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LEGAL REGULATION AND INSTITUTIONAL FRAMEWORK FOR THE NIGERIAN TELECOMMUNICATIONS INDUSTRY: AN OVERVIEW

ABSTRACT

With the roll-out of the Global Systems for Mobile Communications in commercial quantity in Nigeria, the Nigerian telecommunications tempo has metamorphosed. The legal and regulatory frameworks have therefore experienced exponential change as a result of the need for the operators to provide minimum quality of service and meet minimum global standards. The need to re-visit the institutional regime of the Nigerian telecommunications industry has therefore become imminent as many regulatory statutes which were hitherto not so functional in regulating telecommunications have become functional and this has made regulatory overlaps a glaring phenomenon in the Nigerian telecommunications industry. Hence, it is expedient to juxtapose the operational frameworks of the various regulators in the telecommunications industry. This paper therefore is an attempt to have an overview of the regulatory and institutional frameworks for the Nigerian telecommunications industry with a view to analyzing the functions of the industry's regulators, their establishment and staffing.

1.0: INTRODUCTION

The telecommunications industry is a key part of the economy in the world and of crucial strategic importance for the economy's competitiveness. Resultantly, the aim and objective of market liberalization includes not only the benefits to consumers of improved prices, choice, quality of service and widened product range but also overall economic development.¹

Regulation of telecommunications is of utmost importance as a

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¹ See Organization for Economic Co-operation and Development (OECD) Reviews of Regulatory Reform in Telecommunications <<http://www.ictregulation toolkit.org/en/publication.2382.html>> accessed on 20 July 2010.

tool for regulatory reforms in the telecommunications industry. Regulatory reform has emerged as an important area in telecommunications sector and for regulatory reforms to be beneficial, therefore, the regulatory regimes need to be transparent, coherent and comprehensive, spanning from establishing the appropriate institutional framework to liberalizing network, industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.²

In this paper, regulatory authorities of telecommunications industry in Nigeria are considered within the Nigerian legislative framework. This is to ensure coherence and logical arrangement of the work. It covers the main regulatory bodies that have direct or indirect link with telecommunications industry and services within the Nigerian legislative competence. The paper therefore examines the establishment, powers, staffing and functions of each of the regulatory bodies.

2.0: NIGERIAN COMMUNICATIONS COMMISSION (NCC)

Regulatory bodies are established in different countries. These bodies are to regulate the activities and affairs of telecommunications industry. In Nigeria, the specific regulatory body in the telecommunications industry is the Nigerian Telecommunications Commission (NCC).

Establishment

NCC was first established in 1992 by the Nigerian Communications Commission Act No 75 of 1992. By the enactment of the Nigerian Communications Act 2003,³ which repealed the Nigerian Communications Commission (NCC) Act, the establishment provision of the NCC can now be found in Section 3 of the Act⁴ with responsibility for the regulation of the communications sector in Nigeria.⁵

² Ibid.

³ Nigerian Communications Act 2003 cannot be found in the original Laws of the Federation of Nigeria 2004 since it contains all Acts of the National Assembly or deemed to have been made by the National Assembly up till December 2002 by virtue of Revised Laws of the Federation of Nigeria Edition Act 2004. So since the Nigerian Communications Act 2003 was passed into law in 2003, and is now embodied in *Cap N97 Laws of the Federation of Nigeria 2004* as an attachment thereto.

⁴ Nigerian Communications Act, *Cap N 97 Laws of the Federation of Nigeria 2004*.

⁵ Section 3 (1) of the Nigerian Communications Act, *Cap N 97 Laws of the Federation of Nigeria 2004*.

Functions of Nigerian Communications Commission

The commission has the following functions under the Act:

- (a) the facilitation of investments in and entry into the Nigerian market for provision and supply of communications services, equipment and facilities;
- (b) the protection and promotion of the interests of consumers against unfair practices including but not limited to matters relating to tariffs and charges for and the availability and quality of communications services, equipment and facilities;
- (c) ensuring that licensees implement and operate at all times the most efficient and accurate billing system;
- (d) the promotion of fair competition in the communications industry and protection of 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;
- (e) granting and renewing communications licences whether or not the licences themselves provide for renewal in accordance with the provisions of this Act and monitoring and enforcing compliance with licence terms and conditions by licensees;
- (f) proposing and effecting amendments to licence conditions in accordance with the objectives and provisions of this Act;
- (g) fixing and collecting fees for grant of communications licences and other regulatory services provided by the Commission;
- (h) the development and monitoring of performance standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria having regard to the best international performance indicators;
- (i) making and enforcement of such regulations as may be necessary under this Act to give full force and effect

to the provisions of this Act;

