The High and Multiple Taxation as An Impediment to Quality of Telecommunications Service in Nigeria: A Critical Appraisal

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ABSTRACT
The relevance of taxation to telecommunications cannot be over-emphasized just as virtually all stakeholders in the telecommunications industries cannot make use of telecommunication services and installations without paying tax either directly or indirectly ranging from tenement rate, site installation fee, effluent fee etc. This paper, therefore, without gainsaying, examined the high and multiple taxations as an impediment to quality of telecommunication service in Nigeria. The paper considered the categories of telecommunications companies in Nigeria for the purpose of tax payment and the nature cum rate of tax payable by the operators of the telecommunications industries in Nigeria. Relevant laws and cases were examined in the bid to show the implications of high and multiple taxation on the quality of telecommunications services on the one hand and its negative impact on the economy on the other. It is noteworthy that the provocative and unwarranted regulatory interventions in taxation of telecommunications industries in the forms of illegal taxes and levies; high or excessive tax demand when the tax is illegal; assessment and determination of taxes and levies; illegal enforcement and extra-judicial activity and unwarranted legislation constituted a clog to the development of the telecommunication industry in Nigeria. Recommendations on ways out of the quagmire noted in this paper were however proffered.

Keywords: Income Tax Act (ITA), Company Income Tax Act (CITA), Value Added Tax (VAT), Federal Ministry of Environment (FME), Environment Impact Assessment (EIA).

INTRODUCTION
It is axiomatic that taxation is a mundane social phenomenon. It is the process by which communities or group of persons are made to contribute part of their income in some agreed quantum and method for the purpose of the administration and development of society. Every government in carrying out its fiscal responsibilities provides the individuals within its area of jurisdiction the basic necessities of life. Such necessities of life include rural and urban electrification, construction of roads and bridges, provision of pipe-borne water, building and maintenance of schools, establishment of hospital, payment of wages or salaries etc.

Without gainsaying, the government being a non-profit making organization needs to generate revenue from taxes and other sources to finance its budget and development plan. In view of these enormous development plans on one hand and the desire to achieve high standard of living on the other hand, taxation is an integral part of an economy.

1 Olumukeke, D. A. The Taxation in Nigeria: prospects for challenges.
It is however not the crux of this paper to discuss the impact of taxation on Nigerian economy as a whole but rather to examine high and multiple taxation vis-à-vis the quality of telecommunication service in Nigeria. Hence, attention to consider the categories of telecommunications companies in Nigeria for the purpose of tax payment, and tax payable by the operators of the telecommunication industry in Nigeria will somewhat not appear nugatory.

**CATEGORIES OF TELECOMMUNICATIONS COMPANIES IN NIGERIA FOR THE PURPOSE OF TAX PAYMENT**

Under the companies Income Tax Act\(^2\) telecommunication in Nigeria are bifurcated, namely; Nigeria Telecommunications Companies and non-Nigeria Telecommunication Companies. The former is any telecommunications company incorporated under the companies and Allied Matters Act and whose control, management and authorities are exercised in Nigeria.

All other telecommunications companies fall into the latter category (i.e. non-Nigerian Telecommunications Companies)\(^3\). This distinction is so important particularly in relation to profits which are deemed to be derived from Nigeria and therefore subject to Nigerian Tax\(^4\). Thus, the profit of a Nigeria telecommunication company are deemed to accrue in Nigeria whether they arise and whether or not they have been brought into or received in Nigeria. On the other hand, the profit of a non-Nigeria telecommunications companies are only deemed derived from Nigeria to the extent that they are attributable to some part of the operation of the company carried on within Nigeria\(^5\). Thus, a foreign telecommunications company registered under the Company and Allied Matters Act becomes domiciled in Nigeria at any rate; the branch that is intended to trade in Nigeria becomes a separate and distinct entity from its parent company\(^6\). If the central management and control are however located abroad, the company may not be resident in Nigeria but it will nevertheless be liable to taxation in Nigeria in respect of all its trading income and can also be wound up in Nigeria\(^7\).

