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The Anti-Competitive Implications of the MTN-IHS Acquisition:

An Essential Facilities Perspective

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Introduction

The Nigerian telecommunications market for Mobile Network Operators (MNOs) already functions as an oligopoly, with high market concentration in favour of four companies: MTN, Airtel, Globacom and 9mobile.[1] In February 2026, MTN Group announced its proposed acquisition of the remaining shares in IHS Towers,[2] a transaction that carries profound implications for competition in the sector. The proposed acquisition will face numerous hurdles pertaining to competition regulation in Nigeria, the first and most obvious being the merger control regime. This article, however, focuses on the restriction of essential facilities through the framework of the abuse of a dominant position. It provides a theoretical and legal background to the essential facilities doctrine and its potential implications for the proposed acquisition.

The first section of the article examines the essential facilities doctrine, offering a theoretical and legal analysis of its application in the Nigerian context as it relates to the acquisition. The article then makes the case that IHS's tower infrastructure constitutes an essential facility and argues that by acquiring control of such infrastructure, MTN would assume a gatekeeper position within the downstream telecommunications ecosystem. It proceeds to consider, in brief, the theories of competitive harm that may arise from the transaction. The article concludes that the Federal Competition and Consumer Protection

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[1] Mordor Intelligence, 'Nigeria Telecom Market Size and Share Analysis' (*Mordor Intelligence*, 6 January 2026) https://www.mordorintelligence.com/industry-reports/nigeria-telecom-market accessed 24 March 2026.
[2] MTN Group, 'MTN Group Announces Proposed Acquisition of IHS Towers' (*MTN*, 17 February 2026) https://www.mtn.com/mtn-group-announces-proposed-acquisition-of-ihs-towers/ accessed 23 February 2026.

Commission (FCCPC) must exercise heightened and sustained scrutiny over MTN's conduct in relation to competitors' access to tower infrastructure.

The Essential Facilities Doctrine

The Federal Competition and Consumer Protection Act 2018 (FCCPA) is Nigeria's primary competition statute and thus provides the most appropriate lens for the legal analysis of this acquisition. The Act introduced Nigeria's first comprehensive framework addressing abuse of dominance, restrictive trade practices, merger control and consumer protection. More relevant to this article, section 72(1) of the FCCPA prohibits any abuse by one or more dominant undertakings in a market, before cataloguing a non-exhaustive list of conduct that would amount to such abuse.[3] One such conduct is the denial of access to an essential facility, where it is economically feasible to provide that access, thereby codifying the essential facilities doctrine in Nigerian competition law.[4] Section 72(2)(b) of the FCCPA prohibits a dominant firm from denying a competitor access to an essential facility it owns or controls, where it is economically feasible to do so. However, the Act does not define 'essential facilities' and owing to the novelty of the provision, there is no developed judicial precedent or direct guidance on the subject in Nigeria. Reference is therefore made to foreign jurisprudence to properly examine the concept.

The essential facilities doctrine was first coined in American antitrust law, and it has evolved over the years with changing socio-economic landscapes and across jurisdictions.[5] The doctrine operates to the effect that the owner of what is termed an 'essential facility' may be mandated to provide access to that facility in the interest of competition, especially where the resource cannot easily be replicated by competitors.[6] Ordinarily, firms enjoy the discretion to deal with their property in whatever manner they choose, but where the

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[3] Federal Competition and Consumer Protection Act 2018 (FCCPA), s 72(2).
[4] FCCPA 2018, s 72(2)(b).
[5] *United States v Terminal Railroad Association of St Louis* 224 US 383 (1912); *MCI Communications Corp v American Telephone and Telegraph Co* 708 F 2d 1081 (7th Cir 1983).
[6] OECD, *The Essential Facilities Concept* (OECD Roundtables on Competition Policy Papers No 5, OECD Publishing 1996) https://doi.org/10.1787/59ae77fe-en accessed 16 April 2026.

property is deemed indispensable to effective competition, the firm may become subject to a duty to license, share or supply it to competitors.[7] Therein lies an inherent conflict with other areas of law, such as intellectual property and general property rights.

In the European Union, the *Bronner* case established the criteria for imposing a duty to deal on a dominant undertaking, in order to balance this conflict.[8] These are:

> That the infrastructure must be indispensable to carrying on business in the market;
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> That failure to provide access would eliminate all competition in the downstream market.
>
> That refusal to grant access cannot be objectively justified.