- (j) management and administration of frequency spectrum for the communications sector and assisting the National Frequency Management (NFM) Council in developing a national frequency plan;
- (k) development, management and administration of a national numbering plan and electronic addresses plan and the assignment of numbers and electronic addresses therefrom to licensees;
- (l) proposing, adopting, publishing and enforcing technical specifications and standards for the importation and use of communications equipment in Nigeria and for connecting or interconnecting communications equipment and systems;
- (m) the formulation and management of Nigeria's inputs into the setting of international technical standards for communications services and equipment;
- (n) carrying out type approval tests on communications equipment and issuing certificates therefor on the basis of technical specifications and standards prescribed from time to time by the Commission;
- (o) encouraging and promoting infrastructure sharing amongst licensees and providing regulatory guidelines thereon;
- (p) examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration;
- (q) preparation and implementation of programmes and plans that promote and ensure the development of the communications industry and the provision of communications services in Nigeria;
- (r) designing, managing and implementing Universal Access strategy and programme in accordance with Federal Government's general policy and objectives thereon;
- (s) advising the Minister on the formulation of the

general policies for the communications industry and generally on matters relating to the communications industry in the exercise of the Minister's functions and responsibilities under this Act;

(t) implementation of the Government's general policies on communications industry and the execution of all such other functions and responsibilities as are given to the Commission under this Act or are incidental or related thereto;

(u) generally advising and assisting communications industry stakeholders and practitioners with a view to the development of the industry and attaining the objectives of this Act and its subsidiary legislation;

(v) representation of Nigeria at proceedings of international organisations and fora on matters relating to regulation of communications and matters ancillary and connected thereto; and

(w) general responsibility for economic and technical regulation of the communications industry.⁶

Qualification for Appointment as Commissioners

Commissioners of the commission shall be persons of recognized standings, qualification and experience in one or more of the field of financing or accounting, law, consumer affairs, telecommunications engineering, information technology, engineering generally and public Administration.⁷ A person shall not be appointed or remain in office as a commissioner, however, in the following circumstances:

- if he is not a Nigerian citizen
- if he is not ordinarily resident in Nigeria
- if he is a serving member of the National Assembly, State House of Assembly or any Local Government Council
- if he is incapacitated by any physical illness
- if he has been certified to be of unsound mind

⁶ Section 4 (1) of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

⁷ Section 7 (1) of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

- if he has been convicted in Nigeria or elsewhere of a criminal offence, being a misdemeanor or felony
- if he has at any time been removed from an office of trust on account of misconduct⁸

Subject to the provision relating to disqualifications of the commission, all Commissioners are appointable by the President of the Federal Republic of Nigeria from the 6 geo-political Zones of Nigeria, subject however to the confirmation of the Senate.⁹

Management and Staffing of the Commission

The Chief Executive of the Commission has the primary responsibility for the execution of the policies and decision of the Board and for the day-to-day management and supervision of the activities of the Commission.¹⁰ The Chief Executive and Executive Commissioners shall be persons possessing sound knowledge of and ability in the organization and management of communications matters and holds office for a term of 5 years, renewable for another term and no more.¹¹ The Board has the responsibility of appointing a secretary for the commission. The secretary shall not be a commissioner but shall possess relevant and adequate professional qualifications with not less than 10 years post-qualification experience.¹² It is the duty of the Secretary to keep the corporate records of the commission and perform such other duties and functions as the Chairman or the Chief Executive may from time to time direct.¹³

The commission has powers to appoint such number of other persons as it deems necessary as staff of the commission.¹⁴

⁸ Section 7 (2) of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

⁹ Section 8 (1) of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

¹⁰ Section 12 (1) of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

¹¹ Sections 12 (2) & 13 of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

¹² Section 14 (1) of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

¹³ Section 14 (2) of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

¹⁴ Section 15 (1) of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

3.0: NATIONAL FREQUENCY MANAGEMENT COUNCIL (NFM)

