

VALUE-ADDED SERVICES - EXAMINING ITS REGULATORY FRAMEWORK AND ITS IMPACT ON THE TELECOMMUNICATIONS SECTOR



INTRODUCTION

The recent growth of the telecommunications industry has witnessed a reposition from the provision of standard and conventional services such as voice calls and text messages to a variety of services collectively known as Value Added Services (“VAS”).

VAS refers to services that are not within the scope of core telecommunications services such as voice calls and text messages. These services can either be rendered by telecommunications companies or by other companies working with or through telecommunications companies.

Examples of such services include multimedia messaging, caller tunes, et al. The market value of the industry was estimated at \$200 million per annum in 2016 and is expected to reach \$500 million by the end of this year [1]

The VAS sector is widely regarded as a subsector of the telecommunications industry and is regulated by the Nigerian Communications Commission (“NCC”), pursuant to the Nigerian Communications Act (“NCA”) and the Wireless Telegraphy Act of 1990 (“WTA”). The NCA and WTA empower the NCC to regulate VAS providers and operators in Nigeria. Further to the NCA and WTA, the NCC, issued the Value-Added Services and Aggregators Framework (“VASAF”) and the License Framework for Value Added Services (“LFVAS”).

While the NCA and WTA are principal legislation that relate to the VAS sector in Nigeria, the primary regulations governing the VAS sector are the VASAF and the LFVAS. While the VASAF regulates the VAS (Content Service) industry, the LFVAS provides a framework for the issuing of licence in the VAS sector.

The Value-Added Services and Aggregators Framework and the Licence Framework for Valued Added Services

According to the VASAF and the LFVAS, the VAS sector consists of four broad segments with the following corresponding market players:

- 1.The Network Operators;
- 2.The Aggregators;
- 3.The content and application service providers; and
- 4.Developers of content, applications and platforms.

As stated in the explanatory notes provided in the VASAF on the above market players:

[1] Ayodele “Nigeria's VAS Market Set to hit \$500m” (Punch, 4th November 2016 <https://punchng.com/nigerias-vas-market-set-hit-500m-ncc/>)

- Network Operators are required to provide the final link to the subscriber for the purpose of delivering VAS to the end-user. However, they are not allowed to host or distribute these VAS(s) directly to their subscribers.
- The Aggregators are required to provide a concentration point to limit the number of devices that will be directly connected to the operators, thereby eliminating the need for Content Service Providers to keep multiple physical connections to each Network Operator. They basically serve as the bridge between the content and applications service providers and the network operators. However, it is important to note that Aggregators are not allowed to either host or distribute contents and applications, nor will they have access to the information passing through them or perform any data level processing.
- Content and applications services providers are the only players that are permitted to pool, host, and distribute content and applications using their own in-house software and hardware platforms.
- Developers are unlicensed, freelance creators of content and applications or those who have a franchise on such VAS that they provide. They are however not licensed to distribute such services. Developers do not need a licence from the NCC to market their products; however, they must be registered with the NCC.

In summary, the structure of the four segments is such that the Developers develop contents and pass same (under an agreement) to the Content and Application Service providers, who in turn distribute such content through the Aggregators, to the network operators, for onward distribution to the end subscribers.



It must be noted that before any of these market players can take part in, or become incorporated into the VAS value chain, they must register with the NCC or obtain the required licence under the LFFVAS [2]

Function of the market players

Under the VASAF, the market players are vested with certain functions and responsibilities. These functions are highlighted below.

Network Operators

- Provide termination service to Aggregators and transmit requests for service from subscribers to Content and Application Providers through Aggregators [3]
- Protection of subscribers from unwanted and unauthorised VAS in accordance with the NCC's directives and the provisions of the VASAF.
- Provision of billing, revenue collection, publicity and e-marketing services to Content and Application Providers who wish to outsource these administrative services to Network Operators.

