

NATIONAL TRANSPORT COMMISSION BILL, 2015

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A BILL

FOR

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE NATIONAL
TRANSPORT COMMISSION AS AN INDEPENDENT MULTI-MODAL ECONOMIC
REGULATOR FOR THE TRANSPORT INDUSTRY AND FOR OTHER RELATED
MATTERS

Sponsored by Hon. Ossai N. Ossai

[] Commencement

ENACTED by the National Assembly of the Federal Republic of
Nigeria as follows:

- 1 PART I - PURPOSE, APPLICATION AND SCOPE OF THE ACT
- 2 1. The purpose of this Act is to:
- 3 (a) establish the National Transport Commission as an effective,
- 4 impartial and independent regulatory authority in the transport sector and to
- 5 set out the objectives, functions and powers of the Commission;
- 6 (b) promote the implementation of the national transport policy;
- 7 (c) provide an economic regulatory framework for the transport
- 8 sector or regulated transport industry;
- 9 (d) provide mechanism for monitoring compliance of government
- 10 agencies and transport operators in the regulated transport industry with
- 11 relevant legislation and advice Government on matters relating to economic
- 12 regulation of regulated transport industry;
- 13 (e) provide for an efficient economic regulation of the transport
- 14 Sector;
- 15 (f) Protect the rights and interests of service operators and users
- 16 within Nigeria; and
- 17 (g) create an enabling environment for private sector participation
- 18 in the provision of services in the transport sector.
- 19 2. This Act shall apply to the provision or use of transport and
- 20 related services in marine, rail and road transport in Nigeria.

Purpose of the
Act

Application and
Scope

Power to declare
a Regulated
Transport
Industry

- 1 **3. -(1) The Minister may by Order on the advice of the Commission**
2 **declare an industry to be a regulated transport industry after having regard to:**
3 **(a) the existence of a significant and non-transitory market power;**
4 **(b) the non-existence of economic regulation specific to that industry;**
5 **(c) the existence of regulatory benefits to the Nigerian public; and**
6 **(d) any other relevant consideration.**
7 **(2) The Order may declare which:**
8 **(a) services are to be prescribed in respect of a regulated transport**
9 **industry; and**
10 **(b) prices are to be prescribed in respect of a regulated transport**
11 **industry.**

12 **PART II - ESTABLISHMENT OF THE NATIONAL TRANSPORT COMMISSION**

Establishment
of the National
Transport
Commission

- 13 **4. -(1) There is established an independent multi-sector transport**
14 **industry economic regulator to be known as the National Transport**
15 **Commission.**
16 **(2) The Commission shall be a body corporate with perpetual**
17 **succession and a common seal, capable of suing and being sued in its corporate**
18 **name, and shall have the power to do all and any of the following:**
19 **(a) enter into contracts and incur obligations;**
20 **(b) acquire, hold, mortgage, purchase, sell, lease and deal howsoever**
21 **with property, whether movable or immovable, real or personal for the purpose**
22 **of this Act;**
23 **(c) do all acts and things which a body corporate may by law do and**
24 **which are necessary or convenient for the purposes of this Act; and**
25 **(d) exercise all of the powers given to it under this Act and do all acts**
26 **and things which are necessary or convenient for carrying out its functions and**
27 **duties under this Act.**
28 **(3) The common seal of the Commission shall be kept in such custody**
29 **as the Commission directs and shall not be used except as authorised by the**
30 **Commission.**

1 (4) The Commission shall be structured as the Board may from
2 time to time deem appropriate for the effective discharge of its functions and
3 operations.

4 **5. The Commission shall:**

Functions of the
Commission

5 (a) create an economic regulatory framework for the provision of
6 transport services and facilities;

7 (b) facilitate effective competition, promote competitive market
8 conduct and ensure that the misuse of monopoly or non-transitory market
9 power is prevented in the provision of transport services;

10 (c) promote private sector participation in the provision of
11 transport services;

12 (d) ensure that operators and users have equitable access to the use
13 of transport facilities, services, channels and routes while having regard to
14 the level of competition in and efficiency of, the regulated transport
15 industry; and

16 (e) monitor the performance of the regulated sector.

17 **6. -(1) In carrying out its functions, the Commission shall exercise**
18 the following powers:

Powers of the
Commission

19 (a) implement Government's economic regulatory policies on
20 transport;

21 (b) protect the interest of users of transport services by ensuring
22 that prices are fair and reasonable while having regard to the level of
23 competition in, and efficiency of, the regulated transport industry;

24 (c) examine and resolve complaints, objections and disputes
25 referred to it as between Government agencies in the regulated transport
26 industry and concessionaires, licensed operators, users, shippers and
27 consumers or any other person involved in the regulated transport industry,
28 using such dispute-resolution methods as the Commission may determine
29 from time to time including mediation and arbitration;

30 (d) ensure that regulatory decision making has regard to the

1 relevant health, safety, environmental and social legislation and best practices
2 applicable to the regulated transport industry;

3 (e) register all transport service providers and determine the fees for
4 such Registration;

5 (f) set guidelines and general policies on tariffs charged and monitor
6 compliance by public and private transport service operators and suppliers of
7 prescribed goods and services;

8 (g) monitor the relationship between public transport service
9 operators and their affiliates and the relationship between concessionaires and
10 their affiliates to ensure that no party derives unfair advantages over other
11 transport service operators;

12 (h) develop, enforce and monitor performance standards and indices
13 relating to the quality of transport services and facilities provided to users,
14 shippers and consumers in Nigeria having regard to best international
15 performance indicators;

16 (i) enforce economic regulatory provisions of all relevant legislation
17 on the regulated transport industry including but not limited to legislation on
18 ports, inland waterways, road and rail transport;

19 (j) make such regulations as may be necessary under this Act to give
20 full force and effect to the provisions of this Act; and

21 (k) execute all such other functions and responsibilities as are given to
22 the Commission under this Act.