**NATURE OF TAX PAYABLE BY THE OPERATORS OF TELECOMMUNICATIONS INDUSTRIES IN NIGERIA**

The realization of the importance of tax system has triggered much interest, planning and restructuring in the area of developing taxation especially in developing economies like Nigeria\(^8\). The commercial boom of Global system for Mobile Communication (GSM) in August 2001 significantly increased the rate at which the Nigerian Telecommunications was developing thereby rating the Nigerian Telecommunication Industry as the fastest growing in Africa\(^9\). Consequently, there became upsurge in Nigeria government revenue generation through tax. This is evident from the springing up of more companies engaging in telecommunication service and installations, creating and establishment of business centre for phone calls.

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\(^2\)See Sections 11, 13 and 105 of CITA  
\(^3\)ibid  
\(^4\)See Section 9 (1) CITA  
\(^5\)Section 13 (1) and (2) CITA  
\(^6\)See Peerock Investment Ltd. V. Hotel Presidential Ltd (1973) 3 ECLR 19  
\(^7\)See generally, an examination of the legal regulations and taxation of telecommunication and electronic commerce in Nigeria by D. A. Ariyoosu http://www.unilorin.edu.ng/….Law-(L…..>accessed on 25th January, 2014  
\(^9\)Opic at page 215
Accordingly, the relevance of taxation to telecommunications cannot therefore be over-emphasized as virtually all stakeholders in the telecommunications industry cannot make use of telecommunication services and installation without paying tax either directly or indirectly ranging from tenement rate, site installation fee, effluent etc. However, in order not to stultify the class, company income Tax and value Added Tax will be briefly discussed.

**Company Income Tax (CIT)**

It is a tax imposed by the Government on the income and profits of companies operating in the country. The Federal Government has Exclusive Legislative Competence to legislate on taxation of incomes, profits and capital gains of companies. The specific law governing the administration of Companies’ Income Tax is the Companies Income Tax Act.

Since virtually all telecommunications services and facilities are provided by incorporated companies, the companies are bound by the provision of the companies Income Tax Act. The administration of the companies Income Tax is vested in the Federal Inland Revenue Service.

**TAX RATE FOR TELECOMMUNICATIONS COMPANIES**

The current tax rate in any year of assessment for any Telecommunications company in Nigeria, as in other companies, is 30%, payable on the profits accruing in, derived from, brought into or received in Nigeria within the year of assessment, these profits are in relation to the categories set out in the Act.

Generally, in Nigeria telecommunications, Company’s dividends are liable to tax at source. However, dividends paid in the form of bonus share or scrip shares to individual shareholder are not subject to tax. Also, where the company is a shareholder in another company, then such dividends are excluded from the profit of the company for the purposes of computation of the tax. Telecommunications network services may arise from more than one jurisdiction. A service could emanate from one jurisdiction and terminate at another jurisdiction, and between different telecommunications companies.

This is particularly so given the fact that the Companies Income Tax Act makes a distinction between a Nigeria companies and a foreign company. The importance of the distinction between a Nigeria company and a foreign company lies in the separate treatment for tax purposes, of the profits of the two companies. Thus, for a Nigerian company which engages in telecommunications, the tax is on its global income whether or not they have brought into or received in Nigeria. However, for a foreign company, only profits attributable to its operation within Nigeria are taxable. Thus, the profits of a foreign company are taxed to the extent that they are derived from sources within Nigeria.

This distinction may still be fraught with difficulties, especially in respect of administering the tax and international double taxation. Undoubtedly, double taxation agreements between tax jurisdictions would go a long way in resolving these problems. In any event, where a foreign company carries on the business of transmission of message by cable or by any form of wireless apparatus, only so much of its activities attributable to operations in Nigeria are taxable.

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4. See Sections 9 and 40 of CITA
5. See s. 9 (1) (a) and (9) of CITA
6. See s. 9 (1) (a) and (9) of CITA
7. Cap C21 LFN 2004
8. Nigeria Company is any company in corporate under the companies and Allied Matter Act or any other enactments replaced by that Act. A foreign company is any company or corporation (other than a corporation soled establish by or under any law in force in any territory or country outside Nigeria.
9. See Section 11 (1) and (2) CITA
10. S. 15 CITA

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Value Added Tax (VAT)
It is a consumption tax levied at each stage of the consumption chain, and is borne by the final consumer of goods and services. Hence, every end user of telecommunications services pays VAT through consumption of telecommunications services. It is otherwise known as tax on spending\(^\text{21}\). The VAT element is presently at a flat rate of 5% and is collected on behalf of the government\(^\text{22}\). Following registration with the Federal Inland Revenue Services’ Integrated Office by business organizations, VAT requires such organization to charge and collect the VAT at the aforesaid flat rate of 5% of all invoiced amounts of taxable goods and services\(^\text{23}\). No individual, business, organization or government agency using telecommunications services and facilities is exempted from VAT\(^\text{24}\).

