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NIGERIAN ELECTRICITY REGULATORY COMMISSION

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GUIDELINES ON DISTRIBUTION FRANCHISING IN  
THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY

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## TABLE OF CONTENTS

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1.	Purpose	3
2.	Background	3
3.	Distribution Franchise Model	4
	3.1 Commercial Arrangement	4
	3.2 Contractual Arrangement	5
4.	Application Procedure	5
5.	Revocation of Franchise Arrangement	6

## 1. PURPOSE

The purpose of this document is to provide regulatory guidance to distribution licensees ("DisCos") on obtaining the Commission's consent in compliance with section 69(1) of the Electric Power Sector Reform Act ("ESPRA") for franchise arrangements for part of a DisCo's public utility function with the franchisee operating under the terms and conditions of the DisCo's distribution licence. The objectives of these guidelines are to:

- (i) Provide a light-handed framework for approving franchising arrangements of DisCos.
- (ii) Ensure that franchise arrangements of DisCos are designed to improve service to end-use customers.
- (iii) Ensure that the obligations of DisCos under its licensing terms and conditions are not compromised by the franchise arrangement.
- (iv) Ensure that the customer care standards are strictly complied with within the franchise area.

The Commission shall, upon consideration and review of a franchise proposal, issue a "No Objection" to the DisCo to proceed with the franchising arrangement.

## 2. BACKGROUND

The privatisation of DisCos in the Nigerian Electricity Supply Industry ("NESI") had, amongst many objectives, a specific key performance indicator of an agreed level of reduction in technical and commercial losses. With the core investors held accountable for the achievement of the loss targets, the DisCos have to a limited extent adopted some level of outsourcing of activities primarily in the area of revenue collection and distribution system operation. The prevalence of long rural feeders in the distribution systems exacerbated by community challenges in some areas have stimulated business decisions and the evolution of revenue protection schemes and community aggregation models for load clusters that may otherwise remain underserved. The possible benefits of granting a distribution franchise by a DisCo, where feasible, are to:

- (i) Stimulate investments in addressing funding and infrastructure deficits in the distribution sub-sector.
- (ii) Provide investment opportunities for third parties in the distribution sub-sector of the electricity value chain.
- (iii) Improve the quality of service for customers in the provision of adequate and reliable supply of electricity.

- (iv) Create opportunities for service improvement of underserved customer groups through investment by third parties or consumer associations.

### 3. THE DISTRIBUTION FRANCHISE MODEL

The public consultation held by the Commission on the prospects of distribution franchising indicates opportunities in the following models:

- (i) Metering, Billing and Collection.
- (ii) Total management of electricity distribution function in a ring-fenced area.
- (iii) Total management of distribution feeders including billing & collection.
- (iv) Loss reduction and provision of embedded generation.

The Commission shall, in addition to the models listed above consider and review any other innovative franchise models developed by a distribution licensee.

In the consideration of an application for "No Objection" to proceed with a franchising arrangement, the Commission shall consider the following:

#### 3.1 COMMERCIAL ARRANGEMENTS

- (i) The tariff applicable under the distribution franchise arrangement shall be determined in accordance with the prevailing tariff methodology approved by the Commission pursuant to section 76 (i) (b) of the Act.
- (ii) The procurement of additional generation capacity for any franchised area through a bilateral contract or embedded generation option shall be in full compliance with prevailing Orders, Regulations and Guidelines issued by the Commission.
- (iii) A DisCo shall hold prior customer consultation as a condition for the procurement of additional generation capacity where the cost is higher than the prevailing wholesale tariff from the power pool. Under such a condition, the Commission shall review the procurement for prudence as a condition for allowing the pass-through cost to consumers in the franchised area. Where applicable, the Commission may conduct a public hearing for the determination of any supplementary charge to consumers.

#### 3.2 CONTRACTUAL ARRANGEMENT

- (i) The franchising arrangement by the DisCo shall be on a firm contractual agreement with the franchisee. The contract shall, at a minimum, provide base data for the franchised area prior to contract, amount payable by the franchisee, deliverables

expected of the franchisee, capital expenditure, tenor of the agreement (which shall not exceed the unexpired tenor of the DisCo's licence), cancellation terms of the agreement, remedies for failure by the franchisee, technical delineation of franchised area, asset register, trading point, treatment of legacy contracts, reporting obligations, metering arrangement, termination and a dispute resolution mechanism.

- (ii) The payment obligation of the franchisee must be securitised in a form acceptable to the DisCo with safeguards to ensure that the liability of the DisCo to the market is not compromised.
- (iii) Parties related to the distribution licensees as directors or shareholders are not eligible to enter into a franchise arrangement with the utility.
- (iv) Where practically feasible, DisCos planning a franchise arrangement should engender competition by adopting an open competitive approach to the engagement of prospective franchisees.

#### 4. APPLICATION PROCEDURE

- (i) A DisCo shall not, without prior approval of the Commission, franchise any of its licensed functions to any person.
- (ii) Upon completion of the engagement process of a franchisee but prior to the execution of the Franchise Agreement, the distribution licensee shall apply to the Commission for "No Objection" to proceed with the franchise arrangement.
- (i) An approval of the Commission to an application filed pursuant to these guidelines shall not be unreasonably withheld taking due regard to the objectives listed in section 1(ii, iii, and iv).

#### 5. REVOCATION OF A FRANCHISE ARRANGEMENT

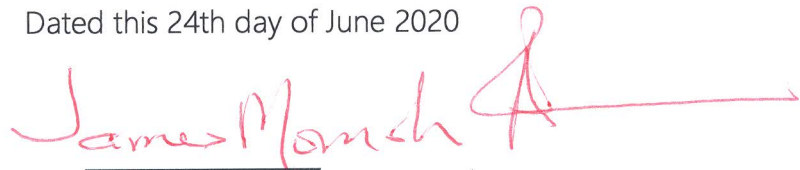
- 5.1 The Commission may, based on information available to it, or upon receiving a petition from relevant stakeholders or other licensees, initiate an inquiry into the conduct and performance of a franchise arrangement.
- 5.2 The Commission may issue an Order revoking a franchise arrangement if in its opinion:
  - (i) The franchise arrangement is being operated in a manner that willfully or unreasonably contravenes any provisions of EPSRA, licence terms and conditions



of the distribution licensee, regulations and Orders of the Commission, Market Rules, Network Codes.

- (ii) The franchisee is carrying out business in a form or manner which constitutes an immediate threat to public health and safety.
- (iii) Any circumstances exist which render it necessary in the overriding public interest to suspend the franchise arrangement.
- (iv) A public hearing shall be held by the Commission prior to the revocation of any franchise arrangement by a DisCo.
- (v) An Order for the revocation of a franchise arrangement shall hold the distribution licensee responsible for continuity in the provision of electricity services.
- (vi) Where the franchisee or distribution licensee is eligible to compensation for un-amortised investments, all settlements shall be in accordance with the provisions of the franchise agreement.

Dated this 24th day of June 2020



James A. Momoh  
Chairman