23 (2) Subject to this Act, the Commission has the power to do all things
24 necessary for the performance of its functions and to enable it to achieve its
25 objectives under this Act.

26 (3) The Commission shall at all times perform its functions and
27 exercise its powers in such a manner as to achieve the objectives of this Act and
28 any objectives specified in any sector legislation under which a regulated
29 transport industry operates.

30 (4) Further to the provisions of subsections (1) and (2) of this section,

1 the Commission shall have such other functions and powers as may be
2 conferred on the Commission by the relevant legislation and regulations
3 under which a regulated transport industry operates.

4 7. -(1) This section applies to the Commission and to prescribed
5 Agencies for the purpose of ensuring that:

6 (a) the economic regulatory and decision making processes of the
7 Commission and prescribed Agencies are closely integrated and better
8 informed; and

9 (b) overlap or conflicts between regulatory schemes are avoided.

10 (2) The Commission may, as it deems fit, consult with a relevant
11 prescribed Agency in:

12 (a) the making of a determination;

13 (b) the conduct of an enquiry; or

14 (c) preparing and reviewing economic regulations and regulatory
15 practice.

16 (3) Where required to do so by the Commission, a prescribed
17 Agency shall consult with the Commission in:

18 (a) relation to any matter specified by the Commission which is
19 relevant to the objectives or functions of the Commission under this Act or
20 under any other legislation; or

21 (b) respect of any matter specified by the Commission which may
22 impact on a regulated transport industry.

23 (4) A prescribed Agency must ensure that consultation occurs as
24 early as practicable in the regulatory, advisory or decision making processes
25 of the prescribed Agency.

26 (5) The requirements under this section are in addition to any other
27 requirements or processes under any other relevant legislation or regulatory
28 schemes to the extent that such legislation is consistent with the provisions
29 of this Act.

Relationship
of the Commission
with the Minister

1 **8.** -(1) Subject to subsection (2) of this section, the Minister shall
2 convey to, the Commission in writing, the general policy direction of
3 Government for the transport sector.

4 (2) In the execution of his functions and in relating with the
5 Commission, the Minister shall at all times ensure that the independence of the
6 Commission, with regards to the discharge of the Commission's economic
7 regulatory functions and operations under this Act, is protected and not
8 compromised in any manner.

9 (3) Prior to the formulation or review of policies for the relevant
10 sector, the Minister shall ensure consultation with relevant stakeholders in that
11 relevant sector.

12 PART III - MEMBERSHIP OF THE COMMISSION

Membership
of the Commission

13 **9.** -(1) The Commission shall be comprised of:

14 (a) an Executive Chairman; and

15 (b) six Executive Commissioners

16 (2) The supplementary provisions set out in the First Schedule to this
17 Act shall have effect with respect to the proceedings of the Commission and
18 other matters contained therein.

19 (3) Subject to subsection (2) of this section, the Commission shall
20 have the capacity to make standing orders for the regulation of its proceedings
21 and meetings.

Qualification
for Membership
of the Commission

22 **10.** -(1) Members of the Commission shall be persons of recognised
23 expert knowledge, qualification and experience in one or more of the following
24 fields:

25 (a) ports or railway administration;

26 (b) maritime transport;

27 (c) rail transport;

28 (d) road transport;

29 (e) engineering;

30 (f) finance;

- 1 (g) law;
 2 (h) transport economics and management; and
 3 (i) regulatory matters.

4 (2) A person shall not be appointed or remain in office as a member
 5 of the Commission if he:

- 6 (a) is not a Nigerian citizen;
 7 (b) is a serving member of the National Assembly, State House of
 8 Assembly or any Local Government Council;
 9 (c) is incapacitated by any physical illness;
 10 (d) has been certified to be of unsound mind;
 11 (e) is an un-discharged bankrupt;
 12 (f) has been convicted in Nigeria or elsewhere of a criminal offence
 13 involving dishonesty; or
 14 (g) has at any time been removed from an office of trust on account
 15 of misconduct.

16 (3) The Conflict of Interests provisions contained in the Second
 17 Schedule to this Act shall apply to all members of the Commission.

18 **11.**-(1) All members of the Commission shall be appointed by the
 19 President on the recommendation of the Minister of Transport. Appointment and
tenure

20 (2) Each member of the Commission shall serve for a term of 4
 21 years from the date of his appointment, at the expiration of which the
 22 President may renew his term for a further period of 4 years and no more.

23 **12.** The remuneration and allowances payable to the Executive
 24 Chairman and the Executive Commissioners shall be as approved by the
 25 President. Remuneration
and Allowances

26 **13.** A member of the Commission may resign his office by giving 3
 27 months written notice addressed to the President through the Minister. Resignation of a
member of the
Commission

28 **14.**-(1) A Member of the Commission may be suspended or
 29 removed from office by the President if he: Removal of a
Member of the
Commission

30 (a) is found to have been unqualified for appointment as a member

1 of the Commission pursuant to section 10 of this Act;

2 (b) has demonstrated inability to effectively perform the duties of his
3 office;

4 (c) is guilty of serious misconduct in relation to his duties;

5 (d) is disqualified or suspended from practising his profession in any
6 part of the world by an order of a competent authority;

7 (e) it is in the public interest; or

8 (f) is in breach of the Conflict of Interests rules set out in the Second
9 Schedule to this Act.

10 (2) A member of the Commission shall not be removed from office
11 except in accordance with the provisions of this Act.

Vacancy on the
membership of
the Commission

12 **15.** A vacancy in the Commission shall be filled by the appointment
13 of another person to the vacant office by the President in accordance with
14 section 11 of this Act.

