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Africa TMT briefing

This briefing sets out a selection of recent TMT developments in key African markets.

The Africa TMT sector continues to grow. Recent market activity and legal developments are summarised below. These demonstrate a focus in the region on increasing regulation of personal data and increasing access to communications services (including through investment in infrastructure).

Commercial updates

Recent market activity

Ghana

AirtelTigo Merger

Millicom International Cellular S.A. (*Millicom*) and Bharti Airtel Limited (*Airtel*) received approval from the National Communications Authority in October 2017 to merge their operations in Ghana. The merger, the first of its kind in the telecommunications sector in Ghana, saw Millicom and Airtel exercising equal ownership and governance rights in the combined entity branded as AirtelTigo.

AirtelTigo is currently the second largest mobile network operator (*MNO*) in Ghana with a combined customer base of approximately 10 million and a 25 per cent market share. The entities have started to integrate and harmonise their operations by combining resources and services which is anticipated to lead to better voice quality, high speed data services, reinforced network stability and resilience as well as a major boost in mobile financial services through combined agent networks and platforms.

MTN Ghana launches Initial Public Offer of shares

Scancom PLC (*MTN Ghana*), the first MNO in Ghana to be granted a 4G licence, launched an initial public offer (*IPO*) on the Ghana Stock Exchange in May 2018. The IPO involves an offer of up to 35 per cent of its issued shares to the public. The shares being offered comprise both new shares to be issued and existing shares to be transferred. The IPO is primarily as a result of the localization condition attached to the 4G licence granted to MTN Ghana by the National Communications Authority in 2016, following a successful bid for the licence in November 2015. MTN Ghana is required to have 35% Ghanaian ownership pursuant to the 4G licence. The IPO, which is the biggest equity offer on the Ghana Stock Exchange, is expected to close on 31st July 2018, and will make MTN Ghana the first telecommunications company to be listed on the Ghana Stock Exchange.

Kenya

CA disapproves calls for boycott of products and services of its licensees

The Communications Authority of Kenya (*CA*) in November 2017 responded to calls by Kenya's main opposition coalition, the National Super Alliance, to boycott products and services of some of the licensees in the ICT sector, indicating that such a move would disrupt investment in the sector and lead to job losses. The warning by the CA follows calls by opposition politicians who allege that Safaricom aided in the manipulation of the results of the

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Corpus Legal Practitioners (Zambia)

Bennani & Associés LLP (Algeria)

For more information, please contact:

Shawn der Kinderen
Partner
T +31 20 485 7624
E shawn.derkinderen@freshfields.com

Natasha Good
Partner
T +44 20 7832 7659
E natasha.good@freshfields.com

Gabriel Mpubani
Partner
T +44 20 7716 4101
E gabriel.mpubani@freshfields.com

Rob Cant
Partner
T +971 4509 9195
E rob.cant@freshfields.com

8 August 2017 general elections and the 26 October 2017 repeat presidential election. Safaricom has categorically denied these allegations. The CA warned that such attacks have the potential to diminish the faith and confidence that Kenyans have in the ICT sector, which is a critical driver of socio-economic development. It encouraged the aggrieved parties to report any alleged malpractices to the relevant authorities.

Nigeria

9Mobile divestment and search for new investor

A default by 9Mobile (formerly known as Etisalat Nigeria) on a USD1.2 billion facility provided by a consortium of 13 Nigerian banks has led to the divestment by Etisalat (the provider's previous majority shareholder) of its stake in the company to the banks' security trustee, a change in management, a change in brand name and the ongoing attempt to sell the operator to a suitable investor. As at February 2018, media reports indicated that Barclays Africa, the financial adviser appointed by the consortium of lenders to manage the sale of 9Mobile on behalf of the security trustee and remaining shareholders to Teleology Limited, had directed Teleology Limited to make a non-refundable cash deposit of USD450 million before 25 July 2018.

The Nigerian Communications Commission (*NCC*, the telecommunications sector regulator) has indicated that it will carry out due diligence on Teleology Limited to ascertain whether it has the technical expertise and capability to run 9Mobile. This due diligence will commence after confirmation from the Central Bank of Nigeria (*CBN*, Nigeria's banking sector regulator) that Teleology Limited has met all of it financial obligations. If Teleology Limited fails to make the payment by the deadline or pass the technical evaluation, the bid of the reserved bidder, Smile Communications, will be considered.

