



THE MTN + GLOBACOM BREAKUP AND MAKEUP: REGULATORY REVIEW OF INTERACTIONS BETWEEN TELECOMMUNICATIONS COMPANIES IN NIGERIA

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BACKGROUND

The Nigerian Communications Commission (NCC or the Commission) on January 8, 2024 via a Pre-Disconnection Notice (the Notice) of same date¹ notified the general public, including Nigerian subscribers to Globacom of its approval of the Partial Disconnection of Globacom to MTN Nigeria (MTN). According to the Notice, this disconnection was in accordance with Section 100 of the Nigerian Communication Act, 2003 as well as Paragraph 9 of the Guidelines on Procedure for Granting Approval to Disconnect Telecommunications Operators, 2012. This Partial Disconnection was expected to commence from January 19, 2024 and would effectively discontinue outbound calls from Globacom to MTN, allowing only for inbound calls from MTN users to Glo subscribers.

Further and according to the Notice, the disconnection will subsist until otherwise determined by the Commission. This event has necessitated a detailed understanding of how telecommunications companies operating in Nigeria relate with each other as well as the governing laws and subsidiary regulations guiding such interactions.

REGULATORY FRAMEWORK FOR INTERCONNECTEDNESS OF TELCOS IN NIGERIA

Telecommunications companies (Telcos) in Nigeria – in their operations and interactions with customers and with each other are regulated by the Commission. The legislations regulating the interconnectedness of Telcos include but are not limited to:

- a. The Nigerian Communications Act (NCA), 2003;
- b. NCC's Guidelines on Procedure for Granting Approval to Disconnect Telecommunications Operators, 2012 (the ATD Guidelines);
- c. The Nigerian Communications Act - Enforcement Regulations 2004 (the Regulations)

¹ [Pre-Disconnection Notice \(ncc.gov.ng\)](https://ncc.gov.ng)

- d. NCC's Guidelines for Dispute Resolution, 2004
- e. NCC's Guidelines on Technical Standards for Interconnectivity of Networks (TSIN Guidelines)
- f. NCC's Guidelines on Co-location and Infrastructure Sharing 2021

For the purposes of this article, we will specifically look at the NCA 2003, with slight references to the TSIN Guidelines and the ATD Guidelines as applicable to the MTN + Globacom conversation.

INTERCONNECTION OF TELCOS UNDER THE NCA 2003

Chapter VI of the NCA on Economic Regulation, especially in Part 2 of the same chapter contains provisions regulating interconnection between Telcos and places an obligation on them to interconnect. Specifically, NCA provides that if a Telco (whether as a network services or facilities provider) receives a request for interconnection from another Telco, then the Receiving Telco shall have an obligation to interconnect its communications system with the other licensee's network at technically feasible locations in accordance with the other provisions of the Act as well as with the terms of an Interconnection Agreement to be prepared and executed by both Telcos.²

Further, such Interconnection Agreements are to be in writing and are required to comply with the provisions of the NCA as well as such other regulations and guidelines as may be periodically released by the Commission. Additionally, such Interconnection Agreements are to comply with the principles of neutrality, transparency, non-discrimination, fair competition, universal coverage, access to information, equality of access as well as equal terms and conditions.³ The Interconnection Agreement between the Telcos notwithstanding, the Commission is saddled with a lot of responsibilities by the NCA and is even allowed to intervene in negotiations between these negotiating Telcos, and at its instance or at the instance of either or both parties to the Agreement. The Commission is authorized to make binding rulings where:

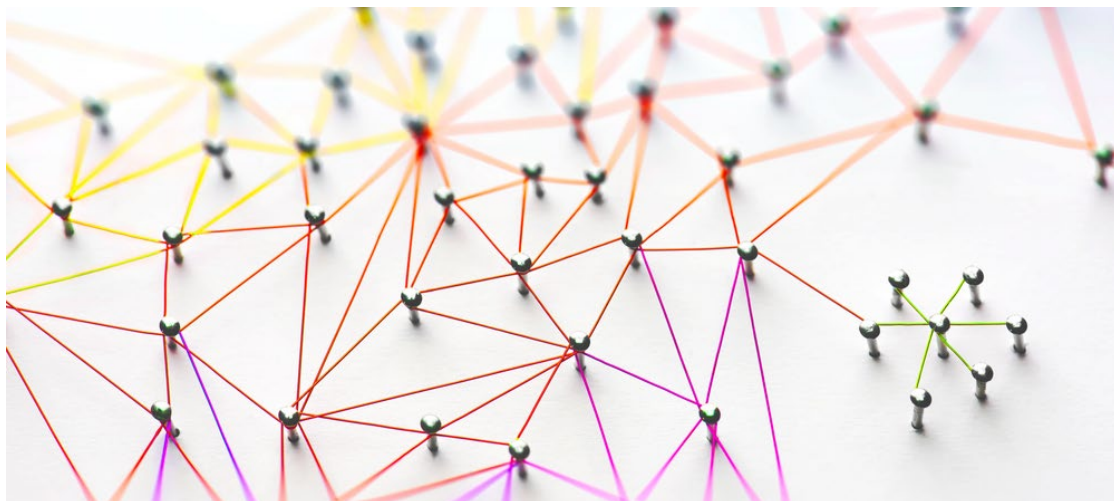
- A. It determines that the Agreement is inconsistent with the NCA or any subsidiary legislation thereto;
- B. Parties fail to reach a consensus on specific issue or delay in reaching such consensus;
- C. The Commission considers it in the public interest to intervene without any invitation from any party to the Interconnection Agreement.

The above provision of the NCA allows the Commission to interfere in any and all discussions and arrangements between Telcos especially in order to protect public interest and ensuring consistency between such agreements and the extant laws as applicable to Telcos. The involvement of the Commission in arrangements between Telcos is again reiterated by the NCA, which requires that such Interconnection Agreements are to be registered with the Commission within 30 (thirty) days from the

² Section 96 of the Nigerian Communications Commission Act, 2003

³ Section 97 of the Nigerian Communications Commission Act, 2003

date of execution,⁴ with the Commission again being granted powers to call for an amendment of such Interconnection Agreements where it is of the opinion that same is inconsistent with applicable laws including the NCA, the Regulations, the ATD Guidelines or the integrity of public network.⁵



The NCA empowers the Commission to make interconnection regulations which may specify model terms and conditions for interconnection agreements between service providers to address issues such as time frame and procedures for negotiations and conclusion of such interconnection agreements; quality and levels of service; rate methodology; intellectual property and commercial information protection et.al.⁶ Again, the Commission's involvement in arrangements between Telcos is further established by the NCA where it provides that a Telco shall not at any time and in any circumstance disconnect or discontinue interconnection to any interconnecting Telco without the prior written approval of the Commission⁷ – hence the Commission's active participation in the MTN + Glo "breakup".

The NCA, while regulating the process of interconnection between Telcos, requires a Telco providing network facilities or network services to provide access to their network facilities or services listed in their Access List⁸ to other Telcos providing similar network facilities, network services, applications services and content applications services. This access is to be of at least the same or more favourable technical standard and quality as that of the Telco providing the access. A Telco's Access List is to contain information on its network facilities and network services as well as other facilities and services which facilitate its supply of network or application services. The Commission is also mandated by the NCA to maintain a register of all such facilities.⁹

⁴ Section 98 (1) of the Nigerian Communications Commission Act, 2003

⁵ Section 98 (3) of the Nigerian Communications Commission Act, 2003

⁶ Section 99 of the Nigerian Communications Commission Act, 2003

⁷ Section 100 of the Nigerian Communications Commission Act, 2003

⁸ Access List is a list of a Telco's facilities or services as established in Section 101 of the Nigerian Communications Commission Act, 2003

⁹ Section 102 (2) of the Nigerian Communications Commission Act, 2003

TECHNICAL STANDARDS FOR INTERCONNECTIVITY OF NETWORKS (TSIN)

The TSIN provides details on the technical aspect of interconnectivity between Telcos, especially in terms of their physical connection as separate networks, with the aim of allowing users of those networks to communicate with each other. The TSIN's objectives are geared towards ensuring inter-operability between Telcos to achieve a predictable result – which is the interconnectivity of users of different networks so that these users do not have to make major adjustments to account for differences in product or services as provided by each individual Telco.¹⁰ The TSIN is divided into three different chapters making provisions for:

1. **General Principles** – which provides for objectives of the TSIN as well as interconnection principles and issues to be considered by Telcos in the course of their negotiations prior to interconnection;
2. **Interconnect Provisioning** – which addresses technical and operational issues, interconnection provisioning procedures, Peer to Peer Interconnection, Provisioning, Testing and Commissioning of Interconnect Facilities as well as disputes that may arise in the course of interconnection, among others ;
3. **Network and Systems Specifications** – which addresses issues on Network and Transmission Requirements for Interconnection, Calling Line Identification, Interconnection in Wireless Mobile Networks, Collocation and Infrastructure sharing, Architecture of Interconnect Link among other issues.