15 **PART IV - MANAGEMENT AND STAFF OF THE COMMISSION**

The Executive
Chairman

16 **16.** -(1) The Executive Chairman shall be the Chief Executive and
17 Accounting Officer of the Commission and shall be responsible for the:

18 (a) execution of the policy, decisions and programmes of the
19 Commission;

20 (b) day-to-day management, administration and supervision of the
21 activities of the Commission; and

22 (c) supervision of all employees of the Commission and the
23 implementation of the Commission's regulatory and control functions.

24 (2) The Executive Chairman shall perform such other functions as are
25 assigned to him under this Act or by the Commission from time to time.

The Executive
Commissioners

26 **17.** The Executive Commissioners shall perform such functions as are
27 assigned to them by the Commission or the Executive Chairman from time to
28 time.

Secretary to the
Commission and
other Staff of the
Commission

29 **18.**-(1) There shall be appointed by the Commission a Secretary who
30 shall possess relevant professional qualifications and experience as a legal

1 practitioner with not less than 10 years post qualification experience.

2 (2) The Commission Secretary shall keep the corporate records of
3 the Commission and perform such other duties and functions as the
4 Commission or the Executive Chairman may, from time to time, assign to
5 him.

6 (3) The Commission shall have powers to appoint such other
7 persons as it deems necessary, as employees of the Commission.

8 (4) The Commission shall pay its employees such remuneration
9 including allowances as the Commission may from time to time determine
10 having regard to the recommendations of the National Salaries, Incomes and
11 Wages Commission.

12 (5) The employment of the staff shall be subject to such terms and
13 conditions as may from time to time be stipulated by the Commission and
14 contained in the respective staff's employment contracts.

15 (6) The Commission shall develop and implement appropriate
16 Staff Conditions of Service for its employees with particular regard to the
17 issues of remuneration, pension schemes and other service benefits,
18 sufficient for the Commission to attract and retain knowledgeable and
19 expert manpower.

20 (7) The Conflict of Interests provisions contained in the Second
21 Schedule to this Act shall apply to all employees of the Commission.

22 PART V - FINANCIAL PROVISIONS

23 19.-(1) The Commission shall establish and maintain a Fund ("the
24 Commission's Fund") which shall comprise:

Fund of the
Commission

25 (a) An initial subvention as may be appropriated to the
26 Commission by the National Assembly;

27 (b) A proportion of the proceed from royalties collected by an
28 authority empowered to collect royalty from transport service operators not
29 exceeding 0.25% of what is collected from operators, concessionaires,
30 leases and licensees etc, shall accrue to the Commission;

	1	(c) All charges, levies and fees collected by the Commission under
	2	this Act or its subsidiary legislation issued pursuant to this Act;
	3	(d) Registration fees collected annually by the Commission;
	4	(e) Gifts, loans, grants, aids;
	5	(f) All other assets that may from time to time be vested in or accrue to
	6	the Commission in the course of performing its duties under this Act.
	7	(2) The Fund shall be managed in accordance with extant Financial
	8	Regulations applicable in the Public Service and rules made by the
	9	Commission.
Application of Surplus Revenue	10	20. Any excess of the Commission's revenue over its approved
	11	outgoings and charges for that year shall be remitted to the Consolidated
	12	Revenue Fund.
Borrowing Powers, Gifts, etc.	13	21. -(1) The Commission may, with the prior consent of, or in
	14	accordance with the authority given by the Minister of Finance, borrow such
	15	sums of money or raise capital otherwise than from the Government as the
	16	Commission may require in the exercise of its functions under this Act.
	17	(2) The Commission may accept gifts or grants of money or aid or
	18	other property from national, bilateral and multi-lateral organisations and
	19	upon such terms and conditions, if any, as may be agreed upon between the
	20	donor and the Commission provided that the conditions are not inconsistent
	21	with the objectives and functions of the Commission under this Act.
Annual Reports	22	22. The Commission shall prepare and submit to the President
	23	through the Minister of Transport annually and not later than six months after
	24	the end of its financial year, a report on the activities of the Commission for the
	25	preceding financial year and shall include the Commission's audited accounts
	26	for the year under review together with the auditor's report.
Exemption from Taxation	27	23. The provisions of any enactment relating to the taxation of
	28	companies or trust funds shall not apply to the Commission.
Budget and Expenditure	29	24. -(1) The Commission shall not later than 30 th September in each
	30	financial year prepare and submit to the Minister of Finance budget showing

1 the expenditure which the Commission proposes to incur in respect of the
 2 succeeding financial year in order to carry out the functions of the
 3 Commission.

4 (2) Subject to subsection (1) of this Section, the Commission shall
 5 apply the monies in the Commission's Fund for the:

6 (a) administrative and operating costs of the Commission;

7 (b) payment of salaries, wages, fees and other allowances,
 8 retirement benefits and any other remuneration payable to the
 9 Commissioners and staff of the Commission;

10 (c) purchase or acquisition of property or other equipment or other
 11 capital expenditure or for maintenance of any property acquired or vested in
 12 the Commission; and

13 (d) performance of all or any of the functions of the Commission
 14 under this Act.

15 **25.**-(1) The financial year of the Commission shall start on 1st
 16 January of each year and end on 31st December of the same year.

Financial Year
and Audit of
Commission's
Accounts

17 (2) The Commission shall keep proper records of its accounts in
 18 respect of each year and shall cause its accounts to be audited within four
 19 months from the end of each financial year by auditors whose appointment
 20 shall be approved by the Board and shall be subject to reappointment on
 21 annual basis provided that such auditors are on the list of auditors approved
 22 from time to time by the Auditor-General of the Federation.

23 PART VI - REGULATION OF TARIFFS

24 **26.**-(1) Notwithstanding the provisions of any other law, the
 25 Commission shall have the power to regulate tariffs for or in respect of
 26 prescribed goods and services supplied by or within a regulated transport
 27 industry.