[2]As a matter of fact, the VASAF provides that the provision of Section 31(1) of the NCA, barring any company in Nigeria from offering any telecommunications service without an appropriate licence and the capacity to value added services.
 [3]It is imperative to note that network providers must possess a Digital Mobile License, Unified Service Access Service License (UASL) or any other licence issued by the NCC which empowers the licensee to transmit VAS to end users.



Aggregators

Under the VASAF, the functions and responsibilities of Aggregators are divided into core functions and auxiliary services, and they include:

1. Core Functions

- Provide simplified, direct and secure connection to Content and Application Providers for access to all Network Operators that have the capability to transmit VAS to end users. This service is however limited to multiplexing of signals from various VAS providers and distributing same to all Network Operators as requested by each Content and Application Provider.
- Provide direct link to the internet or International Data Access service providers for content and application providers who wish to market their services globally.
- Securely transport content to and from operators and VAS content service provider systems.

2. Auxiliary Services

- Provision of collocation services to those requiring it.
- Provision of billing and revenue collection services to content and application providers as may be required.
- Provide intermediation for billing verification between parties in the VAS value chain.

Content and Application Providers

- Installation of hardware and software platforms for hosting applications and content.
- Hosting and distribution of third-party applications and contents.
- Installing software for processing, counting and logging request for VAS.
- Takes responsibility for billing the customer and revenue collection, either by installing an in-house billing platform or outsourcing it to third parties. The content and application provider may collect payment directly from the subscriber via VAS prepaid voucher or other electronic payment platforms. Revenue collection, branding and advertising can however be outsourced to third parties.
- Remittance of revenue due to developers based on agreed sharing formula.
- Collaborate with developers in determining a reasonable price for VAS products.
- Take responsibility for user authentication, traffic management, security and service delivery.
- Monitor and manage end-to-end quality of service in conjunction with other market players and taking charge of customer complaints, service level agreements and customer code of practice.

- There is no restriction to the types of VAS they can offer although they cannot offer those that are banned by the NCC and/or those that are not permissible under the relevant Nigerian Laws. For tele-marketing and e-adverts, they must adhere to the modes of delivery specified by the NCC as stated in chapter 5 of the VASAF framework and other conditions.
- Must meet minimum technical specifications outlined in the technical framework attached as Annexe 1 to the VASAF.

Developers of Content, Applications and Platforms

- A VAS developer must be able to provide valid proof of ownership of an application to be hosted and distributed if required by the content and application service provider.
- Take responsibility for obtaining necessary rights, licences, consent and permissions for content or third –party applications to be hosted on his behalf when required.
- Be responsible for payment of all royalties and fees required by third-party owners of content and application. Also, subject to the terms of any agreement between the parties, it shall be responsible for all fines and legal fees emanating from any litigations arising from a breach of third-party copyrights and patents.
- Must be ready to indemnify the content and application provider against infringement of third-party copy rights, intellectual property rights, patents in respect of VAS content or apps for which hosting is requested.

- Collaborate with content and application providers and other stakeholders as necessary in determining product price, taking into consideration development, hosting, distribution and overhead costs.
- Take responsibility for the accuracy and correctness of VAS product being distributed and rectify any errors or bugs found in the product.


Licence for VAS Providers

As earlier noted, the LfVAS requires VAS providers to obtain a licence before they can distribute or provide their VAS. However, the LfVAS does not provide any special or unique step or procedure for obtaining this licence. It simply states that the application process should be treated in tandem with the established process and procedure for all individual licences by filing the application licence application form. Furthermore, the licence fees will be as determined for the various services covered by the licence. However, in practice, an applicant (VAS provider) is required to take the following steps:

1. Download the individual Licence Application Form from the NCC's website (www.ncc.gov.ng) [4]
2. Fill the downloaded form and return same in triplicate, i.e., in three copies.
3. After the submission of the form in the manner above, the applicant is required to pay the sum of N1,000,000 (One Million Naira) for the form and 5% of the licence fee of N10,000,000 (Ten Million Naira) being N500,000 (Five Hundred Thousand Naira), as a non-refundable administrative charge [5]