The reasoning underpinning this high threshold was to safeguard property rights, freedom of contract and the incentive to invest and innovate.[9] Nevertheless, there have been numerous departures from this position in recent times.[10] Most relevant to this article is the *Servizio Elettrico Nazionale* case, where the Court notably relaxed the requirement that competition be completely foreclosed or eliminated before an obligation to deal arises. The Court held that a situation which merely restricts effective competition would suffice to give rise to the obligation.[11] Another relevant authority is *Android Auto*, where the Court held that, where a dominant firm has developed its infrastructure for third-party use, the *Bronner* criteria are entirely displaced, such that indispensability need not be proved. Instead, the Court requires only

[7] Niamh Dunne, 'Dispensing with Indispensability' (2020) 16(1) Journal of Competition Law & Economics 74; *IMS Health GmbH and Co OHG v NDC Health GmbH and Co KG* (Case C-418/01) EU:C:2004:257; *Slovak Telekom as v European Commission* (Case C-165/19 P) EU:C:2021:239; *Konkurrensverket v TeliaSonera Sverige AB* (Case C-52/09) EU:C:2011:83.
[8] *Oscar Bronner GmbH and Co KG v Mediaprint Zeitungs- und Zeitschriftenverlag GmbH and Co KG* (Case C-7/97) [1998] ECR I-7791.
[9] Inge Graef, *Data as Essential Facility: Competition and Innovation on Online Platforms* (KU Leuven 2016) 180.
[10] Dunne (n 7); *IMS Health* (n 7) para 52; *Unilever Italia Mkt Operations Srl v Autorità Garante della Concorrenza e del Mercato* (Case C-680/20) EU:C:2023:33.
[11] *Servizio Elettrico Nazionale SpA v Autorità Garante della Concorrenza e del Mercato* (Case C-377/20) EU:C:2022:379, para 124.

that the refusal produce actual or potential effects of excluding, delaying or obstructing the development of a competing market outside normal competition on the merits.[12] The Court distinguished the instance in *Android Auto* from *Bronner*, where the dominant firm had developed the infrastructure for the needs of its own business alone. In such a case, imposing a duty to supply could have far-reaching and detrimental effects on the incentives to invest and innovate, which are among the fundamental justifications for competition regulation.

This article argues that this continuous balancing exercise functions not merely as a means of exploiting loopholes but as a critical safeguard for a developing country like Nigeria. The 'economically feasible' qualification in section 72(2) of the FCCPA mirrors the objective justification criterion in *Bronner*, thereby acknowledging the necessity of mitigating requirements. It reflects an effort by the legislature to navigate the trade-offs that may arise in applying the essential facilities doctrine. The challenge with the economic feasibility qualification is that, in the absence of any guidance on what it entails, the provision may be exploited by dominant firms to evade the duty to share or supply. Similarly, section 72(3) of the FCCPA provides a defence where a dominant undertaking can show that its conduct yields technological efficiency or other pro-competitive gains that outweigh the anti-competitive effect. The aim is that intervention should arise only where the infrastructure cannot be replicated at a reasonable cost and the denial of access would eliminate effective competition.

IHS Infrastructure as an Essential Facility

IHS Towers is the largest tower company operating in Nigeria, with its portfolio representing over 60% of the total tower stock in the country.[13] This is

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[12] David Fåhraeus and Giulio Preti, 'A Landmark Judgment in the Refusal to Deal Doctrine: Android Auto (Case C-233/23) and Bronner's Future in Digital Platform Markets' (2026) 11(1) European Papers 195; *Servizio Elettrico Nazionale* (n 11).

[13] Nigerian Communications Commission, *2024 Subscriber/Network Data Annual Report* (NCC 2024) 45 <https://ncc.gov.ng/market-data-reports/annual-reports> accessed 21 March 2026.

substantially greater than its principal competitors in this market, American Tower Corporation (ATC Nigeria) and Pan African Towers, whose combined tower capacity hardly rivals IHS's aggregate holdings.[14] The concentration present in this market satisfies all measures of a dominant position under section 70 of the FCCPA. Nevertheless, the question of the indispensability of IHS's infrastructure is worth examining closely.