Regulations of
Tariffs

28 (2) In this Section:

29 "prescribed goods and services" means any goods or services, or
 30 access to transport services and facilities, made, produced, supplied or

1 provided by or within a regulated transport industry which goods or services
2 are specified in the empowering instrument as being goods or services in
3 respect of which the Commission has power to regulate tariffs;

4 "prescribed tariffs" mean the tariffs or tariff-range or particular factors used in
5 tariff-fixing however designated for the provision, supply or sale of any
6 prescribed goods and services within a regulated transport industry; and

7 "tariffs" include fees, price, dues, charges and rates.

8 (3) In making a tariff determination, where necessary, the
9 Commission shall adopt an approach and methodology to meet the objectives
10 specified in this Act and any relevant legislation and the Commission may
11 regulate the tariff for prescribed goods and services in any manner that the
12 Commission considers appropriate.

13 (4) Without limiting the generality of subsection (3) of this section,
14 the procedure for tariff determination may include:

15 (a) regulation of tariff;

16 (b) specifying pricing policies or principles;

17 (c) where necessary, specifying an amount determined by reference to
18 a general tariff index, the cost of production, a rate of return on assets employed
19 or any other specified factor;

20 (d) where necessary, specifying an amount determined by reference
21 to quantity, location, period or other specified factor relevant to the rate or
22 supply of the goods or services;

23 (e) monitoring the tariff levels of prescribed goods and services; and

24 (f) any other factor that the Commission considers relevant and which
25 will best meet the objectives specified in this Act and any relevant legislation.

Approval of
Tariffs or Charges
by the Commission

26 27. -(1) All regulated transport service operators shall file their tariffs
27 or range of tariffs with the Commission and shall not impose any tariff or
28 charges for the provision of any service unless such tariff rates and charges are
29 approved by the Commission under section 29(2)(a) or as otherwise provided
30 in this Part.

1 (2) Every regulated transport service operator shall provide
2 services only at the rate approved by the Commission and shall not depart
3 there from without a prior written approval by the Commission of such
4 proposed changes in tariff rates and charges.

5 (3) Every regulated transport service operator shall publish the
6 tariff rates charged to users and consumers for their respective services and
7 the modifications thereto as may be approved from time to time by the
8 Commission.

9 (4) The tariff rates fixed by transport service operators shall be on
10 the principles of fair and competitive trading and such other principles as the
11 Commission may from time to time stipulate in its guidelines or regulations
12 and shall have regard to:

13 (a) the particular and peculiar circumstances of the regulated
14 transport industry and the prescribed goods and services for which the
15 determination is being made;

16 (b) the costs of making, producing or supplying the goods or
17 services;

18 (c) the cost of complying with relevant health, safety,
19 environmental and social legislation applying to the regulated transport
20 industry;

21 (d) the return on investment in the regulated transport industry;

22 (e) any relevant interstate and international benchmarks for tariffs,
23 costs and return on assets in comparable industries;

24 (f) the financial implications of the determination for the regulated
25 transport industry and regulated entities; and

26 (g) any other factor that the Commission considers relevant and
27 which will best meet the objectives specified in this Act and any relevant
28 legislation.

29 (5) In exercising its powers under this Part, the Commission shall
30 ensure that:

- 1 (a) the costs of regulation do not exceed the benefits;
- 2 (b) the decision takes into account and clearly articulates any trade-
- 3 off between costs and service standards;
- 4 (c) tariffs are fair, reasonable and non-discriminatory; and
- 5 (d) tariffs are cost-oriented and in general, cross-subsidies are not
- 6 permitted.

Commission may
prescribe Tariffs

7 **28.** Notwithstanding the provisions of section 31 of this Act, the

8 Commission may intervene in such manner as it deems appropriate in

9 determining and setting the tariff rates for any non-competitive services

10 provided by any transport service provider in order to meet the objectives of

11 this Act or for reasons of national or public interest.

Power to issue
Regulation on
Tariffs

12 **29.** -(1) The Commission shall from time to time make rules or

13 regulations on determination and publication of tariff rates for the prescribed

14 services specified in Section 26 of this Act.

15 (2) The regulations and rules made by the Commission under

16 subsection (1) of this Section may include:

17 (a) rules about the tariff and variation of tariff for specified services or

18 class of services;

19 (b) rules about the publication or disclosure of tariff for specified or

20 class of services; or

21 (c) range of tariff applicable to specified services or class of services.

Penalty for
Unauthorized
Tariffs

22 **30.** Notwithstanding any other provision of this Act, the Commission

23 shall prescribe and enforce appropriate penalties on any transport service

24 provider who violates the tariff duly approved by the Commission for the

25 provision of any of its services.

26 PART VII - REGISTRATION

Requirement
for Registration

27 **31.**-(1) From the commencement of this Act, no person shall operate

28 or maintain a transport facility or provide transport services in a regulated

29 transport sector unless the person is a holder of a Registration Certificate

30 granted by the Commission.

1 (2) The certificate under this section may be issued to a person or
2 class of persons and every certificate shall be in such form and for such
3 period and may contain such conditions as the Commission may determine.

4 (3) The Commission may register any transport operator subject to
5 such condition as may be imposed.

6 (4) Any person who acts in breach of subsection (1) of this section
7 shall on conviction be liable to:

8 (a) a penalty not less than ten times the relevant fee payable to the
9 Commission in the first instance; or

10 (b) a fine not exceeding ten times the initial fee for the relevant
11 registration;

12 (5) The Commission shall from time to time publish for the general
13 public the transport services that require registration.

14 (6) Notwithstanding the provisions of any other law, the provisions
15 of this Part shall apply to existing Government owned transport service
16 operators and any other Government Agencies with the power to operate and
17 provide prescribed transport services in Nigeria.

18 **32.-(1)** Any person may, subject to the provisions of this Act, apply
19 to the Commission for a registration.

Application for
Registration

20 (2) Any application for registration must be lodged in the
21 prescribed manner.

