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MERGER CONTROL AND SECTOR REGULATION IN NIGERIA'S TELECOM INDUSTRY: EVALUATING MTN'S ACQUISITION OF IHS TOWERS

INTRODUCTION

IHS Towers is one of Africa's largest independent owners and operators of telecommunications infrastructure.¹ It leases passive tower infrastructure to telecommunications service providers across multiple African markets, including MTN Nigeria Communications Plc and other operators like Airtel.² Under typical arrangements, mobile network operators lease tower space and related services from independent tower companies like IHS rather than owning such infrastructure outright. This leasing model has been central to the industry's capital efficiency strategy, unlocking capital tied up in passive assets while enabling network expansion.

Beyond financial implications, the transaction raises significant competition law concerns because IHS's tower infrastructure is critical for both MTN and its competitors such as Airtel.³ Control over these essential facilities may enable exclusionary conduct and result in a substantial lessening of competition and harm to consumers. This article assesses the transaction within the concurrent regulatory frameworks of the Federal Competition and Consumer Protection Commission (FCCPC) and the Nigerian Communications Commission (NCC), considering both general competition law principles under the Federal Competition and Consumer Protection Act, 2018 ("FCCPA") and sector-specific safeguards under the Nigerian Communications Act, 2003 ("NCA") and its Competition Practices Regulations.

In February 2026, MTN announced that it would acquire control of IHS Towers, internalizing tower infrastructure previously leased on a long-term basis.⁴ The transaction has the effect of consolidating ownership of significant passive telecom infrastructure under the control of one of Nigeria's largest mobile network operators. The acquisition would result in MTN assuming control over infrastructure relied upon not only by itself but also by competing operators operating in the same downstream retail telecommunications market.

Such structural consolidation requires analysis within Nigeria's competition framework. Although IHS is primarily an American company with a Nigerian subsidiary for operations within the country, the powers of the FCCPA applies to conduct occurring outside Nigeria where such conduct affects competition within Nigeria.⁵ The NCA establishes the NCC's objective of ensuring fair competition in the Nigerian communications industry:⁶ Part I of Chapter VI of the NCA prohibits anti-competitive conduct, and Sections 90 to 95 designate the NCC as the sector-specific authority responsible for administering and enforcing competition rules in the communications market. At the same time, Sections 104 and 105 of the FCCPA require cooperation between the FCCPC and sector regulators, including the NCC, ensuring concurrent and coordinated oversight.

1. As at the end of 2025, the company operated nearly 29,000 towers for communication and infrastructure. See Temitayo Jaiyeola, "MTN is spending \$2.2 billion to absorb IHS Towers and its \$3 billion debt problem," TechCabal, 20 February 2026, <https://techcabal.com/2026/02/20/mtn-is-spending-2-2-billion-to-absorb-ihs-towers/>

2. <https://www.ihs-towers.com/about-ihs>

3. A key feature of IHS Towers' business model is that it provides shared communications infrastructure to multiple mobile network operators, including direct competitors operating in the same downstream telecommunications market. For example, in February 2024, IHS Nigeria renewed and expanded its long-term infrastructure partnership with Airtel Nigeria, committing to provide 3,950 additional tower tenancies over five years and extending existing tenancies covering approximately 6,000 sites until 2031. See <https://www.ihs-towers.com/support-and-info/media/press-releases/2024/ihs-towers-expands-partnership-with-airtel-africa>

4. MTN Announces Proposed Acquisition of IHS Towers, 17 February 2026, <https://www.mtn.com/mtn-group-announces-proposed-acquisition-of-ihs-towers/>

5. Section 2(3), FCCPA.

6. Section 1(e), NCA.

Mergers and Anti-Competition – The Legal Framework

The Federal Competition and Consumer Protection Regime

Under Section 92 of the FCCPA, a merger occurs where one undertaking acquires control over another.⁷ The FCCPA prohibits agreements that prevent, restrict or distort competition⁸ and prohibits abuse of dominance.⁹

Dominance is further clarified in the FCCPC's Abuse of Dominance Regulations 2022, which define a dominant undertaking as one able to act independently of competitors, customers or consumers. While a market share of 40 percent creates a presumption of dominance, that in itself is not unlawful, unless it leads to an abuse of the dominant position.¹⁰ A refusal to supply essential facilities constitutes abuse where the facility is indispensable for downstream competition, the refusal eliminates effective competition, harms consumers, and lacks objective justification. Essential facilities include infrastructure that is difficult or impossible to duplicate due to physical, geographic or legal constraints.