The National Frequency Management Council was established by the Nigerian Communications Act with membership and functions as set out in the Act itself.¹⁵

Membership of the Council

The membership of the National Frequency Management Council (hereinafter referred to as 'the Council') is made up of a Chairman who shall be the Minister responsible for communications; one representative of the Federal Ministry for the time being charged with the responsibility for communications; one representative of the Federal Ministry of Aviation; one representative of the Federal Ministry of Transport; one representative of the Federal Ministry of Science and Technology; two representatives of the Nigerian Communications Commission; one representative of the National Broadcasting commission and one representative of firm the security agencies of the Federal Republic of Nigeria.¹⁶

Functions of the Council

The National Frequency Management Council has the following functions:

- (a) assist and advise the Minister on the representation of the Federal Republic of Nigeria and carrying out ancillary functions at international and regional spectrum allocation bodies including but not limited to International Telecommunications Union (ITU);
- (b) assist and advise the Minister on the preparation and negotiation of bilateral and multi-lateral spectrum allocation treaties with other sovereign administrations;
- (c) assist and advise the Minister on the preparation, negotiation and adoption of spectrum coordination agreements that are applicable to cross-border spectrum uses involving the Federal Republic of

¹⁵ Section 26 of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

¹⁶ Section 27 of the Nigerian Communications Act, Cap N 97 Laws of the Federation of Nigeria 2004.

products and services²². In Nigeria, there are various laws that regulate consumer affairs and protection.²³With particular reference to telecommunications industry, the Nigerian Communications Act provides for consumer protection and quality of service.²⁴ However, the Consumer Protection Council regulates consumer affairs generally, including telecommunications industry.

The Consumer Protection Council Act²⁵ established the Consumer

The following are various foreign laws and regulations on Consumer Protection: The Consumer Protection Act, 1986 of India which provides for the Central Consumer Protection Council and the State Consumer Protection Council in Sections 4 and 7 of the Act. See <http://ncdr/nic.in/_L_1.html#HK149661864> accessed on 18 August 2010; UK Unfair Terms in Consumer Contracts Regulations 1999, Consumer Credit Act 1974 and Unfair Contract Terms Act 1974. See Consumer Protection Law in the Republic of China (Taiwan) and having Consumer Protection Commission of Executive Yuan Serving as Ombudsman supervising, coordinating, reporting any unsafe products/services and periodically reviewing the legislation. See <[http://www.wikipedia.org/wiki/Republic_of_China_%E2%8A%B6%E2%80%A2/http://www.wikipedia.org/wiki/Republic_of_Germany_\(that_is_the_August_2010:_Article_12_of_the_Basic_Law_for_the_Republic_of_Germany_\(that_is_the_August_2010:_Trade_Practices_for_the_Federal-Republic-of-Germany\)](http://www.wikipedia.org/wiki/Republic_of_China_%E2%8A%B6%E2%80%A2/http://www.wikipedia.org/wiki/Republic_of_Germany_(that_is_the_August_2010:_Article_12_of_the_Basic_Law_for_the_Republic_of_Germany_(that_is_the_August_2010:_Trade_Practices_for_the_Federal-Republic-of-Germany)>)> accessed on 18 August 2010; Trade Practices Act 1974 of Australia and the Australian Competition and Consumer Commission is the Regulatory body of Consumer Protection in Australia. See <http://www.wikipedia.org/wiki/Australian_Competition_and_Consumer_Protection> accessed 18 August 2010; In the United States, a variety of laws of both federal and state levels regulate consumer affairs such as the Fair Debt Collection Practices Act, Fair Credit Reporting Act.