22 (3) The Commission shall specify the:

23 (a) kind of service in respect of which applications are invited;

24 (b) form in which applications may be submitted, including any fee
25 payable upon submission of an application;

26 (c) manner in which the service must be provided;

27 (d) place where and times when any application form or relevant
28 document may be obtained from the Commission; and

29 (e) period within which such applications must be submitted.

30 (4) The Commission may require an applicant for registration to

1 submit to the Commission within the period specified by it and at the
2 applicant's expense, such further information as may be necessary to consider
3 the application.

4 (5) Within a period of six weeks after receiving an application in
5 accordance with subsection (1) of this section, the Commission shall:

6 (a) issue a Registration Certificate subject to specified terms and
7 conditions; or

8 (b) refuse to issue a Registration Certificate and give written reasons
9 for such refusal.

10 (6) In performing its function under this section, the Commission
11 shall at all times be guided by the principles of and consideration for:

12 (a) transparency, fairness and non-discrimination;

13 (b) efficient use and management of port and land transport facilities;

14 (c) development of indigenous capacity in ownership and provision
15 of transport services;

16 (d) the need to promote fair competition and investment in the
17 regulated transport industry;

18 (e) the need to provide modern, qualitative, and competitive transport
19 services in Nigeria; and

20 (f) such other principles and considerations as the Commission may
21 from time to time consider necessary and in the national interest.

Recommendation
from Government
Agencies in
Regulated Industry

22 33. -(1) The Commission shall prior to the grant of registrations under
23 this Part, refer the application to and obtain written recommendation on each
24 application from the relevant Government Agency.

25 (2) It shall be the duty of the Commission to ascertain that in making
26 the recommendation under subsection (1) of this section, the guidelines and
27 criteria for evaluation and selection issued by the relevant Government Agency
28 have been strictly complied with.

Guidelines and
Regulations on
granting of
Registrations

29 34.-(1) The Commission shall from time to time issue guidelines and
30 regulations for granting of registrations.

1 (2) All Government Agencies in a regulated transport industry
2 shall submit to the Commission detailed guidelines and criteria used for
3 evaluation and recommendation of qualified applicants, specifying,
4 amongst others, the persons or classes of persons who are eligible generally
5 to apply for registrations, the technical standard, the procedure for technical
6 evaluation and the applicable terms and conditions for grant of the license by
7 the Commission.

8 (3) Each regulated transport sector Agency shall ensure that
9 concession contracts or permits issued by it to operators are made subject to
10 the registrations to be granted by the Commission.

11 PART VIII - ACCESS

12 35.-(1) Consistent with regulations issued in that behalf by the Access
13 Commission every Operator subject to registration under this Act shall
14 provide access to a significant infrastructure facility on fair and reasonable
15 terms and conditions.

16 (2) Before determining whether a facility is a significant
17 infrastructure facility for open access, the Commission shall, among other
18 considerations verify and ascertain that:

19 (a) there are no other alternative facilities;

20 (b) it would not be economically feasible to use another facility
21 providing access to the same route;

22 (c) it would not be economically feasible to develop another
23 facility providing access to the same route;

24 (d) access to the facility would promote competition in at least one
25 market (whether or not in Nigeria) other than a market for using the facility;

26 (e) safe access to the facility can be ensured at an economically
27 feasible cost; and

28 (f) any other matter which the Commission may consider relevant.

29 (3) An enquiry under this Section shall be conducted in accordance
30 with Part XI of this Act.

1 (4) A person who is aggrieved by a requirement of the Commission
2 under sub- section 1 of this section or a decision of the Commission under this
3 Part of this Act may appeal against that requirement or decision to the
4 Commission and such appeal shall be determined by the Commission in
5 accordance with its extant regulations on appeals.

Application of
this Part

6 36. This Part applies to a channel, berth, terminal, anchorage, fairway,
7 route, jetty, bridge, station, sidings, platform or any service facility as the case
8 may be declared by the Commission by a notice published in the Gazette to be a
9 significant infrastructure facility.

Provision of
access

10 37. -(1) Subject to such exemptions as may be determined and
11 published by the Commission, an operator shall provide access to a significant
12 infrastructure facility on fair and reasonable terms and conditions.

13 (2) An operator shall:

14 (a) use all reasonable means to meet the requirements of a person
15 seeking access to a significant infrastructure facility; and

16 (b) make a formal proposal of terms and conditions for access within
17 10 working days of receiving a request or within such reasonable lesser period
18 as may be determined by the Commission.

19 (3) The terms and conditions of access may vary according to the
20 actual and opportunity costs to the operator.

Determination
on access

21 38.-(1) If an operator has not made a formal proposal in accordance
22 with section 40 (1) of this Act, the person seeking access may apply in writing
23 to the Commission for the making of a determination in accordance with the
24 provisions of this Act.

25 (2) If an operator and a person seeking access cannot agree on the
26 terms and conditions on which access is to be provided, the operator or the
27 person seeking access may apply in writing to the Commission for the making
28 of a determination in accordance with this Part specifying the terms and
29 conditions on which access is to be provided.

30 (3) The Commission shall, within 14 days of receiving an application

1 under subsections (1) or (2) of this section, give notice in writing to the
2 person making the application or to any other person from whom the
3 Commission is entitled to require information under this Act specifying:

4 (a) any information that the Commission requires the person to
5 give so that the Commission can make a determination; and

6 (b) a reasonable time within which the information must be
7 provided.

8 (4) The Commission shall not make a determination if the
9 Commission considers that the making of a determination would
10 substantially impede the existing right of access of another person unless
11 that person has been given an opportunity to make a submission to the
12 Commission in respect of the application.

13 (5) A person who is bound by a determination may apply in writing
14 to the Commission for the amendment or revocation of the determination on
15 the ground that there has been a material change in circumstances.