VAT returns and payment are normally made monthly to the Integrated TAX office of the Federal Inland Revenue Service on or before 30\(^{th}\) day of the month following that in which the service or supply was made through proper keeping of records and accounts of all business transactions\(^\text{25}\). If output exceeds input in any particular month, the excess is remitted to the Federal Inland Revenue service (FIRS). But where input exceeds output, the tax payer is entitled to a refund of the excess from the FIRS\(^\text{26}\). The law, however, imposes punishment for non-remittance of VAT as at when due. Thus, if VAT is paid later than the prescribed period, it would be regarded as not having been paid as at when due. This is the position of the court of Appeal in *FEDERAL BOARD OF INLAND REVENUE V. INTEGRATED DATA SERVICES LTD\(^\text{27}\)*.

HE PROVOCATIVE AND UNWARRANTED REGULATORY INTERVENTION IN TAXATION OF TELECOMMUNICATIONS INDUSTRY
The achievements of the telecommunications industry in the last ten years have invigorated the international belief that communications is a powerful and progressive tool of socio-economic development. The Continued boost to socio-economic development (e.g. in terms of job creation, security, and Socio cohesion), the impact upon culture and quality of life and the contribution to Gross Domestic product (GDP) are gains which have been recorded by the industry as a direct result of the advent of mobile telephony in Nigeria. Sadly, however, while this sector has been a major catalyst for socio-economic development it has become apparent that majority of our national stakeholders have failed to recognize the pivotal role played by mobile communications to the long-term socio-economic development of the nation. These sections of stakeholders instead continue to perceive the successes of the industry as opportunity to generate short term and other immediate pecuniary benefits\(^\text{28}\). This skewed

\(^{22}\) Ibid
\(^{23}\) Ibid See also S.8 and 32 Value Added Tax Act.
\(^{24}\) Certain goods are however exempted from VAT. Such goods include Books and educational materials, baby products, locally produced fertilizer. See generally S.3 of the VAT Act and first schedule to the Act.
\(^{25}\) See S.15 (1) VAT Act
\(^{27}\) VAT Act (2009) ALL FWLR (Pt. 490) 788 @505. See also *RAIMI V. IMEC* (2005) 6 NWLR (Pg 920)56 @ 84.
perception results in undue interference in the operations of communications networks by various strata of society, and particularly agencies of government predominantly, the industry has witnessed untoward intervention and actions from various Ministries, Departments and Agencies (MDAS) of Governments who see an opportunity to generate revenue from the operations of telecoms operators through the imposition of High, Multiple and illegitimate levies and taxes. The failure of the industry to submit to these illegitimate regime and demands often results in disruptive enforcement actions by these MDAS. Network operators continue to witness harassment, forcibly sealing of telecoms sites or removing components of site installations in their bid to compel compliance. These continued intervention in telecoms operations by MDAS results in a disruptive of services, degradation of service quality, a major increase in operating expenses and the general cost of carrying on communications business in Nigeria. Whereas, the Taxes and Levies (Approved Rates for Collection) Act, 1998 provides the taxes and levies collective by the various tiers of Government. This incidence of multiple taxation and regulation evidences the disregard of the provisions of the above Act by Various Ministries, Departments and Agencies (MDAS) of the Federal, State and Local tiers of Government 29. These acts culminate in the imposition of illegal and inappropriate taxes and levies in the following ways as discussed briefly below Viz (a) illegal taxes and levies (b) High or excessive tax demand when the tax is legal; (C) assessment and determination of taxes and levies (d) illegal enforcement and extra-judicial Activity and (e) unwarranted legislation.