[4] The form is in PDF format

[5] "Value Added Service Aggregator Licence" (NCC, 05 November 2017 <https://www.ncc.gov.ng/media-centre/public-notice/297-value-added-service-aggregator-license>)



The licence once granted, subsists for an initial period of five years and is renewable on equal terms, upon the fulfilment of the requirements for renewal [6]

Licence Scope

The LFVAS provides for some services that are expected to be rendered by VAS providers. These services are divided into Entertainment, Marketing, Advertising, Commerce and General services, and they include:


- Entertainment-Premium rate messages, subscription service for TV and radio polling, games, chat, quizzes.
- Marketing- Premium billed contest, subscription services, group functions, incentives and promotions.
- Advertising-Drive purchases to target markets, create affinity groups and ongoing communications of new products using broadcast (TV, Radio), print (online, newspaper, magazine).
- Commerce- Transaction fees for the redemption of coupons, point of sale purchases and micro payments; subscriber rate plans.
- Generally, some form of mobile VAS to be provided include; Text messages, Picture messages, Ring tones, Graphics, Games, Mobile Internet Sites, Videos, Multimedia, Call Directory and Call Centre services.

It is also imperative to note that under the LFVAS, VAS providers are required to adhere to certain guidelines in carrying out their operations. These guidelines as stated under the LFVAS, include:

- *Service Subscription*- in protecting the right to privacy of subscribers, the LFVAS provides that subscribers have a right to privacy, therefore, in no circumstance should a VAS provider send an unsolicited message to a non-subscriber. In addition, approval must be obtained prior to sending commercial SMS messages and other VAs [7]
- VAS providers are mandated not to send or have others send on their behalf, unsolicited, random or untargeted telecommunications messages (SPAM).
- *Advertising and Promotion*- All advertising and promotions must clearly indicate whether a service is a subscription; terms and conditions of programme clearly stated; Service pricing information is clearly and conspicuously indicated.
- The consumer must have the right to 'opt-in' or 'opt-out' of any promotion or program/service, whether subscription-based or otherwise.
- VAS providers must ensure that no VAS service may be promoted as being "free" if it involves any charge whatsoever to the consumer. No product or service may be described as "free" if it is obtainable only by the use of a premium rate service involving a charge to the customer.
- Text messages sent and received by consumers must be stored by the service provider for a period of six months or any period determined to be reasonable by the service provider. There should be no hidden charges and any associated charges for services rendered should be disclosed.

[6] This includes but is not limited to the licence terms and conditions/obligations.

[7] It must be noted that Subscriber approval pertains only to the specific programme to which the consumer subscribed.

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- VAS providers are required to build safeguard measures to the satisfaction of the regulator to ensure that no sexually suggestive or explicit material is transmitted in the course of the service.
 - *Messages that must not be premium-* for SMS containing help and error messages or other general information or for messages requesting for information or stopping a service, the VAS provider must not charge the end-user.
 - *Customer support-* VAS providers are required to maintain customer support on all services. Complaints shall be dealt with within a reasonable time frame. Therefore, where a complaint is not being approved, reasons and decisions must be conveyed to the complainant within a reasonable time.
 - VAS providers are required to implement appropriate mechanisms to ensure and make available by appropriate means at least two methods of directly contacting the service provider. Hence, all advertisements must include the name, telephone numbers, and contact details of the relevant VAS provider.
 - VAS providers shall adhere to the Quality of Service Regulations and other regulations issued by the Commission.

CONCLUSION

The regulation of the VAS sector by the NCC is indeed a welcome development. This is because the sector (though largely under the telecommunications industry) has become a huge sector based on revenue generation and market value. However, it is also the duty of the NCC and other key stakeholders to ensure that the VASAF, the LFVAS, and any other relevant regulation, remains updated and in tandem with industry trends and contemporary realities.



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