16 (6) Subject to subsections (7) and (8) of this section, the
17 Commission shall determine an application under this Section within 21
18 days of receiving the application, excluding the period of time between the
19 day on which notice is given under subsection (3) of this section and the day
20 on which the required information is received by the Commission.

21 (7) The Commission may extend the 21 day time limit in
22 subsection (6) of this section for a period not exceeding 30 days if the
23 Commission:

24 (a) is unable to determine the application within the period of 21
25 days; and

26 (b) notifies the person seeking access and the operator of the
27 extension of time and the reasons why the Commission needs further time to
28 determine the application.

29 (8) The Commission may refuse to make a determination if:

30 (a) the Commission considers that the application is without merit;

- 1 (b) the Commission is satisfied that:
- 2 (i) the operator has complied with the obligations under section 40 of
- 3 this Act;
- 4 (ii) the terms and conditions of access being offered by the operator
- 5 does not constitute taking advantage of a substantial degree of market power in
- 6 the provision of the prescribed services; or
- 7 (iii) having regard to the functions of the Commission and to any
- 8 other matter that the Commission considers relevant, it is appropriate to refuse
- 9 to make a determination.
- 10 (9) A person who is aggrieved by a decision of the Commission to
- 11 refuse to make a determination under this section may appeal to the Federal
- 12 High Court as if that decision were a determination for the purposes of section
- 13 81 of this Act.
- 14 (10) The costs of the Commission in making a determination under
- 15 this section are to be paid by the non-prevailing party.
- 16 (11) A determination under this section shall not be inconsistent with
- 17 any relevant direction on tariffs.
- Hindering access 18 **39.** -(1) An Operator or any person having access to a significant
- 19 infrastructure facility shall not engage in any conduct having the purpose of
- 20 hindering access by any other person in the reasonable exercise of a right of
- 21 access.
- 22 (2) A person who considers that his or her right of access has been
- 23 hindered in contravention of subsection (1) of this Section may apply in writing
- 24 to the Commission for the making of a determination in accordance with the
- 25 provisions of this Act.
- 26 (3) If the Commission determines that there has been a contravention
- 27 of subsection (1) of this Section, the Commission may make a determination
- 28 that a person is entitled to access on such terms and conditions as are specified
- 29 in the determination.
- 30

1 **40.**-(1) The Commission shall conduct an enquiry under the
2 provisions of this Act every 5 years, commencing from the coming into
3 force of this Act to make a determination whether or not a facility that is
4 declared to be a significant infrastructure facility has ceased to be such a
5 facility.

Enquiry about
a significant
infrastructure
facility

6 (2) For the purposes of this section, a facility is a significant
7 infrastructure facility if:

8 (a) there are no other alternative facilities;

9 (b) it would not be economically feasible to use another facility
10 providing access to the same route;

11 (c) it would not be economically feasible to develop another
12 facility providing access to the same route;

13 (d) access to the facility would promote competition in at least one
14 market (whether or not in Nigeria) other than a market for using the facility;

15 (e) safe access to the facility can be ensured at an economically
16 feasible cost; and

17 (f) any other matter which the Commission may consider relevant.

18 (3) An enquiry under this Section shall be conducted in accordance
19 with Part XI of this Act.

20 **41.**-(1) An Operator of a significant infrastructure facility may
21 apply in writing to the Commission for the making of a determination under
22 this Part approving the terms and conditions on which access to the facility is
23 to be provided for the period specified in the determination.

Application for
determination on
conditions for
provision of
access

24 (2) The Commission shall, within 14 days of receiving an
25 application under subsection (1) of this section, give notice in writing to the
26 person making the application specifying:

27 (a) any information that the Commission requires the person to
28 give for the purpose of the determination; and

29 (b) a reasonable time within which the information must be
30 provided.

1 (3) The Commission shall determine whether to accept or refuse an
2 application under this section within 21 days of receiving the application,
3 excluding the period of time between the day on which notice is given under
4 subsection (2) of this section and the day on which the required information is
5 received by the Commission.

6 (4) The costs of the Commission in making a determination under this
7 section shall be borne by the Operator.

8 (5) Section 42 of this Act shall not apply whilst a determination under
9 this section is in force unless the Commission finds that the determination deals
10 with the matters that are in dispute.

Commission may
give directions in
relation to a
dispute

11 **42.-(1)** The Commission, for the purposes of facilitating negotiations
12 or determining a dispute under this Part, may require a person who is or was a
13 party to the dispute to do or refrain from doing something, including:

14 (a) requiring a person to give relevant information or a document to
15 one or more other persons identified by the Commission and copies to the
16 Commission, subject to Section 43 of this Act;

17 (b) requiring a person to carry out reasonable research or
18 investigations in order to obtain relevant information;

19 (c) prohibiting a person from imposing, or seeking to impose, an
20 unreasonable procedural condition on the person's participation in
21 negotiations;

22 (d) requiring a person to respond in writing to another person's
23 proposal or request in relation to the time and place of a meeting;

24 (e) requiring a person, or a representative of a person, to attend a
25 mediation conference.

26 (2) For the purposes of subsection (1)(c) of this section "an
27 unreasonable procedural condition" includes a requirement by one party that
28 the other party or parties to the dispute must not disclose to the Commission
29 information or a document provided in the course of negotiations.

30 (3) A person who without lawful excuse fails to comply with any

1 requirement made under this Section commits an offence and is liable on
2 conviction to a fine of not less than N300,000.00.

3 **43.** -(1) This section applies if:

Confidentiality
Agreements

4 (a) the Commission makes a requirement under section 42(1)(a) of
5 this Act;

6 (b) the person in control or possession of the information or
7 document (“the disclosing party”) notifies the Commission in writing that
8 the information or document is of a confidential or commercially sensitive
9 nature; and

10 (c) the Commission notifies the person that the information or
11 document shall still be required in accordance with section 42(1) (a) of this
12 Act.