South Africa

General market updates

In August 2017, Cell C (South Africa's third largest mobile operator) announced that it had concluded its recapitalisation, reducing its net debt to ZAR6 billion. Following the recapitalisation, Blue Label Telecoms (acting via its subsidiary, The Prepaid Company Proprietary Limited) now holds 45 per cent of Cell C, 3C Telecommunications (collectively comprising the holdings of the Employee Believe Trust, Oger Telecoms and broad based black empowerment grouping, CellSAf) holds 30 per cent, Net1 UEPS Technologies Inc. holds 15 per cent, and 10 per cent is held on behalf of Cell C management and staff.

In October 2017, the former Minister of Finance indicated in the medium-term budget policy statement that the South African government would be looking to sell a portion of its 39.3 per cent stake in Telkom SA SOC Ltd.

Uganda

In December 2017 the Uganda Communications Commission (*UCC*) responded to industry comments on draft models developed in a mobile termination rate (*MTR*) and cost of network services study, and noted the need for an MTR glide path to minimise market disruptions. The justification for the MTR is that wholesale voice/SMS termination and interconnect markets are by nature characterised by the dominance of respective MNOs in the provision of interconnection services to third parties that may wish to terminate traffic to the MNOs' customers. The MNOs have no commercial incentive to lower MTRs but may use high MTRs to raise smaller rivals' costs to the detriment of competition and retail customers.

UCC noted that regulation of retail price caps for "off-net minute" should be conducted with caution since such a regulatory approach could have unintended consequences.

Zambia

Mobile Network Operators fined

The Zambia Information and Communications Technology Authority (*ZICTA*), the regulatory body that oversees the information and communication technologies (*ICT*) sector in Zambia, penalised all three MNOs in Zambia (Airtel, MTN and ZAMTEL) a total of ZMW3,150,000 (approximately USD310,000) for failing to adhere to quality service parameters (such as call set-up, success rate, mean opinion score, successful SMS rate, SMS delivery time and HTTP success log-ins) outlined in the Quality of Service Guidelines in December 2017.

The Information and Communication Technologies Act No. 15 of 2009 (the *ICT Act*) under which the Guidelines are issued requires MNOs to meet minimum standards of quality of service. Airtel was fined ZMW450,000 (approximately USD45,000) and MTN and ZAMTEL were each fined ZMW1,200,000 (approximately USD120,000).

Mobile money

Ghana

Bitcoin

The Bank of Ghana has formally stated its position on the licensing position of cryptocurrencies such as Bitcoin, confirming that the use, holding or trading of cryptocurrencies is not currently licensed under the Payments System Act 2003 (Act 662).

Kenya

Mobile money interoperability to lower transfer costs in Kenya

The cost of sending money across networks in Kenya is expected to decrease following the announcement of a pioneering mobile money interoperability agreement between the country's two leading MNOs. Pursuant to the agreement, Safaricom and Airtel made interactions between their respective mobile money platforms seamless with effect from April 2018. The trial phase will go to market after the approval of the Kenyan CA. Telkom Kenya is expected to sign an agreement with the two leading operators at a later stage.

Nigeria

CBN & NCC sign Memorandum of Understanding on Mobile Money Operations

The CBN and the NCC have announced the signing of a Memorandum of Understanding for provision of mobile money operations by telecommunications service providers in Nigeria. Currently, the regulations that govern mobile money operations in Nigeria prevent telecoms service providers from operating mobile money services. This move is in line with the CBN's target to increase the rate of financial inclusion in Nigeria from the current level of 41 per cent to 80 per cent, and to address the demand by telecoms operators for greater involvement in the financial services space.

South Africa

The adoption and availability of mobile money services in South Africa has not progressed as in other African countries, and the attempts by various network operators to launch mobile money services in South Africa have largely been unsuccessful. Studies in South Africa have suggested that while both M-PESA and MTN Mobile Money (both mobile money offerings by the largest network operators in South Africa) were technically feasible, the primary cause for failure was the lack of business viability. South Africa's institutional and regulatory environment limits the product offering, and potential growth is hampered by an end-user market with existing high financial inclusion.