23 federal or state levels regulate control of the following:
Practices Act, the Fair Credit Reporting Act, Cap C25 LFN 2004; the
These include: the Consumer Protection Council Act, Cap C25 LFN 2004; the Weight and Measures
Standards Organization of Nigeria Act, Cap 559, LFN 2004; the Weight and Measures
Act, Cap W3 LFN 2004; the National Agency for Food and Drug Administration and
Control Act, Cap N1 LFN 2004; the Trade Mark Products (Miscellaneous Offences) Act,
Cap T 12 LFN 2004; the Food, Drug and Related Products (Registration etc) Act, Cap
F33 LFN 2004; the Nigerian Communications Act, Cap N 97 LFN 2004; the Counterfeit
and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act,
Cap C 3 LFN 2004; the Food and Drug Act, Cap F 32, LFN 2004; the Merchandise Marks
Act, Cap M 10 LFN 2004; English Sales of Goods Act of 1789; Sale of Goods Law of
the various State.
the Nigerian Communications Act, Cap N 97 LFN 2004.
Originally the Act was the birth

Act, Cap M 10 LFN 2004; *Enugu State Law*, Cap 10 LFN 2004.
the various State.
See Section 104 of the Nigerian Communications Act, Cap N 97 LFN 2004.
Section C 25 Laws of the Federation of Nigeria 2004. Originally the General Ibrahim
promulgated into law by the Federal Military Government during General Ibrahim
Babangida regime. It was signed into law on 23rd day of November 1992 vide Decree
No 66 of 1992. It automatically became an Act of the National Assembly by virtue of
Section 318 of the Constitution of the Federal Republic of Nigeria 1999.

See Section 104 of the Federation of Nigeria 1992 vide Decree
Cap C 25 Laws of the Federal Military Government during General Abacha
promulgated into law by the Federal Military Government during General Abacha
regime. It was signed into law on 23rd day of November 1992 vide Decree
No 66 of 1992. It automatically became an Act of the National Assembly by virtue of
Section 318 of the Constitution of the Federal Republic of Nigeria 1999.

¹⁸ Consumer Protection from Wikipedia, the Free Encyclopedia <<http://en.wikipedia.org/wiki/consumer-protection>> accessed on 18 August 2010.

20 Ibid.

21 Ibid.

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Protection Council. The council is a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name.²⁶ The council consists of a chairman appointable by the president²⁷ on the recommendation of the Minister of Commerce and Tourism; a person to represent each of the states of the federation on the recommendation of the Governor of each state; and four persons to represent the Federal Ministries of Commerce and Tourism, Industries and Technology, Health and Petroleum Resources.²⁸

Powers and Functions of the Consumer Protection Council

The functions of the Consumer Protection Council (CPC) are to:

- (a) provide speedy redress to consumers complaints through negotiations, mediation and conciliations;
- (b) seek ways and means of removing or eliminating from the market hazardous products and causing offenders to replace such products with safer and more appropriate alternatives;
- (c) publish from time to time, list of products whose consumption and sale have been banned, withdrawn, severally restricted or not approved by the Federal Government or foreign governments;
- (d) cause an offending company, firm, trade, association or individual to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous;
- (e) organise and undertake campaigns and other forms of activities as will lead to increased public consumer awareness;
- (f) encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers;

²⁶ Section 1 (1) of the Consumer Protection Council Act, Cap C 25 Laws of the Federation of Nigeria 2004. For ease of reference, the Act shall henceforth be referred to as the Consumer Protection Council Act, Cap C 25 Laws of the Federation of Nigeria 2004.

²⁷ The President of the Federal Republic of Nigeria.

²⁸ Section 1(2) of the Consumer Protection Council Act, Cap C 25 Laws of the Federation of Nigeria 2004.

(g) issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligation under this Decree;

(h) encourage the formation of voluntary consumer groups or associations for consumers well being;

(i) ensure that consumers' interests receive due consideration at appropriate forum and to provide redress to obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade association or individual;

(j) encourage the adoption of appropriate measures to ensure that products are safe for either intended or normally safe use; and

(k) perform such other functions as may be imposed on the Council pursuant to this Decree.²⁹

In exercise of the above-mentioned functions, the Council has the power to:

(a) apply to court to prevent the circulation of any product which constitutes an imminent public hazard;

(b) compel a manufacturer to certify that all safety standards are met in their products;

(c) cause as it deems necessary, quality tests to be conducted on a consumer product;

(d) demand production of label showing date and place of manufacture of a commodity as well as certification of compliance;

(e) compel a manufacturer, dealer and service company where appropriate, to give public notice of any health hazards inherent in their products;

(f) ban the sale, distribution, advertisement of products which do not comply with safety or health regulations.³⁰

²⁹ Section 2 of the Consumer Protection Council Act, Cap C 25 Laws of the Federation of Nigeria 2004.