13 (2) Where under subsection (1)(c) of this section, the Commission
14 notifies the disclosing party that the information or document shall still be
15 required in accordance with Section 42(1)(a) of this Act, the disclosing party
16 may require the person receiving the information or document (“the
17 receiving party”) to enter into a confidentiality agreement.

18 (3) The terms of a confidentiality agreement may be proposed by
19 the disclosing party and those terms shall be promptly notified to the
20 Commission and to the receiving party.

21 **44.** Where the Commission considers that the terms of the
22 proposed confidentiality agreement are unreasonable, the Commission may
23 request the parties to amend or delete those terms or substitute other terms.

Unreasonable
confidentiality
clauses

24 **PART IX - APPLICATION FOR DEREGISTRATION**

25 **45.** -(1) Any person or an operator may subject to the provisions of
26 this Act apply to the commission for deregistration;

Application for
Deregistration

27 (2) Any application for deregistration shall be lodged in writing to
28 the Commission;

29 (3) The Commission shall:

30 (a) consider the application;

1 (b) make recommendations on the applicant's financial standing;

2 (c) in the event the applicant is in any way indebted to the
3 Commission, proceed against such an applicant to recover such monies,
4 moveable and immoveable property or other items in the possession of the
5 applicant and return same to the Commission;

6 (d) in the event, the applicant is not indebted to the Commission; the
7 Commission shall deregister the person and have such name struck out from its
8 register.

9 (4) Nothing in this Act shall prevent the Commission from
10 deregistering any person or operator under these conditions:

11 (a) death in the case of a natural person;

12 (b) having been declared bankrupt by a court of competent
13 jurisdiction in the case of a corporate entity;

14 (c) winding up or dissolution of a corporate entity;

15 (d) in the interest of public policy; or

16 (e) failure to pay penalty for a period exceeding 60 days.

17 PART X - OTHER REGULATORY POWERS

Oversight
function over
Regulated
Transport Industry

18 46.-(1) The Commission may exercise such powers including the
19 power to make determinations for or with respect to:

20 (a) registration;

21 (b) market conduct; and

22 (c) other economic regulatory matters as may be conferred on the
23 Commission by the empowering instrument.

24 (2) In making a determination under this section, the Commission
25 shall have regard to any:

26 (a) factors specified in the empowering instrument; and

27 (b) other factors that the Commission considers relevant.

Monitoring and
Reporting

28 47.-(1) The Commission shall monitor all matters relating to the
29 performance and compliance of all transport service operators with the
30 provisions of this Act and other applicable sector legislation and publish annual

- 1 reports at the end of each financial year.
- 2 (2) Matters upon which the Commission shall monitor and report
3 include but not be limited to the following:
- 4 (a) the operation and administration of this Act and its subsidiary
5 legislation;
- 6 (b) the quality of services;
- 7 (c) the tariff rates and charges paid by port, inland waterways
8 facility, railway and road transport users for services;
- 9 (d) anti-competition practices including cross-subsidies;
- 10 (e) the development of industry self-regulation;
- 11 (f) any deficiencies in the scope or operation of this Act and its
12 subsidiary legislation; and
- 13 (g) other matters which the Commission considers relevant.
- 14 (3) The Commission shall publish the report, in the manner it
15 deems appropriate, provided that it shall be made available to the public.
- 16 **48.**-(1) Notwithstanding the provisions of any other law, the
17 Commission shall have competence in relation to the regulated industry, to
18 determine, pronounce upon, administer, monitor and enforce compliance of
19 all persons with competition laws and regulations, whether of a general or
20 specific nature, as such laws and regulations relate to the regulated transport
21 industry including prohibition on anti-competition practices.
- 22 (2) A transport service provider shall not engage in any conduct
23 which has the purpose or effect of substantially lessening competition in any
24 aspect of the regulated transport industry.
- 25 (3) The Commission may from time to time publish guidelines and
26 regulations on anti-competition practices in the regulated transport industry
27 and such guidelines or regulations may include references to:
- 28 (a) types of or categories of anti-competitive practices which are
29 prohibited;
- 30 (b) the relevant economic market;

Commission's
Power on
Competition
Matters

- 1 (c) global trends in the relevant market;
- 2 (d) the impact of the practice on the number of competitors in a market
3 and their market shares;
- 4 (e) the impact of the practice on barriers to entry into the market and
5 measures necessary to remove or reduce their impact;
- 6 (f) the impact of the practice on the range of services in the market;
- 7 (g) the impact of the practice on the cost and profit structures in the
8 market;
- 9 (h) access to essential transport services and facilities on fair and non-
10 discriminatory terms to all users in an equivalent position; and
- 11 (i) any other matter which the Commission considers relevant.

12 (4) A transport service provider shall not enter into any
13 understanding, agreement or arrangement, whether legally enforceable or not,
14 which provides for:

- 15 (a) tariff or freight fixing beyond the range set by the Commission;
- 16 (b) market sharing;
- 17 (c) cross-subsidy;
- 18 (d) boycott of another competitor;
- 19 (e) boycott of a supplier of apparatus or equipment; or
- 20 (f) boycott of any other transport service operator.

21 (5) A transport service provider shall not, at any time or in any
22 circumstance, make it a condition for the provision or supply of a product or
23 service that the person acquiring such product or service be required to acquire
24 or not to acquire any other product or service either from himself or from
25 another person specified by him.

Dominant
Operator

26 49.-(1) The Commission may determine that a transport service
27 operator is in a dominant position in any aspect of the Nigerian transport sector.

28 (2) The Commission may publish guidelines and regulations on the
29 determination of "dominant position" for transport service operators.