Zambia

Memorandum of Understanding in relation to digital financial services

In March 2015, Financial Sector Deepening Zambia (*FSDZ*) (a national non-profit company) signed a Memorandum of Understanding with the UN Capital Development Fund (*UNDCF*)'s Mobile Money for the Poor programme (*MM4P*) to work jointly on all activities related to increasing uptake and usage of digital financial services (*DFS*). The five year programme aims to increase active usage of DFS from its current level of 2.5 per cent to 15 per cent by 2019 through six strategic streams: policy and regulation; infrastructure; high volume payments; distribution; customers; and providers. FSDZ leads the policy and regulation and infrastructure work streams while MM4P leads in the other four areas. According to the UNCDF, the number of customers using DFS increased to 1.3 million in 2017 from 1 million in 2016, while the number of agents increased to 12,376 from 7,304 in the same period. Zambia's most common mobile money platforms are Zoona, Airtel Money, MTN Mobile Money (which also operates a mobile money based credit product in partnership with Jumo dubbed "Kongola") and the recently launched Zamtel Mobile Money. In addition, "Kwikfin Mobile" is a mobile money based advance facility that has partnered with Airtel, MTN and Zamtel to provide registered users with access to small salary advance facilities. According to a survey carried out by the Helix Institute of Digital Finance/Microsave, Zambia has high levels of agent exclusivity (91 per cent) compared to other countries in Africa. While Zambian DFS agents enjoy the same transaction volumes as other East African nations such as Tanzania and Uganda, their revenues are the lowest. This has been attributed to Zambians making primarily low-value transactions which bring only small commissions for the DFS agents. This is further impacted by high levels of agent-exclusivity. Were providers able to share their DFS agent networks, DFS agent revenues and participation in the provisions of DFS would increase.

Zambia, together with Senegal and Benin, benefits from a five-year USD25 million programme supported by the Mastercard Foundation to accelerate DFS through technical support to service providers. In Zambia, the project is providing support to Airtel, Zoona, Kazang and MTN.

Increasing access and investment in infrastructure

Kenya

Internet penetration hits 112 per cent

The CA has released a report estimating internet penetration in Kenya to have increased to 112.7 per cent during the period from July to September 2017 when compared to figures from the previous quarter, noting that the number of Kenyans accessing and using the internet is on the rise. This estimate reflects an increase of 12.5 per cent from the previous quarter. The figures contained in the report point in particular to an increased uptake of broadband internet, with broadband subscriptions increasing from 15.4 million to 17.6 million during the period from July to September 2017.

There has also been a positive effect on the use of mobile money services: the report indicates that there were 352.4 million mobile commerce transactions valued at KSh714.3 billion (approximately USD7 billion) during that period, while person-to-person transfers amounted to KSh544.1 billion (approximately USD5.4 billion).

Nigeria

Broadband Plan – NCC's renewed commitment to achieve broadband target

The NCC has renewed its commitment to achieve 30 per cent broadband penetration in Nigeria by 2018, as contained in the National Broadband Implementation Plan. In the last quarter of 2017, the regulator announced the commencement of the second phase of the licensing of additional infrastructure companies that will enable the deployment of critical information and communication technology infrastructure in the five outstanding geopolitical zones of Nigeria. The NCC then proceeded to grant a licence to Zinox Technologies and Brinks Integrated Solutions Limited for deployment of metropolitan fibre-optic infrastructure in the south-eastern and north-eastern parts of Nigeria respectively, increasing the number of infrastructure companies to four.

The NCC has also indicated that it will meet with state governments to facilitate approvals required for the deployment of broadband infrastructure.

South Africa

South African mobile operators continue to invest heavily in extending network coverage to serve unconnected communities and accelerate the migration to high-speed mobile broadband networks. There has also been an increased focus on 5G opportunities. For example, in January 2018 MTN partnered with Ericsson to host a live trial of a 5G network demonstrating the capabilities of the technology, and in May 2018 conducted a field trial with an end-to-end Huawei 5G solution. Further, in May 2018 Vodacom indicated that it is currently preparing its network to support 5G and that it would be in a position to launch 5G services, as soon as the necessary spectrum is allocated to it.

Uganda

In January 2018, the UCC Executive Director stated that the radio space/spectrum Frequency Modulation (FM) is oversubscribed and encouraged investment to shift to digital radio.

Zambia

The Zambian government through the ICT Act has provided for the potential to increase access and investment in infrastructure by providing for "co-location" (the accommodation of two or more switches, antennae or other pieces of electronic communications network equipment in or on a single building, tower or other structure). The Act places an obligation on persons licensed to install facilities on public or private land to, when requested in writing by another licensee, negotiate an agreement for co-location with the other licensee wishing to use the same land or property. Where the parties to a proposed co-location agreement fail to reach an agreement, they may refer the matter to ZICTA which in turn may order the parties to undertake co-location on such terms as it may determine. It is possible for a licensee to reject a request to negotiate an agreement for co-location, for example, where the licensee has insufficient space to accommodate the co-location, where the requested co-location may lead to harmful interference, or where other alternatives to co-location are available and have not been explored by the requesting party.

Digitisation

Algeria

The Finance Law of 2018 has introduced an obligation for merchants in Algeria to provide customers with an option to pay via electronic payment terminal from 1 January 2019. The new regulation forms part of the government's initiative to decrease reliance on cash and encourage the use of alternative payment methods.