At present, Nigeria operates a shared infrastructure approach to tower access, which has significantly reduced the costs of network operation and expansion for service providers. Tower infrastructure, by its very nature, is a fixed, location-specific asset; its operational value is inseparable from its geographic positioning, power infrastructure and backhaul connectivity.[15] When considered alongside the additional challenges associated with tower deployment in Nigeria, such as land acquisition constraints, financial costs, insecurity and delays in regulatory approval, it becomes clear why such investment by competitors, especially new entrants, is largely unattainable.[16] The capital expenditure and lead times required to replicate an equivalent portfolio from scratch are prohibitive. Even well-capitalised MNOs such as Globacom, which independently manages approximately 8,773 towers, required decades of internal development to reach their current scale.[17] To the extent that IHS's tower infrastructure was operated as a shared, multi-operator facility prior to the acquisition, the *Android Auto* reasoning applies: the infrastructure was developed and commercially structured precisely to enable third-party operators to use it. At present, IHS leases its facilities to MTN,

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[14] Mordor Intelligence, 'Nigeria Telecom Towers Market Report' (*Mordor Intelligence*, December 2025) <https://www.mordorintelligence.com/industry-reports/nigeria-telecom-tower-market> accessed 28 March 2026; Intelpoint, 'IHS Towers Controls Over 60% of Nigeria's Collocated Telecom Towers' (*Intelpoint*, 2023) <https://intelpoint.co/insights/ihs-towers-controls-over-60-of-nigerias-collocated-telecom-towers/> accessed 28 March 2026.
[15] Mordor Intelligence, 'Nigeria Telecom Towers Market Report' (n 14).
[16] Christopher Greaves, 'The Big Challenges Impacting Africa's Telecom Tower Ecosystem' (*Capacity*, 26 July 2024) <https://capacityglobal.com/news/the-big-challenges-impacting-africas-telecom-tower-ecosystem/> accessed 21 March 2026.
[17] Technext, 'Tower Monopoly: Globacom Is Not Bothered by MTN's Acquisition of IHS' (*Technext*, 26 February 2026) <https://technext24.com/2026/02/26/globacom-unbothered-mtns-acquisition-ihs/> accessed 20 April 2026.

Airtel, 9mobile and a host of other smaller service providers. Industry data also confirms that contractual lock-ins averaging over nine years compound the barriers to switching.[18] The consequence is that existing or prospective competitors are not realistically able to replicate a competitive tower network within any commercially relevant timeframe.[19]

Furthermore, there is no viable substitute with a similar level of national coverage.[20] ATC is the closest to IHS in terms of coverage, but it provides only partial coverage, as it continues to face barriers to rapid expansion, some of which have been highlighted above. The market is therefore structurally bifurcated: national-coverage operators depend on IHS infrastructure because no technically or commercially viable alternative exists at the required scale and geographic spread.

For all intents and purposes, MTN also satisfies the threshold for dominance under the FCCPA, which defines a dominant position as a firm's ability to act, to an appreciable extent, independently of its competitors, customers and ultimately consumers.[21] The NCC records that, as at January 2026, MTN held about 51% of total active subscribers for telephony services, significantly ahead of Airtel Nigeria with about 34% and Globacom, with about 12%.[22] This trend is replicated across mobile network services in Nigeria, thereby establishing MTN as the dominant mobile network operator in the country. The dominance of MTN and IHS in their respective markets is undeniable. If this acquisition is approved, MTN will acquire IHS's passive infrastructure, comprising towers, masts and related ancillary facilities, which constitutes the physical foundation

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[18] Ibid

[19] Greaves (n 16); Nigerian Communications Commission, *Telecoms Infrastructure Deployment in Nigeria and the Issues of Multiple Regulation/Taxation* (NCC 2017).

[20] TechCabal, 'IHS Buyout Could Rewrite Africa's Telecom Infrastructure Playbook' (*TechCabal*, 23 February 2026) <https://techcabal.com/2026/02/23/ihs-buyout-could-rewrite-africas-telecom-infrastructure-playbook/> accessed 20 April 2026.

[21] FCCPA 2018, s 71.

[22] Nigerian Communications Commission, 'Industry Statistics: Subscriber Data, Market Share (GSM)' (*NCC*) <https://ncc.gov.ng/market-data-reports/industry-statistics> accessed 20 March 2026.

upon which numerous mobile network operators depend for spectrum deployment and national coverage.[23]

Generally, the MTN-IHS acquisition involves vertical integration across two levels of the telecommunications supply chain. The upstream market concerns the provision of tower space, associated passive infrastructure and co-location services to mobile network operators. The downstream market refers to the retail mobile network services market, within which MTN competes with Airtel, Globacom and 9mobile for end-users as a Mobile Network Operator (MNO). The transaction will give MTN a dominant position in the upstream infrastructure market, as well as a competitive edge and the ability to distort competitive conditions in the downstream retail market. The effect of this is the potential entrenchment of MTN's dominant position through the reduction of the competitive strength of its downstream rivals, to the detriment of market incumbents and potential new entrants.

In light of the above, the question shifts from whether IHS Towers is an essential facility in the telecommunications market to the potential anti-competitive risks that may arise from MTN becoming a gatekeeper through the proposed acquisition.