³⁰ Section 3 of the Consumer Protection Council Act, Cap C 25 Laws of the Federation of Nigeria 2004.

Appointment and Staffing

The chief Executive of the council is the Director-General who is appointable by the President Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria. The Director-General must possess relevant academic qualifications and practical experience as appropriate for his functions under the law. He is responsible to the council for the execution of the policies of the council and the day-to-day running of the affairs of the council.³¹ The council has the power to appoint other employees to assist the Director-General in the exercise of his functions.³²

5.0: STANDARDS ORGANISATION OF NIGERIA

The Standard Organisation of Nigeria (SON) is the statutory body that is vested with the responsibility of standardizing and regulating the quality of all products in Nigeria.³³ It is submitted that since the Organisation standardises and regulates the quality of all products, and therefore, any discussion on the quality of product and service of telecommunications operation is a discussion on products within the preview of the responsibility of the Standard Organisation of Nigeria.

Establishment of Standard Organisation of Nigeria (SON)

The Standard Organisation of Nigeria (SON) was originally established by the General Yakubu Gowon Military regime in 1971. Then it was

³¹ Section 22 (1) & (2) of the Consumer Protection Council Act, Cap C 25 Laws of the Federation of Nigeria 2004.

³² Section 22 (4) of the Consumer Protection Council Act, Cap C 25 Laws of the Federation of Nigeria 2004.

³³ See the Standard Organization of Nigeria <http://www.nigeriafirst.org/printer_7928.html> accessed on 21 August 2010. Note that the Standard Organizations of Nigeria (SON) has affiliates and these include: British Standards Institute (BSI). See <<http://www.bsigroup.com/>> accessed 21 August 2010; American National Standard Institute (ANSI). See <<http://www.ansi.org/>> accessed on 21 August 2010; German National Standards. See <<http://www.din.de/cmd?level=tpl-home&context=din>> accessed 21 August 2010; Japanese National Standards. See <<http://www.jisc.go.jp/en/jisc/national-std.html>> accessed on 21 August 2010; Korean Industrial Standards. See <<http://www.ats.go.kr/english/cm-01/cm-01.asp?olapcode=ATSU2001>> accessed on 21 August 2010; China National Standards. See <<http://www.sac.gov.cn/english/home.asp>> accessed on 21 August 2010; Ghana Standards Board. See <<http://www.ghanastandards.org/>> accessed on 21 August 2010; South African Bureau of Standards. See <<http://www.sabs.co.za/>> accessed on 21 August 2010; International Organization for Standardization. See <<http://www.iso.org/>> accessed on 21 August 2010.

called the Nigerian Standard Organisation (NSO). The Act establishing the body was eventually amended in 1976 by the then Military regime of General Olusegun Obasanjo. It was later amended by the short-lived regime of Major General Muhammadu Buhari in 1984 and in 1990 it was further amended by the regime of General Ibrahim Babangida.³⁴ The original Act provides the body with the authority to specify and elaborate standards, as well as provide a quality assurance system for commodities, including manufactured, industrial and imported products and services. But the 1976 amendment to the Act conferred on the Minister of Industry the power to declare mandatory industrial standards in respect of products or processes recommended by the Nigeria Standards Council. The 1984 amendment change the name of the body from Nigerian Standards Organisation (NSO) to the Standards Organisation of Nigeria (SON) because the acronym, NSO, created confusion with a newly established security organization, known as Nigerian Security Organisation.³⁵

In 1990, the amendment to the Act conferred partial autonomy on the SON from the Ministry of Industry. The 1990 amendment, however, was a significant turning point for the organisation and its corporate image. Its chief Executive Officer was elevated to the position of Director-General.³⁶ The amendment also provided for the strict enforcement of powers of seizure, confiscation and destruction of substandard products, including powers to seal up premises where defective products are manufactured or stored.³⁷ The Act is now Standards Organisation of Nigeria Act and is embodied in Cap S 9 Laws of the Federation of Nigeria 2004.³⁸

Functions of the Organisation

The following are the functions of the organisation:
(a) to organise tests and do everything necessary to ensure compliance with standards designated and

³⁴ Standards Organization of Nigeria <http://www.nigeriafirst.org/printer_7928.html> accessed on 22 August 2010.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ By Section 1 (1) of the Standards Organisation of Nigeria, Cap S 9 Laws of the Federation of Nigeria 2004. Standards Organisation of Nigeria was established as an integral part of the Federal Ministry of Industries.

