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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 access to communications services (including through investment in infrastructure) and mobile money.

Commercial updates

Recent market activity

South Africa

Reorganisation of Safaricom ownership

Vodafone has agreed to transfer a 35 per cent. stake in its Kenyan-operated Safaricom business to its South African listed business, Vodacom, South Africa's biggest mobile phone operator. The deal, worth USD2.59bn, will be paid for in new Vodacom shares issued to Vodafone. It is part of a long-term plan to spread Safaricom's M-Pesa mobile money platform beyond Kenya. The move, which forms part of a wider global restructuring by Vodafone, will bring its ownership of Vodacom above 70 per cent. and may result in Vodafone selling down part of its stake in order to avoid a breach of South African free-float rules. Vodafone will retain a 5 per cent. stake in Safaricom and maintain a seat on the board, whilst the Kenyan government will retain its 35 per cent. stake in the company. The deal still requires regulatory approval in both Kenya and South Africa, and regulators could decide that the deal breaches an ownership threshold that would make it compulsory for Vodacom to make a bid for Safaricom as a whole.

Liquid Telecom acquires Neotel

In February 2017, Liquid Telecom closed its acquisition of Neotel, a South African fixed line telecommunications operator, for ZAR6.55bn. Liquid Telecom plans to make extensive upgrades to Neotel's existing network, with the aim of delivering greater levels of high-speed connectivity across South Africa.

Uganda

Ugandan government rescues Uganda Telecom

The Ugandan government took over Uganda Telecom in March 2017 after the company's majority shareholder, LAP Green Network of Libya, failed to inject sufficient capital to revive it and the company was placed under receivership. Uganda Telecom was Uganda's first telecommunications provider and has the largest fixed line network in the country. Recent government action follows meetings between the Ugandan government and Uganda Telecom shareholders at the end of January 2017 to discuss strict business plan guidelines and revival funding, after it emerged in November 2016 that Uganda Telecom was in serious financial turmoil. In May 2017, the Ugandan government reassured Uganda Telecom customers that the company would continue to offer services.

With thanks to our Stronger*Together* firms for their contributions to this briefing:

Bentsi-Enchill, Letsa & Ankomah (Ghana)

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Udo Udoma & Belo-Osagie (Nigeria)

Corpus Legal Practitioners (Zambia)

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

Mobile money

Nigeria

Mobile payment systems/solutions are increasingly being provided on Nigerian mobile networks. The mobile money service sector is regulated by both the Central Bank of Nigeria (the ***CBN***) and the Nigerian Communications Commission (the ***NCC***). So far, the CBN has stipulated two models of mobile money implementation in Nigeria:

- the bank-led model where a bank (either acting alone or with a consortium of banks and whether or not partnering with other approved organisations) delivers banking services leveraging mobile payment systems; and
- the non-bank led model where a corporate organisation (other than a deposit money bank or a telecommunications company) licensed by the CBN delivers mobile money services to customers.

To obtain and use short codes to operate several payment services, an NCC value-added service licence may be required. New telecommunications equipment that is used for the service must be NCC approved. In 2015, the CBN granted licences to 21 mobile money operators in Nigeria (15 non-bank operators and six bank operators).

Kenya

Safaricom, M-Pesa and a new payment card service

Safaricom enlisted more banks in late 2015 to operate its merchant payment service 'Lipa na Mpesa' (***M-Pesa***) in a bid to eradicate delays in cash transfers to a merchant's account. Transactions will now take a minute or less, in contrast to the six hours or more experienced by merchants in the past. Safaricom is targeting small and medium sized businesses that are dependent on instantaneous access to their working capital. M-Pesa's revenue reached KSh55.1bn (around GBP410m) for year-ended 31 March 2017. As of September 2016, more than 114,000 agents use M-Pesa.