To further promote e-commerce, a new law (nº 18-05) was published on 10 May 2018, which allows local and international e-trading and marks an important step towards regulating e-commerce by: (i) introducing the obligation to provide customers with an e-contract in respect of goods or services purchased online; and (ii) allowing either e-payment or cash payment against remittance of goods or services.

In addition, a further new law (nº 18-04) was also published on 10 May 2018, which aims to establish the general rules and principles surrounding post and electronic communications in Algeria. The law nº 18-04 aims to promote and encourage the use of electronic communication, and to guarantee the supply of universal postal services across Algeria.

Kenya

Kenya's Ministry of Industry, Trade and Cooperatives launches e-trade portal

The Ministry of Industry, Trade and Cooperatives has launched an e-trade portal that provides a comprehensive point of access to up-to-date trade-related information such as import duties, target markets abroad, trade in services opportunities and Kenya's suppliers of various goods and services, increasing the ability of Kenyans to trade locally and internationally. The e-trade portal will also advise the government on possible options to pursue in order to address emerging trade disputes.

Nigeria

Digital Switch-Over

Although previous targets were missed, the Federal Government of Nigeria has declared the commencement of a phased migration from analogue to digital broadcasting. The Minister of Information was reported to have confirmed that the migration has been conducted in Jos, Plateau State, Illorin, Kwara State, Kaduna, Kaduna State, Osogbo, Osun State, Enugu, Enugu State and Abuja.

South Africa

The new national ICT policy, adopted by the South African Cabinet in September 2016, included a dedicated focus on the digital transformation of public service by using ICT to enhance service delivery to the general public. On 10 November 2017, in line with the recommendations contained in the new national ICT policy, the Minister of Telecommunications and Postal Services published the National e-Government Strategy and Roadmap, the aim of which is to digitise government services while transforming South Africa into an inclusive digital society and economy over a five-year period.

Zambia

National Financial Switch

All 19 commercial banks in Zambia have contributed a total of USD1,862,000 (approximately USD98,000 each) towards the National Financial Switch (*NFS*) project being implemented by the Zambia Electronic Clearing House in collaboration with the Bank of Zambia.

The NFS project intends to connect all commercial banks' electronic payment systems to increase financial inclusion in Zambia while bringing innovation and efficiency, allowing people to easily pay for their goods and services using e-payment platforms (through online banking, electronic funds transfers, Point of Sales (*POS*) and multi-channel mobile to mobile payments). The project, once implemented, will help increase the usage of digital payment channels and create a cash-light society to reduce the amount of cash circulating outside the banking system. This will also increase access points for banking services for customers. Once the NFS is fully functional, all ATMs and POS for banks connected to the NFS will be accessible by customers throughout the country regardless of whether the issued card is VISA enabled (thereby lowering transaction costs). The NFS project is also meant to amplify digital payments for small-value transactions. The first phase of the NFS was expected to be implemented in January 2018 but implementation has not yet occurred.

Legal developments

Cross-border cooperation

Kenya

COMESA in deal to abolish phone roaming charges

In a move that will foster regional integration, member states of the Common Market for Eastern and Southern Africa (*COMESA*) have reached a deal to abolish telephone roaming charges, raising hope for cheaper services for users in the bloc. Ministers noted that users in Africa paid on average 25 per cent of their monthly gross national income (*GNI*) per capita on mobile calls compared to 11 per cent in other developing nations. The Ministers resolved to adopt uniform call rates to help tackle this issue.

Ministers from the bloc stated in a final report that although pricing of voice services in many African countries was becoming competitive and comparable with the rest of the world, the cost of broadband continued to be out of reach of many people.

Reviews of industry codes of practice and policies

Kenya

Draft wireless Broadband Spectrum Policy

The Ministry of Information, Communications and Technology has developed a Draft Wireless Broadband Spectrum Policy aimed at providing a comprehensive review of spectrum management practices to ensure efficient and transparent assignment and use of spectrum. The Policy, drafted to encourage the development of new and innovative wireless services, sets out the framework for the development of electronic communications systems and services to support the implementation of the National Broadband Strategy.

Nigeria

Draft Internet Industry Code of Practice in support of Net Neutrality

The NCC has called for public input into a draft Internet Industry Code of Practice that is designed to: protect the rights and interests of internet service providers and consumers to an open internet; provide jointly agreed and effective solutions to discriminatory traffic management practices; establish adequate safeguards that must be put in place by service providers against unsolicited internet communications; outline the obligations of internet access service providers in relation to the protection of customers' personal data; and establish best practices for internet governance. The Code of Practice will be applicable to internet access service providers and the provision of internet access services within Nigeria. It is unclear when the code of practice will come into effect.