4.0 Theories of Harm Relevant to the Transaction

At this juncture, it is worth considering some of the anti-competitive conduct that may arise following the acquisition of IHS Towers by one of its numerous tenants in Nigeria, MTN, which would thereby assume the status of a gatekeeper, and not merely a dominant player, in Nigeria's telecommunications ecosystem.

4.1 Raising Rivals' Costs and Barriers to Entry

A central concern is that MTN may adopt conduct amounting to partial or full foreclosure of its downstream competitors. This could occur by way of imposing unfair terms on those competitors, such as higher access prices, or by opting

[23] MTN Group (n 1); TechCabal (n 20).

to discontinue supply to them altogether. A further risk flowing from this is the heightened barrier to entry for new entrants into the downstream telecommunications market, which would stifle innovation and entrench the existing concentration.

4.2 Margin Squeeze and Predatory Pricing

The acquisition of the cell towers would allow MTN to internalise the margins formerly paid to tower operators. These savings could potentially translate into lower costs for consumers, which would be a welcome outcome. On the other hand, competitors that continue to pay tower access charges to MTN may struggle to match its retail pricing and could effectively be pushed out of the market. There is also the risk of predatory pricing strategies, whereby MTN drives competitors out of the market before capitalising on its market control to charge consumers exorbitant prices.

4.3 Self-Preferencing

Self-preferencing refers to the practice whereby a vertically integrated dominant firm favours its own downstream operations over those of competitors that depend on the same upstream input under the dominant firm's control. A potential harm arises if MTN opts to prioritise its own lease amendments and upgrades over IHS's existing tenancies. This would give MTN a competitive edge that would undoubtedly entrench its position in the downstream market unfairly. Competitors that rely on IHS infrastructure for maintenance, upgrades and lease amendments would, as a result, become subject to an unfair market environment.

5.0 The Efficiency Argument: An Honest Engagement

It must be acknowledged that there are arguments that this kind of vertical merger is more likely to produce efficiencies than the anti-competitive effects described above. This reasoning flows from the Chicago School's single monopoly profit theorem, which holds that a firm with monopoly power in an upstream market cannot increase its total monopoly profit by extending that power into a downstream market.[24] In essence, the monopolist can already extract the full monopoly profit through the price of the upstream input and so is not incentivised to foreclose competition downstream, as that would merely redistribute the accrued profit within the supply chain rather than increase it.[25] From this perspective, the MTN-IHS transaction could give rise to immediate efficiency gains, some of which were enumerated by MTN in its acquisition announcement. These include internalising the margin it currently pays to IHS, benefiting from current and future incremental third-party revenues and improving cost predictability, which could even lead to lower retail prices to the consumer's benefit.[26] It could also be argued that, in controlling the tower infrastructure, MTN would have a commercial interest in maintaining high tower occupancy rates, since revenue from multiple tenants exceeds revenue from a single tenant. Additionally, the raising rivals' costs theory depends on assumptions about post-merger pricing incentives that do not account for the fact that the upstream market remains somewhat competitive through the presence of ATC Nigeria and Pan African Towers.

These are fair and logical arguments. However, they rest on assumptions that do not hold neatly in the Nigerian context. The single-monopoly-profit theorem presupposes a competitive downstream market free of regulatory and structural distortions; conditions that are absent in Nigeria's already concentrated telecommunications sector. Where the downstream market is itself oligopolistic, it would be more profitable for a vertically integrated firm to foreclose its rivals in order to entrench its dominance and capture future rents. Suffice to say, there is no real guarantee that this acquisition would translate to lower prices for consumers. Rather, it is more probable that the further

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[24] Robert H Bork, *The Antitrust Paradox: A Policy at War with Itself* (Basic Books 1978) 135–138; Richard A Posner, *Antitrust Law* (2nd edn, University of Chicago Press 2001) 196–201; Frank H Easterbrook, 'The Limits of Antitrust' (1984) 63 Texas Law Review 1.

[25] Richard Whish and David Bailey, *Competition Law* (11th edn, Oxford University Press 2024) ch 19; Bork (n 24) 135–138.

[26] MTN Group (n 1); MTN Group Limited, 'MTN Group Agrees to Acquire the Remaining Shares in IHS Holding Limited and Withdrawal of Cautionary' (17 February 2026) https://irhosted.profiledata.co.za/mtngroup/2019_feeds/SensPopUp.aspx?id=539328 accessed 23 February 2026.

entrenchment of MTN in the market would only embolden the company to unilaterally increase prices to the detriment of the Nigerian consumer.[27] In any event, this reductive equation of consumer welfare to lower prices alone disregards the broader dimensions of consumer welfare, which include the consideration of choice, quality and innovation; which are eroded where a dominant firm controls an essential facility. The residual competition offered by ATC Nigeria and Pan African Towers, though relevant, is constrained by their comparatively modest coverage and cannot be assumed to discipline MTN's conduct once it controls the dominant share of tower infrastructure.