M-Pesa transacted KSh807.1bn (around GBP6.1bn) from April to June 2016, which represented 84.3 per cent. of the total value of all mobile money transactions. This represents a drop of 6.7 per cent. from the previous quarter, where 91 per cent. of all transactions used M-Pesa.

Safaricom has commenced the pilot phase of the M-Pesa card service by distributing around 16,000 payment cards. Information and feedback generated during the pilot will be used to improve user experience before a commercial launch later this year. The launch of the card is understood to be part of the company's strategy to build a payment system around its mobile money services.

Alternative mobile money platforms

Equity Bank's mobile money platform Equitel transacted KSh138.5bn (around GBP1bn) from April to June 2016, which represented 14.5 per cent. of the total value of all mobile money transactions for that period. This was more than double the value that Equitel transacted from January to March 2016.

Equitel now has a user base of 2.7 million and advanced KSh38.5bn (around GBP290m) in loans in 2016, up from KSh5.4bn (around GBP40m) in 2015.

The mobile money platform is set for growth with more major banks entering the market with their own products in an attempt to reclaim market share from Safaricom's M-Pesa. For example:

- in June 2016, the Kenya Bankers Association (the ***KBA***) unveiled Integrated Payments Service Limited (***IPSL***), a company that will facilitate direct transfers of money between banks without using M-Pesa. The KBA is registered as the owner of IPSL on behalf of 43 commercial banks. The transfers will be undertaken through a mobile money platform to be known as Pesalink, which will allow users to transmit up to KSh1m (USD 10,000) in a single transaction and will also be integrated into ATM networks. The Central Bank of Kenya has provided approvals for various banks to provide services via Pesalink; and
- Visa launched its 'Mvisa' app in September 2016 in Kenya to allow users to make purchases or transfer money on their mobile phones.

Following an agreement between mobile money service providers on interoperability, it will now be easier for Kenyans to send and receive money across different telecommunications networks. This will replace the current system, which is inefficient and expensive. Smaller players in the mobile money services sector have been advocating for interoperability on the basis that it

would enable them to compete fairly against Safaricom's M-Pesa.

Ghana

It was reported in December 2016 that MTN had begun negotiations with regulators to start offering mobile based lending services from 2017 onwards. Earlier in 2016, Airtel had attempted to roll out a similar service but this is currently on hold for undisclosed reasons.

Uganda

Smart Telecom has become Uganda's fifth mobile money provider following the launch of its Smart Pesa service in June 2016. Smart joins MTN, Airtel, Uganda Telecom and Africell in the mobile money sector, which served approximately 21 million customers at the end of December 2016 (according to figures from the Bank of Uganda). By contrast, only about 6 million Ugandan adults have an account at a formal financial institution.

South Africa

Mobile financial services have not flourished in South Africa, unlike in Kenya and Tanzania. A number of attempts by the network operators to launch mobile payments in South Africa by network operators have, to date, been met with limited success. For example, in May 2016, Vodacom announced it was ending its South African mobile payment service in light of low uptake. Although South Africa has a high number of mobile phone users, a rigid regulatory framework (which prevents deposit taking and issuing e-money without a banking licence) acts as a market barrier, preventing innovation in this area. In addition, the Financial Intelligence Centre Act 2001 places an obligation on 'accountable institutions', including banks, to establish and verify the identity of their clients (although there is now an exemption for customers to be registered for mobile financial services without proof of address verification, subject to a low daily transaction limit). Failure to comply with these requirements is an offence which could result in imprisonment for 15 years or a fine of ZAR100m.

Increasing access and investment in infrastructure

Nigeria

Infrastructure company licensing

In October 2016, the Nigerian Communications Commission commenced phase two of its licensing process for infrastructure companies to deploy metropolitan fibre infrastructure on an open access, non-discriminatory and price-regulated basis within their assigned territories in the following zones: North-East, North-West, South-East, South-South and South-West (excluding Lagos). The NCC Executive Vice-Chairman has confirmed that the five successful bidders will be licensed in July 2017. In 2015, bids to provide services were won by MainOne (for the Lagos zone) and IHS (for the North-Central zone).

