



# BILL ANALYSIS

No.1, 2016

## Nigerian Postal Commission Bill, 2015 [HB 23]

### OBJECTIVES

The objectives of the Bill are as follows: -

- Implement the National Postal Policy as may, from time to time, be modified and amended;
- Establish a regulatory framework for the Nigerian postal industry and for this purpose to create an effective, impartial and independent authority;
- Promote the provision of a modern universal, efficient, reliable, affordable and easily accessible postal services with the widest range and coverage throughout Nigeria;
- Encourage local and foreign investments in the Nigerian postal industry and the introduction of innovative services and practices in the industry in accordance with international best practices and trends;
- Ensure fair competition in all sectors of the Nigeria postal industry and encourage participation of Nigerians in the ownership, control and management of postal organisations;
- Encourage the development of postal-manufacturing and supply sector within the Nigerian economy and promote effective research and development efforts by all postal industry practitioners;
- Protect the right and interest of service providers and consumers within Nigeria;
- Ensure that the needs of the disabled and elderly persons are taken into consideration in the provision of postal services;
- Ensure an efficient management including planning, coordination, allocation, assignment, registration, monitoring and use of national resources in the postal sub-sector and also promote and safeguard national interests, safety and security; and
- Repeal the Nigerian Postal Service Act, CAP. N127, LFN 2004

### NUMBER OF CLAUSES/PARTS

- The Bill has **30 parts** and **126 clauses**, including two schedules

### CONTENT

The Bill has the following contents: -

- Establishment of the Nigerian Postal Commission, including the staffing and funding of the Commission
- Establishment of a new Licences Regime for the operation of Postal Services

- Power of the Commission to investigate consumers' complaints and non-compliance of operators
- Monitoring and Reporting
- Ant-Trust and anti-competition provisions
- Tariff Rate Regulation
- Universal Service Obligation and Public Postal Operator
- National Post Code System and Technical Standards

## IMPLICATIONS OF THE BILL

### 1. **Creation of an Independent Nigeria Postal Commission: -**

The Bill proposes a new Commission which would be known as "Nigerian Postal Commission" and the Commission has been given very wide and encompassing powers in the postal services industry in Nigeria. The Commission has the power to issue licences, conditions for licences, approval of tariff rates, resolution of disputes, regulations of universal postal services etc. The Commission is given the power to monitor and investigate all matters relating to the performance of all licensees and postal service operators.

The Bill prohibits the interference of the functions and powers of the Commission by the Minister or any other person (Clause 23(2)).

### 2. **Repeal the Nigerian Postal Service Act, CAP. N127, LFN 2004: -**

Clause 123 seeks the repeal of the Nigerian Postal Service Act. All assets, funds, resources and other immovable properties of the old Nigerian Postal Service (NIPOST) will be vested in the new Commission.

### 3. **Establishment of a New Nigerian Postal Service:**

Under Clause 83, a new Nigerian Postal Service is created and it shall be designated as "The Public Postal Operator" that will be responsible for providing universal postal services in Nigeria. Of note is that the proposed Nigerian Postal Service shall be a limited liability company. Nevertheless, according to the Bill, the company shall be under the exclusive and full control of the Nigerian Postal Commission (Clause 83). The functions and powers of the Nigeria Postal Service are listed in Clauses 91 – 94 of the Bill. Nevertheless, it is curious to note that a Bill that seeks to encourage fair competition is giving the Nigerian Postal Service (a limited liability company) exclusive powers to the exclusion of the other companies (Clause 92). This is contradictory intentions within the Bill

### 4. **Promoting Fair Competitive Practices: -**

The Bill seeks to promote the interests and welfare of consumers by enforcing compliance with all competition laws and regulations in Nigeria (Clauses 75 – 77). The Bill also seeks to protect small postal service operators from big and dominant practices of bigger and more powerful corporations. Thus, no one postal service operator will be able to take unfair advantage of the consumers, but rather each postal service operator will be obliged to offer its good or service on attractive terms, and each of the operators will be quick in its response to its consumers and deal efficiently with them.

**5. Establishment of a Universal Postal Service Fund: -**

Clause 84 establishes a Universal Postal Service Fund, which proceeds shall be used for the payment of compensation and incentives to the Nigerian Postal Service created under Clause 83 and the deployment of Postal Services to the unserved and undeserved areas. Funding of the Fund would be through budgetary allocations from the National Assembly as well as other sources (Clause 84(2)). As noted earlier, this is a curious development and not in line with international best practices. It should not be the duty of the Government to fund a limited liability company (i.e. the Nigeria Postal Service). This would be an unfair disadvantage to the other postal operators.

The model of the “Universal Service Fund” contained in the Nigeria Communications Act may be adopted, which allows for the funds to be distributed to all operators in the industry so as to implement wider coverage of the service. For example, when the Nigeria Communications Commission wishes to engage in the infrastructural development of telephony and service to a particular unserved area, it would employ monies from the Fund to either subsidize the telecommunications services in that area or engage a successful telecommunication operator to provide the services at a reasonable rate.