approved by the Council,
 (b) to undertake investigations as necessary into the quality of facilities, materials and products in Nigeria, and establish a quality assurance system including certification of factories, products and laboratories.
 (c) to ensure reference standards for calibration and verification of measures and measuring instruments.
 (d) to compile an inventory of products requiring standardisation.
 (e) to compile Nigerian standards specifications,
 (f) to foster interest in the recommendation and maintenance of acceptable standards by industry and the general public.
 (g) to develop methods for testing of materials, supplies and equipment including items purchased for use of departments of the Government of the Federation or a State and private establishments.
 (h) to register and regulate standards marks and specifications,
 (i) to undertake preparation and distribution of standards samples,
 (j) to establish and maintain such number of laboratories or other institutions as may be necessary for the performance of its functions under this Act,
 (k) to compile and publish general scientific or other data—
 (i) resulting from the performance of its functions under this Act. Or
 (ii) from other sources when such data are of importance to scientific or manufacturing interests or to the general public and are not available elsewhere,
 (l) to advise departments of the Government of the Federation or a State on specific problems relative to standards specifications,
 (m) to sponsor such national and international conferences as it may consider appropriate,
 (n) to co-ordinate all activities relative to its function throughout Nigeria and to co-operate with corresponding national or international organisations in

such fields of activity as it considers necessary with a view to securing uniformity in standards specifications, and
 (o) to undertake any other activity likely to assist in the performance of the functions imposed on it under this act.³⁹

Staffing and Organisational Structure of Standards Organisation of Nigeria

The Organisation consist of a Director of Standards, a Secretary and such member of other staff as may be required to assist the Director, and the director, the Secretary and the other member of the staff of the Organisation shall be members of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria.⁴⁰

The highest decision-making body of the Organisation is the governing council which is the Standards Council of Nigeria⁴¹ having the following functions:

- (a) to advise the Federal Government generally on the national policy on standards specification, quality control and metrology;
- (b) to design, establish and approve standards in respect of metrology, materials, commodities, structures and processes for the certification of products in commerce and industry throughout Nigeria;
- (c) to provide the necessary measures for quality control of raw materials and products in conformity with the standard specifications;
- (d) to determine the overall policy of the Organisation in particular with regards to the financial, operational and administrative programmes of the Organisation and to ensure the implementation of the said policy; and

³⁹ See Section 4 (1) of the Standards Organisation of Nigeria, *Cap S 9 Laws of the Federation of Nigeria 2004*.

⁴⁰ Section 1 (2) & (3) of Standards Organisation of Nigeria, *Cap S 9 Laws of the Federation of Nigeria 2004*.

⁴¹ Section 2 of the Standards Organisation of Nigeria, *Cap S 9 Laws of the Federation of Nigeria 2004*.

- (e) to carry out other functions imposed on it under the Act or any other written law.⁴²
The council consists of seventeen members and shall be appointed by the Minister of Industries.⁴³

6.0: NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY (NESREA)

Prior to the dumping of toxic waste in Koko village in Delta State of Nigeria in 1987, Nigeria was ill-equipped in managing serious environmental issues, as there were no institutional arrangements or mechanisms for environmental protection and enforcement of environmental laws and regulations in the country. Following the Koko toxic waste episode, the Federal Government promulgated the Harmful Waste Decree 42 of 1988, which facilitated the establishment of the then Federal Environmental Protection Agency (FEPA) through Decree No 58 of 1988.⁴⁴

In the wisdom of the Government, FEPA and other relevant Departments in other Ministries were merged to form the Federal Ministry of Environment in 1999, but without an appropriate enabling law on enforcement issues.⁴⁵ Hence the need for a law to address and enforce environmental issues.

The Agency has nexus with telecommunications industry, particularly with regards to technical standards and specifications in the installations of telecommunications masts and towers.

Establishment of National Environmental Standards and Regulations Enforcement Agency (NESREA)

To address the ugly situation of lack of enforcement law in the field of environmental law, the National Environmental Standard and Regulation Enforcement Agency (NESREA) was established as a parastatal of the Federal Ministry of Environment, Housing and Urban

⁴² Section 3 of the Standards Organisation of Nigeria, *Cap S 9 Laws of the Federation of Nigeria 2004*.

