7 years after deregulation.

[99] In mobile telephony alone, about 4500 direct job have been created and 45,000 indirect employment covering such areas as distributorship and dealership, recharge card hawkers and airtime retailers.

[100] Adenikinju, (footnote 34) 5.

[101] <https://mtnonline.com/products-services/phones-and-devices/nano-sim>. Accessed on 11<sup>th</sup> May 2018.

[102] *Ibid*, This is because the cost charge for the SIM would have been credited in the airtime allowance.

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[104] *Ibid*.

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