Plan to bolster telecoms access

In January 2017, the NCC announced its plans to provide access to telecoms to an additional 40 million Nigerians in 2017. The NCC intends to license additional band spectrums during 2017 (including the 38 and 42 GHz bands) to reduce pressure on existing frequencies. The 23 GHz microwave frequency band will be re-channelled from its original 7 MHz plan to a 28 MHz plan. This new plan was scheduled to take effect from 30 May 2017 but there is no indication from the NCC on whether any progress has been made.

Mobile solar electricity systems

Lumos, a Colorado based solar module company (operating in Nigeria as Txtlight Power Solutions Limited), is collaborating with MTN Nigeria to provide mobile solar electricity systems to Nigerians. Through the partnership, Lumos delivers smart solar systems, purchased through mobile phones. Customers lease and install the Lumos system and pay for usage through their mobile phone using airtime purchased from their mobile network operator by sending an SMS or dialling a short code. The mobile electricity device, which comes with a 5-year warranty, can light up bulbs and power appliances like fans, small televisions, mobile phones, radios, computers and other small electronic devices. It was reported in February 2017 that over 150,000 people across 30,000 locations in Nigeria are using this innovation in their homes and small businesses.

Nigeria needs 80,000 telecom masts

The NCC has disclosed that the country needs at least 70,000 – 80,000 telecommunications base stations to deploy 4G and 5G networks to join other countries in developing Internet of Things technology.

Ghana

Extension of mobile telephony network coverage

The VSAT Satellite Hub was recently commissioned by the Ghana Investment Fund for Electronic Communications to increase access to telecommunications services in 2,000 remote communities.

One hundred rural communities have already been connected to the system and more are projected to be added.

Kenya

Construction of Konza Techno City

The construction of this government-backed technology hub outside of Nairobi has recently begun. Dubbed 'Silicon Savannah', it is expected to be completed by 2019. It will host tech businesses (for example, software development and data centres), a university campus and a science park to focus on R&D. Construction costs are estimated at KSh1.2tn (around GBP9bn). The Korean government has committed KSh10bn (around GBP75m) to help finance construction, and the city of Tel Aviv has indicated it will support the project by providing training in relation to technology and start-ups.

Digitisation

Kenya and Uganda

Mastercard launches Mobile Marketplace to digitise agricultural sector

In January 2017, Mastercard launched a digital platform to connect small farmers, agents, buyers and banks in Uganda, Kenya and Tanzania. The platform enables farmers to buy, sell and receive payments for agricultural goods via their mobiles. This digitisation has made work for farmers more efficient and allowed them to have a more legitimate financial footprint, opening up access to loans and other financial services.

Legal developments

Cross-border cooperation

Kenya and Uganda

Smart Africa Alliance agrees to implement One Network Area

In April 2016, the member states of the Smart Africa Alliance (the ***Alliance***) (including Côte d'Ivoire, Gabon, Kenya, Mali, Uganda, Rwanda, Senegal, South Sudan, Chad and Burkina Faso) agreed to implement the 'One Network Area'. Tanzania has also expressed a willingness to join. The regional framework applies to telephone calls originating and terminating within the region and would require the adoption of zero surcharges for receiving calls while roaming within the region, the abolition of additional roaming charges within the region throughout an observation period beginning July 2016 and a cap on roaming call charges so that consumers would only be charged local call rates when making a call within the region. The agreement also calls for member states to establish anti-fraud systems and controls to combat grey traffic and enhance SIM registration rates. In May 2016, Ericsson joined the Alliance as technical advisor in an ICT-based partnership to support the implementation of the Smart Africa vision and plan. During the Transform Africa Summit in Kigali in May 2017, African leaders and policymakers agreed that a lack of urgency and bureaucratic hindrances have contributed to the slow pace of the implementation of the One Network Area. For instance, the East African Legislative Assembly has still not passed the One Area Network Bill that will see member states in the bloc cut roaming charges, even though the Bill was supposed to be passed during the April session this year. Lawmakers in the regional parliament cited financial constraints to be centre stage of failed projects, including bills.