⁴³ See Schedule 1 (1) of the Schedule to the Standards Organisation of Nigeria, *Cap S 9 Laws of the Federation of Nigeria 2004*.

⁴⁴ See 'About NESREA, the Establishment of the National Environmental Standards and Regulations Enforcement Agency (NESREA) < <http://www.nesrea.org/about.php>> accessed on 22 August 2010.

⁴⁵ *Ibid*.

Development.⁴⁶ The Agency is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name.⁴⁷ NESREA is charged with the responsibility for the protection and development of the environment, biodiversity conservation and sustainable development in Nigeria's natural resources in general and environmental technology, including liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.⁴⁸ The vision of the Agency is to ensure a cleaner and healthier environment for all Nigerians while the mission is to inspire personal and collective responsibility in building an environmentally conscious society for the achievement of sustainable development in Nigeria.⁴⁹

Functions of the National Environmental Standards and Regulations Enforcement Agency

The functions of the NESREA are to:

- (a) enforce compliance with laws, guidelines, policies and standards on environmental matters;
- (b) coordinate and liaise with stakeholder, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;
- (c) enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate changes, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wide life, pollution, sanitation and such other environmental agreements as may from time to time come into force;

⁴⁶ NESREA was established vide section 1 (1) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007. Its commencement date was 30th July 2007. By Section 36 of NESREA Act, the FEPA Act, *Cap F 10 LFN 2004* has been repealed.

⁴⁷ See section 1 (2) (b) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007.

⁴⁸ Section 2 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007.

⁴⁹ See Standards Organization of Nigeria <http://www.nigeriafirst.org/printer_792.shtml>

- (d) enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement;
- (e) enforce compliance with guidelines and legislation on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;
- (f) enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;
- (g) enforce compliance with regulations on the importations, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector;
- (h) enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector;
- (i) ensure that environmental projects founded by donor organizations and external support agencies adhered to regulations in environmental safety and protection;
- (j) enforce environmental control measures through registrations, licensing and permitting systems other than in the oil and gas sector;
- (k) conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;
- (l) create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions;
- (m) carry out such activities as are necessary or expedient for the performance of its functions.⁵⁰

Staffing and Governing Council of NESREA

The NESREA Act established a Governing Council for NESREA consisting of a Chairman, Permanent Secretary of the Federal Ministry of Environment or his representatives and such other representatives of

⁵⁰ See Section 7 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007.

government parastatals as stipulated by the Act.⁵¹ The Agency has five Directorates and each Directorate is headed by a Director.⁵² The Agency has a Director-General who is the Chief Executive and responsible for the day-to-day administration of the Agency.⁵³ The Agency appoints such other persons as members of staff as it may deem necessary, to assist the Agency in the performance of its functions.⁵⁴

CONCLUSION

This paper has examined the various regulatory authorities that deal with telecommunications in Nigeria one way or the other. The telecommunications sector specific regulator is the NCC. Although NCC has the responsibility of licensing operators, it should, in so doing, take into consideration the functions of other regulatory bodies to avoid regulatory overlap that may tend to adversely affect the populace. Other regulatory bodies also should take cognizance of the fact that the NCC is the sector specific in the Nigerian telecommunications industry. Where, however there is regulatory overlap, concerned regulatory bodies should harmonise their functions, and this can be effected by reaching a compromise or entering into a memorandum of understanding in their regulatory functions or even sponsoring amendment of their statutory functions.

⁵¹ See Section 3 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007. The government parastatals are Federal Ministry of Solid Minerals Development; Federal Ministry of Agriculture and National Resources; Federal Ministry of Water Resources; Federal Ministry of Science and Technology; a representation of the Standards Organizations of Nigeria; a representative of the Manufacturers' Association of Nigeria; a representative of the Oil Exploratory and Production Companies in Nigeria; the Director-General of the Agency; and three other persons to represent public interest, to be appointed by the Minister of Environment. Each representative of the parastatals must not be below the rank of Director from his or her parastatals. See generally Section 3(1) of the NESREA Act.

⁵² Section 10 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007.

⁵³ Section 11 (1) & (2) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007.

⁵⁴ Section 11 (3) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007.