**6. Enhanced Transparency of the Commission:–**

Under Clause 53, the activities of the Nigerian Postal Commission would be more transparent and accessible to the general public. This is in line with the “open governance” arrangements that countries are practicing in recent times. The Bill mandates the Commission to maintain a register, in both physical and electronic forms, of all of the matters that are required to be registered under the Bill. This includes the Register of Licences, Register of Notices, Register of Directions, Register of Decisions, Guidelines etc. Also, members of the public must always have access to the register.

**7. Powers to Investigate: -**

The Bill gives the Nigerian Postal Commission the powers to conduct investigation, both public and private, over issues arising from the operation of the Bill and postal industry (Clauses 43, 44 and 46). The Inquiries may be held based on the Commission’s initiative or in response to a complaint/request by a private citizen.

The Commission is also expected to publish the report of the inquiry within thirty (30) days of the con.

**8. Resolution of Disputes: -**

One of the novel provisions of the Bill is the power of the Commission to resolve disputes between it and operators as well as disputes between operators (Clause 58). Clause 61 of the Bill provides that the Commission shall adopt any of the Alternative Dispute Resolution methods necessary to resolve the issue. Furthermore, the Bill, under Clause 64, provides that the decision of the Commission in respect of any of the disputes it has resolved shall be binding

on the parties and may be registered in the Federal High Court. Nonetheless, a dissatisfied person or party can still appeal the decision of the Commission at the Federal High Court.

**9. Administrative Hurdle to Review of the Commission's Decision: -**

The Bill provides in Clause 73(1) that an aggrieved person or company may appeal to the Federal High Court for a judicial review of the Commission's decision or other actions. However, in subsection (3) of the Clause, it stated that a person can only apply to court for a judicial review where he/she has first exhausted all other remedies provided under the legislation. This Clause is similar to provisions in Establishment Acts or Laws that the Courts have declared unconstitutional.

**10. Commission to Develop the Post Code System and the Technical Code & Specifications: -**

Under Clause 98, the Commission is solely and exclusively vested with control, planning, administration, management and assignment of the National Post Code System. Also, Clause 99 provides that the Commission shall specify and publish technical code and specifications in respect of postal services. This postcode system shall be used by all postal service operator for the delivery of articles, documents and goods throughout the country

**11. Minister to Develop the Nigerian Postal Policy: -**

Clause 22(1) stipulates that it is the Minister, which is empowered to develop the general policy for the Nigerian postal sector. However, the Minister may request that the Nigerian Postal Commission carry out a public consultative process on the proposed policy formulation or modification.

**12. Emergency Powers: -**

The Bill creates emergency powers for the Nigerian Postal Commission, which gives them the powers to suspend the license of a licensee or confiscate of any postal facilities without a court order. This emergency power can only be activated during public emergency or when public safety is threatened.

**13. Special Powers: - The Bill gives the Commission the following special powers:**

- a. Power to appoint external inspectors to exercise the Commission's powers of monitoring and enforcement (Clause 106);
- b. Power to search any postal service facilities or premises (Clause 107);
- c. Power to confiscate property, impounding of equipment or sealing of the building of a suspected offender or violator as an interim or preventive measure (Clause 108);
- d. Power to issue directives/orders to licensee to desist from unfair competition or business practices (Clause 109);
- e. Power to intercept and detain postal articles that are either posted contrary to the Act, found to be fraudulent or contain goods that are illegal (Clause 110); and
- f. Power to open postal article (Clause 111)

## ANY SIMILAR EXISTING BILL

The Bill is similar to the Post Service Commission Bill 2015 (SB 106) sponsored by Senator Gilbert Nnaji.

## CONCLUDING ISSUES

The Bill is aimed at liberalizing the postal service delivery as well as haulage industry. This is following the policy of liberalization that previous administrations adopted in various sectors including telecommunication, Power and Pension. The Bill also seeks to separate the powers of licensing and commercialization of postal services within the postal service industry.

The Bill promotes fair competition and discourages monopoly in the postal service industry and this is a welcome development. Consumers and the general public will greatly benefit from a more organized and efficient postal service industry. Fair and open competition benefits consumers by ensuring lower prices and new and better products. Furthermore, fair competition

One of the intentions of the Bill is to promote a balanced, efficient and effective Nigerian Postal Service as a Public Service Operator. It would be recommended that the clause that gives the Nigerian Postal Commission power and control over the management as well as administration of the Nigerian Postal Service (a limited liability company) should be removed. The Commission ought not exercise its powers over the Nigerian Postal Service but should allow the Nigerian Postal Service to operate exclusively as a commercial business enterprise. This would greatly benefit the industry as well as the economy too.







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## **About PLAC**

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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