



**NIGERIAN CORPORATES - FLASH-NOTE**

## The MTN Imbroglia

*This morning the South African multinational MTN announced that the Nigerian telecommunications regulator had agreed to reduce by 35% the fine of USD 5.2 billion it had imposed on the company's local subsidiary last month. **This denouement vindicates a prediction, first shared with Rhombus' clients on November 9<sup>th</sup>, that we are now able to disseminate more widely.***

### Flash-note - MTN Nigeria, Nov 9th

1) I am convinced that **the current drama will end with a negotiated settlement**, even though there is no question that the Nigerian Communications Commission has applied the relevant regulations<sup>1</sup> to the letter in slapping MTN with a USD 5.2 billion.

- Following publication of the Regs in 2011, the NCC held a series of meetings to impress upon mobile operators the need to register the identity of every subscriber and to ensure that all unregistered SIM cards were deactivated.
- This August – i.e. almost 4 years later – **NCC issued a 1-week deadline for such deactivation.**
- An NCC audit conducted the following week established that, while all other operators had “substantially complied” with the directive, there had been **no such compliance by MTN** which operates Nigeria’s largest network.
- In early Sept., an enforcement team established that **5.2 million unregistered lines were still operational on the MTN network<sup>2</sup>.**
- One month later, the regulator challenged MTN to show why the sanctions prescribed in Sec. 20(1) of the relevant regulation – i.e. a fine of N200,000 per offending line - should not be applied.
- It took MTN two weeks to submit a response that has been described as “unpersuasive”.
- **The N1.04 trillion fine was imposed on October 23.**

2) The above chronology explains why **MTN has adopted such a cautious tone<sup>3</sup>** in response to what a number of media commentators and even financial-market participants<sup>4</sup> have sought to portray as a capricious and disproportionately severe action on the part of the regulator.

- The company has written to the NCC to request a review of the fine and **asking for “leniency”**.
- It has today (11/9) announced the **resignation of CEO Sifiso Dabengwa**, with immediate effect.

<sup>1</sup> i.e. [Registration of Telephone Subscribers - Regulations](#), issued by the Nigeria Communications Commission (NCC) on Nov 7, 2011.

<sup>2</sup> On Sept. 21, MTN’s non-compliance took on a tragic dimension when one of Nigeria’s elder statesman Chief Olu Falae was abducted on his 77<sup>th</sup> birthday. His kidnappers contacted the family, using an unregistered MTN line, to demand a N100 million ransom and the company was unable to provide security officials with any information as to the subscriber’s identity.

3) The Rhombus view is that the CEO's resignation was an important component of the negotiations reportedly underway<sup>5</sup> between MTN and the NCC. As such, the substantive and symbolic weight of a scalp this large suggest that **the company has an excellent chance of getting the US\$5.2 billion fine reduced – possibly by as much as 30-35%**<sup>6</sup>.

4) While the implied savings of USD 1.82 billion would make a significant contribution to the recovery of MTN's battered share price, **the revised fine of USD 3.38 billion would still pack a powerful signaling punch**, demonstrating the Buhari administration's the zero-tolerance approach to non-compliance with law and regulation.

5) The relevant timeline is quite short, given the NCC's Nov. 16<sup>th</sup> deadline for payment. I do not believe anything will happen before this Wednesday, which is when Buhari is scheduled to finally announce his Cabinet. While the shares are up 8% from last Monday's bottom (with a gain of 1.63% today), **there is arguably still plenty of room for a relief rally**.

### MTN Nigeria update, Nov 30<sup>th</sup>

The price action since my initial note suggests that the market has completely dismissed the prospect of a negotiated settlement. Nevertheless, **over the course of the last fortnight there have been four significant developments, each of which supports the Rhombus thesis**.

1) In his first statement on the issue<sup>7</sup>, the newly appointed communications minister Adebayo Shittu declared that, **"Nobody wants MTN to die. Nobody wants MTN to shut down."**

2) Three days later, the company issued a statement informing shareholders that the original Nov. 16<sup>th</sup> deadline for paying the fine had been extended (*sine die*) and that, **"The Nigerian authorities have, without prejudice, agreed that the imposed fine will not be payable until the negotiations have been concluded."**

3) As if to underscore the message that a negotiated settlement is being discussed at the highest level, minister Shittu was quoted on Nov. 18<sup>th</sup> as stating that, **"It will be up to the president to determine which direction to go since MTN asked for leniency."**

4) The message was not lost upon the Nigerian Governors' Forum which, during a previously scheduled meeting held the very next day to discuss the fiscal pressures arising from the drop in oil prices, strongly opposed the idea of leniency for the multinational<sup>8</sup>.

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<sup>3</sup> It is also significant that the South African authorities have declined to intervene on MTN's behalf. Deputy President Ramaphosa has publicly stated that the company's Nigeria subsidiary has an obligation to comply with local regulations.

<sup>4</sup> See **"MTN Suffered 'Shake Down' by Nigeria Regulator, Wells Fargo Says"**, by Carolina Wilson, posted on *Bloomberg*, Nov. 11, 2011.

<sup>5</sup> As if to confirm the point, in his first statement after being appointed acting CEO, Phuthuma Nhleko declared, "I'll proactively deal with the Nigerian regulator and will continue to work with them in addressing the issues around unregistered subscribers as a matter of urgency".

<sup>6</sup> Gargantuan though this concession appears, it is worth noting that **"When all four Nigerian cellphone service providers missed an August 11 deadline, they were fined amounts from \$19 000, for Airtel, to \$511 000 for MTN"**, a detail disclosed by NCC spokesman Tony Ojobo on Nov. 17. Significantly, only MTN failed to pay, according to the same source, as quoted in **"Nigeria 'won't lower' MTN's \$5.2bn fine"**, by *Fin24* (S. Africa), Nov. 17, 2015.

<sup>7</sup> i.e. Nov 13<sup>th</sup>.

<sup>8</sup> **"MTN has accepted that they committed the offense and has apologised, and they are looking for leniency, we the governors forum decided to support the NCC to abide by the laws of the land and the laws of our land do not give leniency to deliberate offense to our nation"** – NGF Communique dated Nov 19, 2015 as quoted in **"We can no longer pay N18,000 minimum wage, Gobs cry out"**, by *The Vanguard*, Nov. 19, 2015.

On the basis of the foregoing, **Rhombus feels even more convinced than before that the USD 5.2 billion fine will be significantly reduced**, possibly in time to deliver some Yuletide cheer to the company's shell-shocked investors.

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