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The FCCPC's Notice of Threshold for Merger Notification, issued pursuant to the FCCPA, requires that a merger be notified to the FCCPC where the combined annual turnover of the acquiring and target undertakings in, into or from Nigeria equals or exceeds ₦1 billion, or where the target undertaking's annual turnover in, into or from Nigeria equals or exceeds ₦500 million. A transaction of the scale contemplated in MTN's acquisition of IHS Towers falls squarely within this regime and will therefore have been notified to the FCCPC under Section 93 of the FCCPA prior to implementation. Accordingly, it comes as no surprise that after the public announcement of the transaction, the Federal Government announced that regulatory scrutiny regarding compliance with the statutory merger notification framework was in place.¹¹

The National Communications Commission Regime

Parallel to the FCCPA regime, Section 90 of the NCA grants the NCC exclusive competence to determine and enforce competition rules within the communications sector, notwithstanding any other written law.¹² Section 91 prohibits licensees from engaging in conduct that substantially lessens competition, and expressly outlaws price fixing, market sharing, boycotts and tying arrangements. Section 92 empowers the NCC to determine dominance and impose remedies where dominant conduct lessens competition.

The NCC Competition Practices Regulations 2007 elaborates on what constitutes substantial lessening of competition in the communications sector. The assessment of relevant markets, impact on competitors and entry, consumer pricing and availability, and measurable competitive injury are all factors that

7.This control includes decisive influence through ownership, voting rights, board appointment powers, holding-subsidiary relationships, or material influence over policy (Section 92(2), FCCPA).

8.Section 59, FCCPA.

9.Section 72, FCCPA.

10.Article 3 (2), Abuse of Dominance Regulations 2022.

11. Federal Government to review IHS Towers acquisition at <https://guardian.ng/business-services/federal-government-to-review-ihs-towers-acquisition/>

12.Same is provided in respect of all sectors in Section 104 of the FCCPA in favour of the FCCPC. However, Section 105 of the FCCPA mandates the FCCPC to cooperate with sector-specific regulators ensuring that there is an overlap and concurrent regulation by both the FCCPC and the NCC in telecommunication matters. Furthermore, the 2025 Memorandum of Understanding between the NCC and FCCPC operationalises Section 105, mandating cooperation between regulators. This ensures that merger review, dominance assessment, and sector-specific enforcement occur in a coordinated manner, reducing regulatory gaps.

determine substantial lessening of competition.¹³ There is also the creation of rebuttable presumptions that refusal to supply interconnection or essential facilities, discriminatory treatment of competitors, margin squeeze, predatory pricing, cross-subsidisation, anti-competitive bundling, misuse of competitor information, and failure to comply with access obligations constitute substantial lessening of competition.¹⁴

Potential Anti-Competitive Impacts of the MTN-IHS Deal

There are quite a few potential anti-competitive issues that may arise from the transaction upon full completion. Whether they materialise depends on conduct, regulatory oversight, and structural safeguards.

1. Risk of Vertical Integration and Essential Facilities

A core competition concern is that MTN's acquisition of IHS will give it control over infrastructure that rivals rely on to provide services. Towers are quintessential essential facilities due to high fixed costs and duplication constraints; competitors like Airtel may not efficiently build out alternative infrastructure in the short to medium term. If MTN were to use its control to deny or degrade lease access, raise costs, or impose discriminatory terms, this could impair competitors' ability to compete effectively.

2. Margin Squeeze and Predation

The Abuse of Dominance Regulations define margin squeeze as pricing upstream services (tower access) such that equally efficient competitors cannot profitably compete downstream.¹⁵ If MTN uses pricing strategies that effectively squeeze competitors' margins (charging high access fees or offering bundled rates only when competitors acquiesce to unfavourable terms), this can amount to a substantial lessening of competition.

Similarly, predatory pricing, defined as supplying services below long-run average incremental cost,¹⁶ could harm competitors unable to sustain losses, driving them from the market and reducing consumer choice.

3. Discriminatory Conduct

MTN's dual role as both owner and a customer of tower infrastructure may create opportunities for discriminatory conduct in favour of its own service operations. Differential pricing, prioritisation of capacity, or allocating favourable access to MTN affiliates could harm competitors.