Reviews of industry codes of practice and policies

Kenya

Review of Kenya's ICT policy

A final draft of Kenya's ICT policy was produced in June 2016. The Kenyan Ministry of Information, Communications & Technology has indicated that implementation of the policy is an ongoing exercise and various laws will be enacted to give effect to the provisions of the policy. The policy provides guidance on a number of key issues in the ICT sector including infrastructure sharing, mobile money interoperability, access to information, data protection, consumer protection, cyber security and e-commerce. The policy's objectives include:

- encouraging public-private partnerships for ICT-enabled systems;
- facilitating broadband access for all citizens and ensuring broadband connectivity of all public facilities by 2020;
- promoting investment in the ICT sector;

- ensuring availability of spectrum resources to support the development of ICT infrastructure and accessibility countrywide;
- facilitating access to devices and development of local content; and
- facilitating ICT-based delivery systems for healthcare, education and infrastructure.

Review of over-the-top services and mobile virtual network operators regulation guidelines

As part of the general strategy under the ICT policy review described above, the Kenyan Ministry of Information, Communications & Technology is reviewing ICT sector guidelines relating to the regulation of over-the-top services, such as WhatsApp, Skype and Viber. The new guidelines will also include policies regulating the operation of mobile virtual network operators in Kenya.

The Communications Authority of Kenya does not currently regulate the over-the-top services in Kenya and has generally adopted a 'wait and see approach'. However, the language used in the ICT policy set out above suggests that the Kenyan Ministry of Information, Communications & Technology is considering regulation.

Nigeria

Establishment of internet industry code of practice

The Nigerian Communications Commission is seeking stakeholder input to develop a code of practice for the internet industry. A consultation period closed on 23 June 2017 and a draft code is now due to be published for review and feedback. The code aims to provide jointly agreed and effective solutions to the issues of discriminatory traffic management practices and outline the obligations of service providers in relation to content that is potentially offensive or harmful to vulnerable audiences.

South Africa

New national ICT policy

The National Integrated ICT Policy white paper was endorsed by the Cabinet of South Africa on 28 September 2016. The policy is focused on improving competition in the market and contains a number of initiatives designed to improve collaboration between network operators and improve market participant access to network infrastructure. Key proposals include:

- the creation of a new local ICT baseline statistic to measure ICT development;
- a national Digital Transformation Committee to coordinate digital implementation across government branches;
- a new framework and targets for developing universal access and universal service provision;
- an increased competition role for the regulator, including periodic market reviews assessing the state of competition in various defined markets;
- an 'open access regime', which aims to shift the market from 'facilities-based' competition to 'service-based' competition to address excess market concentration. This includes proposals to require operators that control critical network infrastructure and facilities to provide access to other operators at regulated prices;
- the creation of a new economic regulator of ICT, focusing on telecommunications and postal networks and services, and a separate regulator for media content and audio-visual services;
- a new radio frequency spectrum policy designed to promote sharing and collaboration between spectrum licence holders; and
- clarification on the roles and mandates of the various regulators and government departments responsible for ICT policy.

In addition, the policy envisages the creation of a 'Wireless Open Access Network' (***WOAN***), a public-private sector initiative designed to create an open and shared network with broad coverage. Since the publication of the policy, a change has been proposed to the policy such that network operators will keep their existing spectrum assignments, additional high demand spectrum will be assigned to the network operators (probably by way of auction) and the WOAN will be established using part of the high demand spectrum. The network operators will then commit to purchasing a minimum percentage of capacity on the WOAN to ensure its viability. A study is to be conducted on the spectrum that the WOAN will need to operate.