GUIDELINES ON PROCEDURE FOR GRANTING APPROVAL TO DISCONNECT TELECOMMUNICATIONS OPERATORS, 2012 (THE ATD GUIDELINES)

The ATD Guidelines were issued by the Commission further to its powers under the NCA to grant approvals for the disconnection of a Telco and majorly applies to the dispute between MTN and Globacom which led to the partial disconnection.¹¹ The Guidelines contain provisions to guide the procedure of granting approvals by the Commission for the disconnection of a Telco Licensee (*who holds an individual licence*) and to ensure that such process is founded on transparency, certainty, and fairness.

Typically, a Telco as a Network Operator receives tariffs paid by subscribers to such Telco. Such tariffs are inclusive of interconnection charges and a Telco upon receiving same is required to ensure that it deducts and sets aside the interconnection fees payable to its interconnect partners i.e other Telcos with whom it has executed an Interconnection Agreement and with whom it has an arrangement, in line with the mutually agreed terms of the executed Interconnection Agreement.¹² The issue of payment of these interconnection fees formed the basis of MTN's application to

¹⁰ Paragraph 2.2 of the TSIN

¹¹ Paragraph 1 (1) (a) of the ATD Guidelines

¹² Paragraph 1(3) of the ATD Guidelines

disconnect from Globacom. Under the ATD Guidelines, the Commission is not required to consider any disconnection request issued by a Telco against another unless the following conditions have been met:¹³

- a. There is a subsisting Interconnection Agreement between both Telcos which has been duly filed with the Commission;
- b. There is an accurate billing system between the Telcos which is consistent with the standards and specifications determined by the Commission. Telcos are barred from having a billing system which is not type-approved and in compliance with such standards as determined by the Commission;
- c. Both Telcos have fully exhausted all dispute resolution options contained in their Interconnection Agreements for resolving the dispute, billing or other debt issues in question.

The ATD in considering the detrimental effects that a disconnection approval by the Commission will have on subscribers of a disconnected Telco, provides that the Commission in issuing such approval shall be guided by the need to protect the interests of such subscribers.¹⁴ The Commission in issuing such approval is limited to disconnect only out-bound calls from a Respondent Telco's network.¹⁵ In the event that such disconnection is on grounds of indebtedness, any revenue generated from the termination of calls on a debtor Telco's network is to be used to set off its indebtedness.¹⁶

Every Telco (*as an Applicant*) has a right to apply to the Commission for approval to disconnect an interconnected Telco (*Respondent*) for reasons including:¹⁷

- a. Respondent's failure to settle interconnection indebtedness after it becomes due;
- b. Where an Interconnection Agreement executed between the Applicant and Respondent has been terminated;
- c. A breach of the Interconnection Agreement by the Respondent;
- d. Acts by the Respondent contrary to the terms of its licence with regards to interconnection;
- e. Any other reasons established by the NCA or other subsidiary legislation made by the Commission.

The Commission treats applications to disconnect in two categories – debt related reasons and other reasons. In this regard, the Commission has provided a disconnection form to be used by an Applicant Telco in a dispute involving indebtedness of a Respondent Telco, in the manner of **NCC Disconnection Form 1** and which is available as an appendix to the ATD Guidelines and on the Commission's website. This NCC Disconnection Form 1 is to be completed in triplicate and forwarded to the Commission under a covering letter with a

¹³ Paragraph 2 (1) (a) of the ATD Guidelines

¹⁴ Paragraph 2 (2) of the ATD Guidelines

¹⁵ Paragraph 2 (3) of the ATD Guidelines

¹⁶ Paragraph 2 (3) of the ATD Guidelines

¹⁷ Paragraph 3 (1) of the ATD Guidelines

simultaneous electronic copy sent via email to the Commission.¹⁸ Where the request for disconnection is on any issue besides indebtedness, the Applicant need not provide information on debt issues as required by the NCC Disconnection Form 1.