Draft Guidelines on Commercial Satellite Communications

The NCC has published draft Guidelines on Commercial Satellite Communications to regulate "the provision and use of all satellite communications services and networks, in whole or in part within Nigeria or on a ship or aircraft registered in Nigeria". One of the objectives of the Guidelines (which stakeholders and the public have also been asked to review) is to establish a well-developed and organised satellite communications market in Nigeria with an appropriate legal framework that meets international best practices, encourages innovation and guarantees public safety in the rendering of commercial satellite services.

The Guidelines apply to: (a) commercial satellite services operators; (b) operators of space segments and earth stations; (c) satellite gateway service and Global Mobile Personal Communications Systems (*GMPCS*) providers; and (d) both Geo-Stationary Orbit (*GSO*) and non-GSO satellites.

The Guidelines do not apply to military and non-commercial government satellites, radio navigation satellites, amateur satellites, earth exploration and space research satellites, broadcasting satellites and receive-only earth stations.

Consumer protection and competition regulatory updates

Nigeria

NCC Directive – data rollover

In response to demand from subscribers, the NCC is considering plans to require MNOs to offer subscribers at least a 14 day window to rollover their unused data even if the customers do not renew their subscription upon the expiration of their data plan. Currently, any unused data is automatically forfeited if consumers fail to renew their data subscription. The change will enable customers to get better value for money when purchasing data subscriptions. The NCC directed service providers to begin data rollover from the 26 June 2018.

Federal Competition and Consumer Protection Bill

The Federal Competition and Consumer Protection Bill has been passed by both houses of Nigeria's National Assembly and presented to the President for assent. The Bill seeks to create a level playing field for all businesses across various sectors by the development and promotion of fair, efficient and competitive markets in Nigeria. It applies to all businesses and all commercial activities within (or having effect within) Nigeria and extends to undertakings in which the federal, state or local government or any of their agencies have a controlling stake. The Bill will establish a Federal Competition and Consumer Protection Commission and Tribunal, in place of the Consumer Protection Council.

NCC Research on Cost Based Pricing

The NCC has appointed a consultant to begin a study to develop an effective model for determining retail prices for data and broadband services to make the services easily affordable and accessible to the Nigerian public. The study is intended to ensure the affordability and availability of broadband and safeguard fair competition by checking price discrimination, excessive pricing, predatory pricing, margin squeeze and price fixing. The new termination rate for telephony services for the voice segment of Nigeria's telecommunication sector is expected to take effect from 1 July 2018.

South Africa

Competition Amendment Bill, 2017

On 1 December 2017, the Minister of Economic Development published the draft Competition Amendment Bill 2017 for public comment. A primary objective of the draft Competition Amendment Bill, which contains comprehensive proposed amendments to the Competition Act 89 of 1998, is to address structural challenges that constrain the South African economy, namely high levels of concentration and the racially-skewed spread of ownership. The draft Bill includes measures to: strengthen the provisions of the Competition Act relating to prohibited practices, with a particular focus on abuse of dominance; enhance merger regulation through the introduction of provisions relating to 'creeping mergers' and more effective enforcement of conditions; require special attention to be given to the impact of anti-competitive conduct on small businesses and firms owned by historically disadvantaged persons; and strengthen existing provisions relating to market inquiries so that consequential remedial actions effectively address market features and conduct that prevents, restricts or distorts competition in the relevant markets. The draft Bill also provides for the imposition of administrative penalties for all contraventions of the Competition Act, including those contraventions that previously attracted administrative penalties only in the instance of a repeat offence.

Data services market inquiry

In September 2017, following market research which suggested that data prices in South Africa are significantly higher than many other countries, both in Africa and internationally, the Competition Commission commenced a data services market inquiry. The objective of the market inquiry, which is expected to be completed by 31 August 2018, is to determine what factors or features of the market(s) and the value chain may cause or lead to high prices for data services, and to make recommendations as to how the market could be made more competitive and inclusive and how prices for data services can be reduced.

Inquiry into subscription television broadcasting services

On 25 August 2017, the Independent Communications Authority of South Africa (*ICASA*) published a discussion document in respect of its inquiry into subscription television broadcasting services. The inquiry was launched in June 2016 to determine whether there are competition issues in the subscription television broadcasting services sector that require action from ICASA through the imposition of pro-competitive conditions on the relevant licensees. The discussion document sets out ICASA's initial analysis of the subscription broadcasting sector and invited comments on this analysis and its implications for the operation of the sector. The potential remedies ICASA is considering imposing include shortening the duration of long-term contracts, imposing rights splitting and rights divestiture, imposing wholesale-must-offer regulation (such as that imposed by Ofcom on BskyB's premium Sky Sports channels), and requiring set-top box interoperability. Various stakeholders made written submissions in response to this document and participated in public hearings in May 2018. ICASA intends to use these written and oral submissions to determine what further steps, if any, should be taken.