A. Illegal Taxes and Levies

The Taxes and Levies (Approved rates for collection) Act 1998 provides a list of taxes and levies to be collected by all tiers of government; Federal, state and Local. Any tax or levy outside of what the Act provides is illegal. This was handed down in the case of ETIOSA LOCAL GOVERNMENT V. JEGEDE 30. It is notable that in a bid to shore up internally generated revenues. MDAS consistently impose taxes and levies unknown to law on telecommunications operation. For instance, in 2009, the Imo State Ministry of petroleum and Environment introduced an Environmental Audit Review and Certification Fee of N30, 000 per site without the backing of any known law 31. It is noted the statutory responsibility for the conduct of an Environmental Audit under the Environmental Impact Assessment (EIA) Act rests with the Federal Ministry of Environment (FME) or the enforcement agency, the National Environmental Standards and Enforcement Regulations Agency (NESREA).

B. High or Excessive Tax Demand

Where the taxes or levies are legal the amount demanded is typically high and arbitrary without recourse to the provisions of law. Increases are also usually imposed annually or otherwise, without a known parameter for their determination.

C. Assessment and Determination of Taxes and Levies

Government at all tiers tends to use consultants for the purposes of improving internally generated revenue. These consultants are paid a percentage of what they are able to generate. Unfortunately, the end result is that consultants dream up taxes or levies that are unknown to law and utilize thugs and unscrupulous security personnel and indeed draw on Task Forces employing State Security Services to enforce their collection.

29 Ibid
30 (2007) 10 NWLR P. 537 @ 545
31 Op.cit
D. Illegal Enforcement and Extra-Judicial Activity
It is to be noted that the collection of taxes and levies, legal or illegal, is usually done by applying un-sophisticated and legally unsanctioned methods. This includes arbitrary site or office closures, physical attacks, intimidation and arrest of personnel or threats of these and seizure of equipment, among others. Several states across the country have employed and continue to exploit this approach to extract monies from operators. For telecommunications companies, this is particularly damaging because they deny the affected operators access to their facility sites for routine maintenance and fuelling. This invariably results in network outages congestion and exacerbation of the quality of service situation as facilities run out of fuel or otherwise fail for lack of maintenance or fault rectification.

E. Unwarranted Legislation
Under the gives of Federalism, Governments, especially at the state and Local levels, do insist on exercising authority within their locale. While they should ordinarily have authority to exercise such powers, the law places a limitation to the extent that where a federal legislation has covered the field, and state or Local Governments can no longer legislate on the same issue of course, going ahead still, to legislate on this leads to inappropriate, typically excessive legislation and a dauntless disrespect for the Law. A good example is the Lagos state Infrastructure Maintenance and Regulatory Agency (LASIMRA) Law 2004. The Agency sought to regulate telecommunications infrastructure in Lagos State and was ultimately declared illegal by the Federal High Court.

PROBLEMS ASSOCIATED WITH MULTIPLE REGULATION
Regulation of Telecommunications sector by two or more entities occasions the hazard of indiscriminate regulatory intervention by these MDAS working at cross purposes to the detriment of the affected operators. It is not uncommon for instance to have a telecommunication for instance to have a telecommunications operator receive a stop work order from either a state or Local MDA over a Right of Way (ROW) approval granted by a state or Federal MDA. It is also common to have state and Local Environmental MDAS reject an Environmental Impact Assessment (EIA) certificate Issued by the Federal Ministry of Environment (FME) to insist instead on the telecommunications operator processing same with them. This crude phenomenon is further corroborated by the demands in Kaduna State by the Kaduna State Urban and property Development Authority (KASUPDA) who insisted on conducting its own EIA thereby disregarding the EIA earlier issued to a telecommunications company by the Federal Ministry of Environment (FME). It is no doubt the fact that the problem associated with this imbroglio usually leads to delay in project implementation which in turn causes excessive increase in the project cost, network outage and quality of service issues among others. Besides Multiple taxation which ultimately results, the situation presents significant regulatory disagreement that can ground telecommunications operations for months in severe cases with unpleasant implications for the national socio-economy.