4. Misuse of Sensitive Information Use

13.Regulations 6-9, NCC Competition Practices Regulation 2007.

14.Regulation 8, NCC Competition Practices Regulation 2007.

15.Regulation 11(4)(b), Abuse of Dominance Regulations 2022.

16.Regulation 13, Abuse of Dominance Regulations 2022.

MTN might gain access to sensitive competitive information during negotiations or infrastructure planning processes. The NCC CPR expressly contemplates that withholding essential technical information or misusing competitively sensitive information can materially restrict competition.¹⁷

5. Barriers to Entry and Expansion

By internalising infrastructure, MTN could raise barriers to entry or expansion for new or smaller operators. If access conditions tighten or costs rise, competitors may be deterred from expanding services into underserved areas, harming consumer welfare and innovation.

Comparative Analysis: How Have Similar Deals in Other Jurisdictions Been Dealt With In the Past?

A comparative lens highlights that both U.S. and Nigerian competition regimes converge on a consumer harm and effects-based analysis, rather than a blanket hostility to scale. Under Nigerian law, the FCCPC similarly distinguishes between purpose-based and effects-based restrictions, prohibiting only those agreements or transactions that “prevent, restrict or distort competition,” while allowing efficiency justifications under Section 60 FCCPA. This mirrors the U.S. consumer welfare standard,¹⁸ more recently applied in assessing Netflix’s abandoned takeover of Warner Bros Discovery.¹⁹

The contrast is also evident in digital markets. The Spotify v Apple antitrust dispute²⁰ reflected concerns around self-preferencing and platform gatekeeping, akin to Nigerian concerns on dominance and exclusionary conduct in multi-sided markets. In both jurisdictions, dominance is not unlawful per se; rather, acts indicative of abuse such as foreclosure, discriminatory access, or leveraging control across the value chain, is the trigger for intervention.²¹

Outcomes across jurisdictions reflect a converging enforcement philosophy. Netflix’s withdrawal from the WBD transaction illustrates how regulatory scrutiny can deter anti-competitive mergers without formal prohibition. Conversely, Apple’s €1.8 billion fine in its dispute with Spotify demonstrates a preference for behavioural remedies, compelling changes to App Store practices that restricted competition and consumer choice. Both approaches align with the principle that antitrust intervention is not aimed at size alone, but at the misuse of market power. Ultimately, regulators in both systems act where conduct distorts competition, limits innovation, or results in measurable harm to consumers.

17.Regulation 8(h)(v), NCC Competition Practices Regulation 2007.

18.Majorly influenced by the US’s Supreme Court’s 1963 decision in [United States v. Philadelphia National Bank](#), which established that mergers producing a firm controlling 30% or more of a relevant market are presumptively anticompetitive under Section 7 of the Clayton Act.

19.Seán D Reyes, “The Warner Bros. Discovery Bidding War Shows Antitrust Enforcement Still Works” (ProMarket, 26 March 2026) <https://www.promarket.org/2026/03/26/the-warner-bros-discovery-bidding-war-shows-antitrust-enforcement-still-works/> accessed 31 March 2026.

20.Foo Yun Chee, “Apple hit with \$2 billion EU antitrust fine in Spotify case,” Reuters (4 March 2024), available at: <https://www.reuters.com/technology/apple-hit-with-over-18-bln-euro-eu-antitrust-fine-spotify-case-2024-03-04/> accessed 31 March 2026.

Conclusion

The acquisition of IHS Towers by MTN represents a structural consolidation of infrastructure and retail telecommunications operations within a single corporate group. Such consolidation, while commercially rational, inherently raises risks of foreclosure, discriminatory access, margin squeeze, and increased barriers to entry.

Nigerian competition law is neither silent nor passive in the face of such risks. Ownership of essential infrastructure is not unlawful. Abuse of that ownership is. Eventually, any threats to competition or consumer welfare will hinge on whether post-acquisition conduct satisfies the statutory thresholds for substantial lessening of competition or abuse of dominance.

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21. Spotify, "The European Commission Confirms, Apple's Anti-Competitive Behavior Is Illegal and Harms Consumers," Spotify Newsroom (4 March 2024), available at: <https://newsroom.spotify.com/2024-03-04/the-european-commission-confirms-apples-anti-competitive-behavior-is-illegal-and-harms-consumers/> accessed 30 March 2026.



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