6.0 Recommendations

Given the anti-competitive risks that pervade this acquisition, there would need to be heightened scrutiny by the FCCPC of MTN's affairs if the acquisition is approved by the Nigerian regulators. This is to prevent problematic conduct such as restricting access to essential facilities and, more importantly, to ensure that the transaction directly benefits end consumers in the short and long term. However, regulatory risks arise in the event that the FCCPC intervenes post-merger. If the law is applied too harshly at the outset, it may impede genuine innovation and investment. Conversely, if it is applied only ex-post or too leniently, the regulators risk permitting anti-competitive effects that entrench MTN's dominance to a degree that may prove irremediable to Nigeria's telecommunication market and consumers.

It is therefore not enough for the law to be applied plainly. The regulators must consider the intent of the law and whether a given decision will achieve the greatest good for the economy and consumers at large. In determining whether 'technological efficiency or other pro-competitive gains' under section 72(3) are sufficient to exclude the application of section 72(2)(b), the Commission must deploy all available economic and social research tools to

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27 Robert Lande, 'Consumer Choice as the Ultimate Goal of Antitrust' (2001) 62 University of Pittsburgh Law Review 503, 503-05; Lina M Khan, 'Amazon's Antitrust Paradox' (2017) 126 Yale Law Journal 710, 737,

assess whether the permitted exclusion would outweigh its anti-competitive effect. This must be held to a stringent standard in order to protect the very essence of the Act.

Notably, the FCCPA was enacted in 2018, prior to decisions such as *Servizio Elettrico Nazionale* and *Android Auto*. This underscores the importance of keeping competition policy dynamic, so that it reflects the rapidly changing socio-economic conditions of society. That said, it could be argued that this acquisition may be the very spark that reignites competition and infrastructural development in a downstream telecommunications market that has stalled for years. This view echoes the reasoning of the Advocate General in *Bronner*, who warned that unrestrained mandatory access orders may reduce the incentive of competitors to make significant investments of their own.[28] Airtel, for instance, through its parent company, has increased its stake in an Indian tower company that has begun establishing subsidiaries in Nigeria, signalling a possible shift towards operator-owned infrastructure.[29] It is therefore left to the regulators, the FCCPC and the NCC, to keep a watchful eye on the sector and to ensure that these developments work towards increasing competition for the ultimate benefit of the Nigerian consumer.

6.0 Conclusion

There is a clear dearth of literature examining the tensions and conflicts between the interest in improving efficiencies and the achievement of other goals of competition regulation, particularly from the perspective of developing African countries such as Nigeria. The MTN-IHS transaction highlights the challenge facing developing-economy competition regulators in balancing two legitimate but often conflicting objectives: attracting the investment necessary to address critical infrastructure deficits and preserving the competitive market structures that deliver long-term consumer welfare. That said, the answer to the risk of over-regulation is not under-regulation.

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[28] *Oscar Bronner* (n 8), Opinion of AG Jacobs, para 62.
[29] TechCabal (n 20).

Rather, it is a calibrated, proportionate and evidence-based regulatory intervention that preserves the conditions for investment while ensuring that such investment cannot be weaponised to foreclose competition. In this regard, agencies such as the FCCPC must prioritise research and the publication of detailed reports on the economic analysis and justifications behind their decisions, as well as the assessment of emerging issues across markets, to ensure effective regulation. This would significantly improve legal certainty and promote transparency to the benefit of businesses and consumers alike, thereby building trust and encouraging compliance with competition policy.[30] It would also guarantee the maximisation of the short-term and long-term benefits of competition for the economy and consumer welfare.

Admittedly, there is potential for the acquisition to have pro-competitive effects by spurring other market incumbents to invest more heavily in tower infrastructure and to divest from the shared approach that has dominated the Nigerian mobile market for years. Nonetheless, this does not erase the FCCPC's duty to scrutinise the short-term and long-term effects of the conduct undertaken by MTN as the dominant firm in the downstream telecommunications market. That said, this transaction presents a unique opportunity for the development of Nigeria's competition jurisprudence, and the manner in which the regulators respond will shape the sector for years to come.

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30 Arinze Okiche and Ebelechukwu Okiche, 'Integrating Competition and Consumer Protection in Africa: The Law and Practice of Nigeria's Federal Competition and Consumer Protection Commission' (2025) 69(3) Journal of African Law 365.