IMPLICATION OF HIGH AND MULTIPLE TAXATIONS ON QUALITY OF TELECOMMUNICATIONS SERVICE
High and multiple taxations usually lead to inappropriate and irksome intervention, as the MDAS resort to extra-legal means to enforce such interventions. As noted earlier, MDA employ coercive means, such as facility lock-outs to enforce compliance by telecommunications operators. Operators are denied access to such sites for refueling, maintenance or fault resolution, leading to congestion and other quality of service deficiencies Indeed, to ensure that operators fuel the squeeze, it is the case that the agents of the MDAS go for the jugular by targeting Hub sites to which anywhere between 20 to 100 or more sites are parented. This effectively paralyses a good section of the network, causing complete network outage for the affected communities over an area that could stretch across as many as two or more adjoining states with quality of service deficiencies across a much wider area. It is instructive to remark that the impacts or such network outage are not restricted to the affected telecommunications network but could indeed spread to others. The fact that the telecommunications infrastructure is a web of interconnected elements
means that failures on one service providers network will often unduly burden, congest or otherwise compromise service quality and availability on other networks, negatively affecting users on the other networks. While it has not happened in Nigeria, it is the case that a domino effect of such network disruption has brought down the national network in some countries with disastrous socio-economic consequences on them.

FURTHER HAZARDS OF TELECOMMUNICATION NETWORK OUTAGE

Network outages and poor quality of services present a great threat to national safety and security and indeed to the overall maintenance of law and order; these incidents constrain the ability of emergency response, law enforcement and security agencies to respond appropriately to emergency and distress situations.

**Security Services**

Network outages occasional by site closures will render security agents in the vicinity powerless to communicate whilst criminals perpetrate their heinous activities of particular concern is the high likelihood of the failure of specialized security devices and applications occasioned by these shutdowns and the jeopardy to which intelligence provided to security agencies will be placed.

**Emergency and Distress Situations**

Emergency, medical or other intervention cannot be readily summoned or coordinated to attend to life-threatening incidents including heart attacks, accidents and disasters, such as fire and flooding etc. These cases and more will not receive urgent attention owing to the unavailability of telecommunications services occasioned by site closures of course; this further emphasizes the critical nature of Telecommunications networks.

**Business Losses and Socio-economic disruption**

Network outages disrupt socio-economic activities as dependent services (such as banking, airline ticketing, government e-payments and a host of other activities) became unavailable or constrained. Business both traditional and in particular, online that rely on telecommunications infrastructure and services are pulled down whilst the outages last. The disruption of socio and economic activities in this manner will accrue huge economic losses for telecommunication operators and other business, the Government and the nation as a whole. In its 2010 Research Study I, pyramid Research reports that by 2009, mobile had created 8,000 in direct employment and a total of 3 million in indirect employment. This Value chain supports several verticals in rural connectivity, agriculture, education, finance, health, transport and entertainment, etc. These verticals are impacted by network outages by way of business and economic losses. Such losses exacerbate the unemployment situation and incentive criminal activities and other socio vices that precipitate a vicious cycle of societal problems and underdevelopment. It is pertinent to note that Government is also a major direct and indirect beneficiary of in terms of taxes paid directly by the industry and other payments from citizens employed indirectly by the industry.

CONCLUSION AND RECOMMENDATIONS

Multiple taxation and regulation of telecommunications operations cause illegal and high taxations and extra judicial enforcements; it brings about regulatory discord that does not assist business planning and forecasting and does not make for healthy investment decisions; it contributes to the degradation of quality of services that are not conducive for socio-economic activities whilst also compromising public Safety, security and the maintenance of law and order; it diminishes the utility of telecommunications as an economic enabler and social overhead capital by precipitating business losses that inhibit economic development and disrupt social cohesion; it limits tax revenues to Government by constraining the potential of the telecommunications sector to contribute through direct and indirect value addition to the national economy. It is a major threat to broadband realization for Nigeria and it is imperative that the

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32Ibid
menace which falls squarely with Government be promptly addressed for the overall socio-economic benefit of Nigeria. In the recent memorandum submitted by the Association of Telecommunications Companies of Nigeria (ATCON) to the senate committee on communications, the association emphasizes the need for urgent action on multiple taxation of telecom industry (of course this is a pointer to the threatening nature of multiple taxation to the Sector) while we are not oblivious of the fact that the unfortunate consequences of multiple and illegitimate levies/taxes is not borne solely by the telecommunications industry, it is nonetheless strongly recommended that the critical nature or services provided by the telecommunications sector requires urgent action to address these challenges before total collapse of the telecommunications sector is witnessed.