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COMMENTS ON THE CONSULTATION PAPER ON DOMINANCE IN SELECTED TELECOMMUNICATIONS MARKET

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Comments on NCC's Consultation Paper on Dominance in Selected Markets

1. Mobile Telephony market

The Commission appears to have adopted a technology neutral stance. Notwithstanding this, it is our humble submission that the mobile telephony market comprises CDMA and GSM operators. The CDMA operators having been previously restricted to geographic area code jurisdictions are now marginal players in a market where the GSM operators have dominant market shares on account of the earlier disadvantages suffered by CDMA operators during the asymmetric interconnection regime skewed in favour of GSM from 2001 to 2006 and the regulatory constraints to CDMA operators highlighted above. The commission should also take this into account in evaluating who a dominant operator is.

Therefore the correct construct of the mobile telephone services market should of necessity include the new CDMA-UASL operators, who are entering a market collectively dominated beyond all doubts, by the leading three (3) GSM operators.

As we had noted in our previous submission to the NCC in February 29, 2006; "prior to the introduction of Unified Access Services Licence (UASL) in 2006, the regulatory environment was not technology neutral". Limited mobility led to heavy disadvantages on the part of operators like ZOOM, who had to maintain separate networks in each city or area code city and consequently lost the advantages of scale operation derivable from the efficiencies of connected networks and full mobility, for five (5) operating years as a result, CDMA operators remained small against the weight of the heavy advantages enjoyed by their GSM counterparts on account of the regulatory thrust.

In conclusion, the mobile telephone services definition should take into cognizance the existence of ten (10) not five (5) players; to be described as national mobile services operators. Where there are ten players, the relevant question should then be: does any small group control up to 90 % of the market? If the answer is positive, that establishes collective dominance for our purpose. The regulatory direction should therefore be geared towards encouraging the new entrants for a fresh term of years.

2. Control of essential facilities

As a result of the first mover advantage MTN has, it has been able to capture a substantial chunk of the market in Nigeria, MTN has extensive network coverage nationwide. It also has control over essential infrastructure like transmission backbone and has laid optic fiber all over the country. It is true that these facilities needed by smaller carriers to provide service are prohibitively expensive to replicate. In most cases MTN is not so lenient on collocation and sharing of infrastructure. Even when it agrees to collocate, there is evidence that it prices essential inputs higher than it implicitly charges itself for internal use of such facilities. For instance an MTN transmission link cost as much as N1.3million per month even though such a link should normally not cost more than $200 per month in other climes. This incumbent advantage is used subtly to exclude rival networks from participation in markets that are strategic thereby lessening competition. Moreover, control of such facilities offers the incumbent an opportunity to engage in a "price squeeze" of rivals to the extent that for every N1 (One naira) generated by PTOs as much as 65k (sixty five kobo) in some instances is paid to MTN. The NCC will need to re-introduce asymmetric interconnection charges in favor of the disadvantaged small players and promote greater access to shared infrastructure by access orders and reference offers.

3. Relative size of MTN operations and Internal economies of scale

Aside from the fact that MTN employs about the same number, or even fewer personnel than each of the other two major carriers as rightly observed by the commission, it is an established fact that a large subscriber base and off-net in-coming calls are positively correlated thus the larger networks under a regime of high symmetric termination rates, invariably benefit massively to the detriment of the smaller operators. This phenomenon has the potential to erect entry barrier against new entrants such as PTOs just entering into full mobility. Already such tendencies are evident in the introduction by leading GSM operators of retail tariffs to their subscribers that are lower than wholesale tariffs charged to small operators and new entrants. Internal economies of scale further makes it possible for larger networks to tap from such savings to subsidize production for competitive markets aimed at bonding subscribers to their network. We are all living witnesses to the introduction of free midnight calls by MTN and other larger providers. As obtainable elsewhere, the Commission needs to explore further pricing rules that promote entry into a network industry dominated by incumbent carriers like ours. For instance, in the USA, the FCC Act makes provision for pricing rules such as **"reciprocity" "Imputation"** and **"unbundling".**

4. Negotiating position of customers

The switching cost for the subscribers is also essential. It may be costly for subscribers to switch to new operators even though the latter would price more aggressively. Subscribers may be tied to the network by fidelity formulas and contracts. Lack of number portability becomes an issue here. MTN being the pioneer operator, most of the subscribers are already used to their MTN numbers and it has become a symbol of identity for many. Added to this fact, is the company's extensive network coverage. One way of addressing negotiation power is to implement number portability. This will enable a subscriber to move to another network while still retaining the number. However, while number portability is laudable, it is important to also state that it may not readily favour CDMA mobile operators because the CDMA technology operates on a so called "closed-model" as against the "open-model" of GSM. The CDMA close-model makes it impossible right now for their subscribers to switch between networks as one operator's "RUIM" card may not readily work on another until this issue is decisively resolved.

5. Ease of entry

In any market where there is barrier to new entrants, the position of the existing firms is usually strengthened. The restrictions on market entry favour MTN and other GSM operators like Zain and GLO. The barriers have to be viewed in terms of legal barriers, natural barriers in terms of spectrum scarcity, economic barrier etc. Given the existence of such barriers, the NCC must find new ways of check-mating activities of incumbents that have the propensity of lessening competition. Pricing adjustments to wholesale services like i+nterconnection, long distance carriage, Internet bandwidth, etc are therefore mandatory for a level playing field.

6. Rate of Technology change

Most GSM operators have launched 3 G services. The introduction of 3G services has undeniably boosted investment and market growth, and this will effectively change the industry landscape in the medium to long term. Some operators have commenced development of innovative applications on the new platform. However, 3G services like data hitherto used to be the main preserve of CDMA operators since their ability to compete with the Big three on the voice side was hampered by financial and regulatory constraints. The ultimate effect of granting 3G licenses to GSM operators who are already dominant players in voice market has further complicated this position. The commission may need to define market boundaries for the various players.

7. Joint /Collective Dominance

The mobile telephony market appears to be an oligopolistic market i.e., a market with few sellers. As such, collective dominance cannot be ruled out in such a market and there could be tacit collusion to increase or control prices above competitive price even without concluding a cartel agreement. MTN, GLO, and ZAIN are in effective control of infrastructure, transmission backbone, fiber optic, international gateway etc. The fact that they carry traffic for other operators and generate high interconnect fee for domestic and International calls should further lend credence to this.

8. International Internet Connectivity Market

The level of current and anticipated competitors in the IIC market is such that Nitel-SAT3 and GLO1 whether operating individually or collectively will constitute dominant providers. Regulatory intervention is required to prevent Globacom from acquiring Nitel in the on-going bid to privatize the government entity. The Internet market is still evolving. With increase in computer penetration, the Internet penetration will triple. The price for International Internet connectivity needs to be reduced so that Internet service can gain greater penetration. The way to achieve this is for the Commission to encourage healthy competition and a level playing field for the operators. Therefore, our position is that the commission should find ways of separating the independent carriers from the retail service providers. Allowing an operator to be an independent bandwidth provider and also Internet retail service provider may give room for dominance in the market unless the prices will be controlled by Regulation. We have already seen the destruction of a major foreign exchange earner for Nigeria through price manipulations. The large GSM operators especially Glo as a national carrier, have dropped their in-bound international interconnect rates way below the local interconnect rates while holding on to the high interconnect rate for outbound international call rates.