The Commission is given the timeline of 3 working days after receiving a request by an Applicant Telco to forward the request to a Respondent Telco, requiring such Respondent to respond within 5 working days as to why the Commission should not grant the approval for the disconnection. The Respondent Telco is to provide its defence under a covering letter to the Commission, accompanied by a duly completed NCC Disconnection Form 2 in triplicate. Subject to further extension (maximum of 3 days), a Respondent Telco's failure to provide a written response to the Commission is taken as an indication of a lack of defence and allows the Commission to take a decision based on the submissions of the Applicant Telco.¹⁹

The ATD Guidelines provides the following conditions for the grant of an approval to disconnect for reason of indebtedness:²⁰

- a. Applicant has paid all its regulatory fees to the Commission;
- b. Applicant had exchanged Call Data Records (CDR) with the Respondent on demand and such CDR have been reconciled and outstanding amount has been agreed by both Telcos;
- c. The debt must be outstanding for 60 calendar days inclusive of the timeline for payment as agreed by the Telcos in their Interconnection Agreement;
- d. For recurring indebted Telcos, the duration allowed for the indebtedness may be reduced to 45 calendar days inclusive of the timeline for payment as agreed by the Telcos in their Interconnection Agreement;



The Commission is also given the power to invite parties to a hearing meeting upon receiving an application by an Applicant Telco. In the course of the meeting, where a Respondent Telco shows demonstrable efforts by payment of at least 50% of the indebtedness, the Respondent Telco would be required to sign an undertaking on

¹⁸ Paragraph 3 (2) of the ATD Guidelines

¹⁹ Paragraph 3 (6) of the ATD Guidelines

²⁰ Paragraph 5 of the ATD Guidelines

terms acceptable to the Applicant Telco. Refusal to sign same by the Respondent Telco would result in the grant of approval to disconnect by the Commission. The Commission is mandated to communicate its decision to the parties with 15 working days of its receipt of all requested documents or conclusion of hearing.

Pre-Disconnection Notice

The ATD mandates the Commission to publish a notice to the subscribers of a Respondent Telco, where such Respondent Telco fails to pay its indebtedness as at a date agreed in the undertaking. This Pre-Disconnection Notice is to inform the subscribers of the Respondent Telco's inability to pay its indebtedness as well as the possibility of a disconnection from the network of the Applicant Telco and is to be published in two national newspapers and by SMS to all subscribers of the Respondent/Debtor Telco.²¹

The Commission is precluded from publishing any notice to subscribers unless prior notice of such approval to disconnect has been given to both the Applicant and the Respondent to be disconnected.²² In every case where notice is given to a Respondent Telco, such notice is required to include a directive to settle any indebtedness within 3 working days from the date of the receipt, failing which notice of the disconnection shall be published to subscribers of the Respondent Telco. The Commission is also given the power to authorize an Applicant Telco to partially disconnect a Respondent Telco on terms to be decided by the Commission. Such partial disconnection is limited to the disconnection of only outbound calls from the Respondent Telco's network to the Applicant Telco's network. This seems to be in tandem with the MTN and Globacom disagreement.

Reconnection

Where a Telco has been disconnected by the Commission for reason of indebtedness, the Interconnection Agreement as executed by the parties will automatically terminate and such Respondent Telco shall only be reconnected to the Applicant Telco upon the execution of a new Interconnection Agreement between both parties and a total liquidation of all outstanding debts. In order for this reconnection to be made to the Applicant Telco, the Respondent Telco shall be required to provide a Bank Guarantee to the Applicant Telco to ensure prompt payment of Interconnection Fees.²³

CONCLUSION

As regards the MTN + Globacom issue, the NCC in a yet to be published statement issued a 21-day extension to Globacom to resolve its debt with MTN. This was on the basis of an amicable discussion between parties to resolve the dispute. Accordingly, the Commission has put the partial disconnection on hold for a period of 21 days commencing from 17 January, 2024.

²¹ Paragraph 7(1) of the ATD Guidelines

²² Paragraph 8(1) of the ATD Guidelines

²³ Paragraph 13 of the ATD Guidelines

From the review of the applicable laws and guidelines as provided by the NCC, the Commission has shown its continuous interest and commitment to participate in the telecommunications sector, especially regarding interactions and interconnectivity of Telcos. Globacom's disconnection from MTN would have possibly had detrimental effects on Globacom's market share which stands at 27.86%,²⁴ and as such, there is wisdom in pursuing an amicable settlement. While the Commission's continuous intervention in interactions and disputes between market players will serve to ensure fairness and good faith, while also avoiding the delays and complexities typically associated with traditional litigation, it is necessary to ensure that such intervention is done in consideration of principles of contract such as privity, freedom to contract and sanctity of agreements between parties. This is even more necessary considering that the Commission is typically privy to and approves Interconnection Agreements before they are effected between the relevant parties and as such, parties should also be largely guided by the terms of the agreements.

²⁴ [Industry Statistics \(ncc.gov.ng\)](http://ncc.gov.ng/Industry-Statistics)