Consumer protection and competition regulatory updates

Nigeria

Updates to consumer protection legislation

On 10 May 2017, it was reported in the media that the House of Representatives (the lower chamber in Nigeria's National Assembly) passed the Federal Competition and Consumer Protection Bill. The Bill seeks to repeal the Consumer Protection Council Act, chapter C25, Laws of the Federation of Nigeria 2004 and establish a Federal Competition and Consumer Protection Commission, together with a Competition and Consumer Protection Tribunal. The Bill is also aimed at the development and promotion of fair, efficient and competitive markets in the Nigerian economy, the facilitation of access by all citizens to safe products and the protection of consumer rights in Nigeria. It also proposes a prohibition on any abuse by one or more undertakings of a dominant position in a market. Market dominance is assessed on the market share of the undertaking(s) in the relevant market.

The Bill is still undergoing consideration in the Senate (the upper chamber in the National Assembly). When passed by the Senate and assented to by the President of the Federal Republic of Nigeria, the Federal Competition and Consumer Protection Bill will become law.

Legislature considers requiring telecoms operators to list on the Nigerian Stock Exchange

The Nigerian legislature is considering requiring participants in certain industries, including operators in the telecommunications industry, to list on the Nigerian Stock Exchange. While there is no indication that a bill has been drafted or sent to the National Assembly for consideration, the Minister of Communications Technology has appealed to all mobile telecommunications companies in Nigeria to list their shares on the Nigerian Stock Exchange.

In compliance with the terms of settlement with the Federal Government of Nigeria, MTN is understood to have commenced the process for the listing of its shares on the Nigerian Stock Exchange in 2017. The media reports that MTN's representatives visited the senior officers of the Securities and Exchange Commission to discuss the possibility of issuing various classes of shares to targeted investor groups.

Zambia

New ICT licensing framework

The new Zambia ICT licensing framework, announced in May 2017, is aimed at introducing a converged licensing framework and is intended to enhance competition, lower tariffs and improve telecommunications and internet services for customers. The new framework will also encourage greater citizen participation in the telecoms industry (by encouraging the entry of small and medium enterprises), increase technological convergence and eliminate barriers to new entrants (to create new markets and promote competition). The new regime will allow any operator of data services to acquire a licence for the delivery of VoIP-based connectivity, allowing any of the country's internet service providers to add voice to their existing product ranges.

However, the framework is not yet operational as the relevant regulations are still being finalised. There is currently no indication as to when the framework will come into effect.

Financial services regulatory updates

Ghana

Review of payment systems law

The Bank of Ghana is in the process of reviewing the Payment Systems Act, 2003 (Act 662) and has published a Draft Payment Systems and Services Bill, 2017, which incorporates and amends the Guidelines for E-money Issuers and the Agent Guidelines.

The amendments include:

- specifying a timeframe of 24 hours for e-money issuers and payment service providers to inform users of disruptions or anticipated disruptions to the system (the existing Guidelines for E-money Issuers do not provide a specific timeframe other than 'promptly');
- providing that written agreements between e-money issuers or payment service providers and users must be in electronic *and* print version (under the existing Guidelines for E-money Issuers, either is sufficient); and
- requiring that agency business approval is sought from the Payment Systems Department of the Bank of Ghana (rather than the Banking Supervision Department of the Bank of Ghana, as required under

the existing Agent Guidelines) before offering agent-based banking or e-money services.

The new law will apply to banks, specialised deposit taking institutions, dedicated e-money issuers, payment service providers and agents of such institutions.

Uganda

Financial Institutions (Amendment) Act 2016

In January 2016, the Ugandan parliament passed the Financial Institutions (Amendment) Act 2016. The new Act significantly overhauls the Financial Institutions Act 2004 and, for the first time, provides a framework for the regulation of mobile banking and money transfer services in Uganda. The amendments also mean that at least 11 commercial banks in Uganda can adopt the Islamic banking model.