Financial services regulatory updates

South Africa

The growing impact of digital technology in various sectors of the economy, including the financial services sector, was mentioned in the Budget Review published by the South African National Treasury in 2017 and 2018. In particular, noting that fintech hubs have been established in Cape Town and Johannesburg and that the fintech industry caters for changing consumer demands (such as mobile payments) and promotes financial inclusion, the National Treasury indicated that a fintech framework will form part of the much-anticipated Conduct of Financial Institutions Bill, which may also include the introduction of a “regulatory sandbox”-type initiative to encourage innovation within a controlled environment. This Bill is yet to be published for public comment.

Telecommunications regulatory updates

Kenya

ICT Practitioners Bill, 2016 back to Kenya’s Parliament

The ICT Practitioners Bill 2016 aims to regulate the training, registration, licensing, practice and standards of ICT practitioners. The Bill has been met by uproar from industry players as it imposes a requirement on all ICT practitioners in Kenya to be registered under the ICT Practitioners Institute (to be created when the Bill is passed).

The Bill would mean that only registered members of the Institute would be permitted to practice ICT in Kenya. For a person to be eligible as a member, they would be required to be: (a) a holder of at least a bachelor’s degree in an ICT-related field from a recognised university, or have any bachelor’s degree but have at least three years’ experience in ICT, or (b) be a holder of a diploma from a recognised university or be considered by the institute to be a person of “good moral character”, and pass an examination from the institute proving that he/she is fit and proper for registration as a member.

Nigeria

Code of Corporate Governance for telecommunications companies

The NCC has published a revised Code of Corporate Governance (the *Corporate Governance Code*) that is designed to guide the governance of telecommunications companies. The Corporate Governance Code contains provisions regarding the composition and responsibilities of the board of directors, board leadership and ethics, roles of the board, membership of board committees, board appointment process, remuneration and performance evaluation of telecommunications companies. Non-compliance with the Code could lead to the imposition of fines, the suspension of services and the suspension or revocation of licenses. The full list of potential penalties is set out in the Nigerian Communications (Enforcement Processes) Regulations 2005.

The Corporate Governance Code, which was initially published in July 2014 and became effective in November 2016, serves as a guide to operators who fall outside its scope but is mandatory for telecommunications providers that meet the stipulated criteria.

VAS Aggregator Framework and increased regulation for VAS

The NCC has also published a Value Added Services Aggregator Framework (the *VAS Aggregator Framework*) to further regulate the provision of value added services in Nigeria. The VAS subsector of the telecommunications industry in Nigeria has now been formally segmented into four broad segments consisting of: (a) network operators; (b) aggregators; (c) content and application service providers; and (d) developers of content, applications and platforms. Aggregators are tasked by the VAS Aggregator Framework primarily to provide a concentration point to limit the number of devices that are directly connected to the network operators.

The VAS Aggregator Framework also prevents VAS providers from sending marketing messages to subscribers that have not opted to receive such messages. VAS providers are now required to obtain approval of the subscribers prior to sending commercial SMS messages and other value added services. These restrictions follow the NCC’s directive in June 2016 which directed all network operators (through whom such messages are transmitted) to mandatorily implement a “Do-Not-Disturb” facility to enable subscribers of the operators to opt-out of receiving any or some unsolicited promotional or marketing messages. Subscribers who have neither opted-in nor opted-out can only be sent adverts through the following non-intrusive modes: in-call attachment in the form of audio or text messages during ringing or holding periods, end-of-call attachment (i.e. SMS or graphic messages sent at the end of the call) and video or text attachment during a multimedia or video messaging session, internet access or VAS access. Consultations are ongoing on the VAS Aggregator Framework, with the last consultation having taken place on 1 March 2018.

South Africa

The Minister of Telecommunications and Postal Services (the *Minister*) published the Electronic Communications Amendment Bill for public comment on 17 November 2017. The primary purpose of the Bill is to amend the Electronic Communications Act 36 of 2005 (*ECA*), which governs electronic communications and broadcasting services in South Africa, to implement the recommendations contained in the new national ICT policy. Some of the most notable proposals are listed below:

- An express prohibition on the trading (including transfers and transfers of control) of any high demand spectrum, which would likely include the 700MHz, 800MHz and 2.6GHz bands. This will have a critical impact on any transaction involving telecoms licensees that hold high demand spectrum i.e. it will not be possible for the licensed spectrum to be part of the transaction.
- The return of exclusively or individually assigned high demand spectrum subject to an inquiry being conducted by ICASA within 24 months of the commencement of the Bill, under which ICASA is required to make recommendations to the Minister on the terms, conditions and timeframe for the return of spectrum, taking into account policy considerations, market developments and the availability of open-access networks. It is expected that there will be strong opposition to this proposal in the industry.
- The creation of a wireless open access network (*WOAN*), i.e. an entity which provides wholesale electronic communications network services on open access principles (e.g. cost-based pricing, active infrastructure sharing including national roaming, and radio access network sharing). The Minister must issue a policy direction setting out which unassigned high demand spectrum *must* be assigned to the WOAN, and any unassigned high demand spectrum not mandatorily assigned to the WOAN *may be* assigned by ICASA to other licensees on certain conditions.
- A requirement on ICASA to impose universal access and universal service obligations on existing and new spectrum licensees (with the Minister's approval).
- The amendment of the market review provisions in the ECA. In particular, ICASA is required to define all the relevant markets and market segments relevant to broadcasting and electronic communications within 12 months of the amendments coming into effect. ICASA is further required to set out a schedule in terms of which it will conduct market reviews and which markets should be prioritized.

Interested persons submitted comments on the Bill in January 2018, and industry stakeholders participated in an industry consultation workshop on the Bill in March 2018. The Bill is still in draft form and the content and nature of the Bill may still change, particularly if there is strong opposition to the proposed changes. However, the Bill clearly illustrates the intention of the Minister to align the existing legislative framework with many of the policies and policy directions set out in the new national ICT policy (which was not, in itself, binding on the industry).

Uganda

Television authorisation framework

The UCC issued a new authorisation framework for television broadcasts on 30 August 2017 to align the television authorisation framework with the rest of the communications sector. The new framework includes Public Infrastructure Provider (*PIP*) and Public Service Provider (*PSP*) license categories, and the services are further divided into various classes. The PIP license is technology neutral and could be National or Regional, and will be required for satellite, terrestrial, cable and IPTV. A new additional category of temporary license was also created, mainly for research and innovation ("sandboxing") purposes. With effect from 1 September 2017, the UCC also issued a new license, fees and fines framework.

UCC Directive to telecoms operators

On 8 March 2018 the UCC issued a directive to all telecoms directors. Under the directive:

- the sale of SIM cards through unregistered street vendors is prohibited, with all telecoms operators being directed to immediately recall all SIM cards held in stock by such vendors;
- telecoms operators must install card readers at their service centres to verify the national identification information of all customers during subscriber registration; and
- telecoms operators will now be liable for any future violations of UCC directives by their employees or agents.

Proposed mandatory listing of telecommunication companies

According to media reports, the Ministry of Finance tabled a policy paper before the cabinet that seeks to have all telecommunication companies listed on the Uganda Securities Exchange.

Mr. Godfrey Mutabazi, the Executive Director of the UCC, welcomed the idea, which he said will not only promote a sense of ownership for Ugandans, but will also build the companies that service the interests of the relevant telecommunication company.

New tax regime

Mobile Money: all mobile money transfer providers have been mandated to charge a tax/ excise duty of one per cent of the transaction value in relation to all deposits, receipts, payments and withdrawals.

Over-the-top services: an excise duty of 20o UGX per user per day of access has been levied on over-the-top services providers, such as Facebook, WhatsApp, Instagram, Twitter, etc.

Zambia

New Licensing Guidelines

ZICTA issued new Licensing Guidelines which came into force in August 2017. Under the new licensing regime, ZICTA will issue two types of licences in the ICT sector: a network licence and service licence. By contrast to the previous regime (which required an operator to own specific licences to provide particular services, such as voice and data), under these new categories, the service provider in a market category will be at liberty to provide as many services as the facility can permit. The migration to a converged licensing regime will necessitate the removal of unnecessary barriers and costs to establishing and operating a business in the voice and data markets, thereby promoting competition. This model is expected to enhance the provision of telecommunication services to unserved and underserved areas to help to achieve universal access targets. It also aims to promote greater citizenry participation in the telecoms industry by encouraging the entry of small and medium enterprises through regionalisation. There has been tremendous interest in this framework from potential local and international players and an increase in the provision of electronic communications services is expected.

The new licensing guidelines have also necessitated the revocation of the statutory instrument limiting the number of MNOs to a maximum of 3 (currently Airtel, MTN and Zamtel). After a competitive tender process, ZICTA issued an international network and service license to Unitel International Holdings BV (*Unitel*), which will make it the fourth mobile operator in Zambia. Unitel has pledged to invest more than USD350 million through a local unit and will compete with market leaders MTN and Airtel.