Telecommunications regulatory updates

Uganda

Compulsory registration of SIM cards

The Uganda Communications Commission (the ***UCC***) issued a directive for the compulsory registration of all SIM cards in the country. The government has said that this was introduced as a national security measure for the purposes of ensuring secure and safer communications. Those who do not comply with the directive will have their SIM cards de-activated. The deadline for registration was 19 May 2017 but has since been extended until 30 August 2017, following intervention by the Ugandan government.

Prosecution by the UCC for communication offences

The UCC has obtained approval from the Director of Public Prosecution (the ***DPP***) for prosecutorial discretion for communications offences under the Computer Misuse Act, 2011 and the Electronic Transactions Act, 2011. This means that the UCC can now prosecute offenders independently of the DPP, using its specialised knowledge. This will expedite and increase criminal charges related to communications offences. The UCC's priorities are to deal with vandalism of equipment and ensure increased compliance.

Uganda Communications (Amendment) Bill (2016)

Under the Uganda Communications (Amendment) Bill (2016), which was passed on 6 April 2017, the Ugandan parliament gave approval to the Minister for Information and Communications Technology to independently develop regulations governing the telecommunications sector without parliamentary intervention. Previously, regulations proposed by the Minister had to receive parliamentary approval. This is expected to expedite legislative development in the communications sector as parliamentary legislative processes are slow (for example, the Regulations in relation to the Uganda Communications Act 2013 are still pending in parliament).

South Africa

Discussion document on equity ownership by historically disadvantaged groups

On 31 March 2017, the Independent Communications Authority of South Africa (***ICASA***) initiated an inquiry to determine how it should approach the implementation of non-sector specific broad-based black economic empowerment (***BBBEE***) legislation in the communications sector. At present, the Electronic Communications Act 2005 requires a minimum level of ownership by historically disadvantaged people (of which black people are one category) in order to obtain, renew or transfer an individual licence, or transfer control of the licence holder. There is no ongoing requirement to maintain this level of ownership outside of these regulatory processes. Non-binding targets for BBBEE are also set under the general BBBEE legislation for ownership by black people, management control by black people, skills development of black people, enterprise and supplier development of majority black-owned businesses, and socio-economic development initiatives. The extent to which businesses achieve these targets must be taken into account by government entities, including the ICASA, when undertaking regulatory processes, amongst other things. The ICASA is consulting on the types of requirements that should be imposed on communications operators in relation to minimum levels of ownership by historically disadvantaged people and minimum BBBEE levels.

Infrastructure and radio frequency spectrum

Amendments to South Africa's Radio Frequency Spectrum Regulations 2015 came into force on 22 November 2016. The regulations now provide for: (i) a licence-exempt approach for V-band access (together with technical requirements and requirements regarding type-approval of any equipment); and (ii) a hybrid approach for E-band access combining 'light' (self-coordinated) and 'full' (conventional, regulator-coordinated) licensing. The regulations have also been amended to introduce a new change in control regime for frequency spectrum licences.

On 30 March 2016, the ICASA published a findings document on the regulatory framework on electronic communications infrastructure sharing, following responses to its discussion document published on 15 September 2015. The ICASA has concluded that the Electronic Communications Act No. 36 of 2005 and the Facilities Leasing Regulations 2010 effectively legislate for infrastructure sharing, and intends to actively monitor and enforce the rules to promote and facilitate infrastructure sharing. The ICASA will also assess whether there is a need to amend the Facilities Leasing Regulations to deal with local loop unbundling.

General regulatory updates

Kenya

Access to Information Act 2016

The Access to Information Act 2016 came into force on 21 September 2016 and allows the public to access information held by public entities. This is limited by common standards e.g. privacy, confidentiality, national security, etc. The Act lays out the procedure for requesting information, the timeframe for responses and the format for disclosure. It provides that a public entity will oversee requests for information and may force entities to comply with the disclosure obligations.