General regulatory updates

Kenya

Communication Authority fines telcos for poor quality services

The CA levied fines and issued warning notices to Safaricom, Airtel and Telkom for failing to meet the 80 per cent minimum threshold set for compliance with a number of quality of service standards contained in the Information and Communications (Licensing and Quality of Service) Regulations 2010. The sanctions relate to the 2015/2016 financial year, meaning the CA has now issued fines and warnings under the regulations for four years running.

The fines levied were sums equivalent to 0.15 per cent of each operator’s latest financial returns for the period prior to 30 June 2017.

Nigeria

NCC and NSDC sign Memorandum of Understanding on telecommunications infrastructure protection

The NCC and the Nigerian Security and Civil Defence Corps (*NSCDC*) have signed a Memorandum of Understanding to protect critical telecom infrastructure from vandalism and theft. Details of the protections and how they will be implemented have yet to be released, but the MOU has underlined the parties' commitment to protecting telecoms infrastructure.

NCC and CBN sign Memorandum of Understanding on payment systems in Nigeria

In line with the National Financial Inclusion Policy (the *Policy*) launched by the CBN in 2012 with the goal of reducing the financial exclusion rate to 20 per cent by 2020, the CBN and NCC signed a Memorandum of Understanding on 9 April 2018 in relation to the role of payment systems in improving financial inclusion in Nigeria. The intention of the Policy if to achieve financial inclusion for the entire adult population of Nigeria by providing it with, as required, easy access to a broad range of formal financial services. These include, but are not limited to, payments, savings, loans, insurance and pension products, at affordable cost. Media reports indicate that the responsibilities of the CBN and NCC seek to achieve this government objective by looking to improve payment systems in Nigeria, including (but not limited to) enhancing the provisions of mobile money services.

Passage of Electronic Transactions Bill 2017

The Electronic Transactions Bill, when implemented as law, will provide a regulatory framework for conducting transactions using electronic or related media, the protection of consumer rights in electronic transactions and services, and the protection of personal data.

At present, Nigeria does not have comprehensive legislation regarding the protection of personal data. The Bill is set to introduce a range of requirements applying to all Nigerian persons in relation to the processing of personal data and the rights and liabilities of data holders. The Bill will also supplement the provisions of the Evidence Act relating to: the validity and certification of electronic signatures, records and contracts, the admissibility of documents, and electronic filings.

South Africa

Protection of personal data

It is expected that the operative provisions of the Protection of Personal Information Act 4 of 2013, South Africa's first comprehensive data protection legislation, will come into effect during the course of 2018. This follows the establishment of the Information Regulator and the publication for public comment on 8 September 2017 of the draft Regulations Relating to the Protection of Personal Information (which provide further details on certain operative provisions of the Act such as the responsibilities of information officers and the manner in which a data subject may object to the processing of personal data).

Cybercrime regulation

A Cybercrimes and Cybersecurity Bill was published in August 2015 for public comment following an undertaking by the Department of Justice and Constitutional Development to review cyber security laws in South Africa to ensure a coherent and integrated cyber security legal framework. The latest draft of the Cybercrimes and Cybersecurity Bill was tabled in Parliament on 21 February 2017. The Portfolio Committee on Justice and Correctional Services is currently processing the Bill, prior to referral to the National Council of Provinces.

Recent case law

South Africa

On 8 June 2017, the Constitutional Court handed down judgment in the matter of *Electronic Media Network Limited and Others v e.tv (Pty) Ltd and Others 2017*. The dispute related to the validity and lawfulness of an amendment to the Broadcasting Digital Migration Policy adopted by the Minister of Communications pursuant to which subsidised set-top boxes which were to be provided to around five million lower-income South Africans as part of the country's process of digital migration, would not have the capability to decipher encrypted broadcast signals (this was a change to the initial policy position, in terms of which the subsidised set-top boxes would have decryption capabilities). Following the amendment, e.tv brought an application to the High Court to review the Minister's decision for, among other things, failing to conduct the necessary consultations before effecting the amendment. Having been unsuccessful before the High Court but successful before the Supreme Court of Appeal, the Constitutional Court found against e.tv. The majority of the court upheld the lawfulness of the amendment, finding that the requirements for consultation had in fact been met and that the policy-making process was procedurally and substantively rational.

Uganda

The case of *Uganda Telecom Limited vs. MTN Uganda* was decided by the Supreme Court on 12 September 2017. The dispute concerned interconnection agreements for international calls between Uganda and South Sudan during the period in which South Sudan was using Uganda's country code (+256). The judgment provides legal guidance to companies providing a telecommunication service under an interconnection fees structure. The decision of the Supreme Court further emphasizes the position that interconnection agreements should provide clear parameters for international or local telephone traffic with specific consideration to the legal and contractual aspects of interconnection rates applicable, call origin and termination.