30 (3) The guidelines and regulations in subsection (2) of this Section

1 shall specify the matters which the Commission may take into account,
2 including:

- 3 (a) the relevant economic market;
4 (b) global technology and commercial trends affecting market
5 power;
6 (c) the market share of the transport service provider;
7 (d) the provider of prescribed service's power to independently set
8 its rates;
9 (e) the degree of service or product differentiation and promotion
10 in the market; and
11 (f) any other matter which the Commission may consider relevant.

12 (4) The Commission may direct a transport service operator in a
13 dominant position in the transport sector to cease any conduct in that market
14 which has or may have the effect of substantially lessening competition in
15 the transport sector and to implement appropriate recommendations.

16 50.-(1) A transport service provider may apply to the Commission
17 prior to engaging in any conduct which may be construed to have the
18 purpose or effect of substantially lessening competition in any aspect of the
19 transport sector, for authorisation for the conduct.

Authorisation
for specific
Conduct

20 (2) Notwithstanding the provisions of this Part, the Commission
21 may authorise the conduct if the Commission is satisfied that it would be in
22 the national interest to grant such authorisation.

23 (3) Prior to granting the authorisation, the Commission may
24 require the transport service operator to submit an undertaking regarding his
25 conduct in any matter relevant to the authorisation.

26 51.-(1) A transport service operator may withdraw an application
27 made under subsection (1) of section 50 of this Act at any time prior to
28 authorisation by the Commission.

Withdrawal of
an authorisation
granted by the
Commission

29 (2) An authorisation granted by the Commission under subsections
30 (2) or (3) of section 50 of this Act, may only be withdrawn upon such terms

1 and subject to such conditions as the Commission may specify.

2 (3) The Commission shall maintain a register of current
3 authorisations of conduct under this Part in accordance with Part XVIII of this
4 Act.

Regulation
relating to
Agreements

5 **52.-(1)** Subject to subsection (2) of this section, the Commission
6 may make regulations or rules under this Act in respect of agreements between
7 private sector transport service operators on one hand and between the
8 Government and private sector transport service operators, on the other.

9 (2) The Commission shall only make rules under subsection (1) of
10 this section which are intended to prevent or mitigate:

11 (a) any conduct by the parties mentioned in subsection (1) of this
12 section that will or is likely to lead to a substantial lessening of competition in
13 any aspect of the regulated transport industry; or

14 (b) the misuse of market power in any aspect of the regulated
15 transport industry.

16 PART XI - DIRECTIVES

Issuance of
Directives

17 **53.-(1)** The Commission may, from time to time, issue directives or
18 orders in writing to any person regarding the compliance or non-compliance
19 with the provisions of this Act or its subsidiary legislation or any licence
20 conditions, including the remedy for a breach of the provisions of this Act or its
21 subsidiary legislation.

22 (2) Before issuing a directive or order under subsection (1) of this
23 section, the Commission shall issue a notice in writing to the person specifying
24 the nature of compliance required and the person shall be granted an
25 opportunity to be heard or may submit a written submission within a
26 reasonable time specified in the notice on reasons for his conduct or activity.

27 (3) After the expiration of the notice specified in subsection (2) of this
28 section, the Commission shall take into consideration any reasons provided by
29 the person before making a decision in relation to the relevant conduct or
30 activity of the person.

1 (4) After due consideration of any reasons provided by the person,
2 the Commission may issue a directive or order under subsection (1) of this
3 section requiring the person to take specified action to prevent
4 contravention or continued contravention of any of the provisions of this Act
5 or its subsidiary legislation.

6 (5) The Commission shall give the person written notice of its
7 directive or order not later than 30 days from the date the decision was made
8 and the person shall comply with the directive or order issued by the
9 Commission.

10 **54.**-(1) The Commission may, when issuing a directive or order
11 under this Act in relation to prescribed services, have regard to the costs
12 associated with any service related to the prescribed services if:

Matters to
consider in
issuing Directives

13 (a) the related service is necessary or essential to the provision of
14 prescribed services;

15 (b) the related service cannot readily be provided by another
16 operator; and

17 (c) it is not feasible to charge a separate fee or price for the related
18 service.

19 (2) The Commission may when issuing a directive or order in
20 relation to prescribed services have regard to services required to meet the
21 objectives of the relevant regulated transport industry sector including the
22 provision of:

23 (a) port, rail and road infrastructure within the relevant regulated
24 transport industry sector that is necessary for moving cargo and passengers
25 to or from berthing facilities, rail and road transport stations, terminals,
26 platform, sidings, short term storage facilities or cargo marshalling
27 facilities;

28 (b) infrastructure erected in order to satisfy safety, security,
29 planning, or environmental requirements;

30 (c) safety, security, emergency or environmental management

1 services that are required by law;

2 (d) strategic planning for the transport facility; and

3 (e) the facilitation of trade through the relevant transport facility.

Modification of
Directives

4 **55.** The Commission may modify, vary or revoke a directive or order
5 and the procedure set out in section 54 of this Act shall apply in respect of any
6 modification, variation or revocation of a directive or order.

Non-compliance
with Directives

7 **56.** A person who fails to comply with a directive of the Commission
8 under this Part shall be liable to a penalty not exceeding N20,000,000.00 and to
9 a further penalty not exceeding N200,000.00 for each day the contravention
10 continues after service of the direction or order on it.

Register of
Directives

11 **57.** The Commission shall maintain a register of all directives issued
12 by the Commission, including any written instruments modifying, varying or
13 revoking a directive or order, in accordance with Part XVIII of this Act.

14 **PART XII - ENQUIRY**

Enquiry

15 **58.** -(1) The Commission may hold a public enquiry on any matter of a
16 general nature that relates to the administration of this Act or its subsidiary
17 legislation if the Commission considers an enquiry is necessary or desirable for
18 the purpose of carrying out its functions.

19 (2) Subject to subsection (3) of this section, the Commission may
20 hold a public enquiry under subsection (1) of this section:

21 (a) in response to a written request from a person; or

22 (b) on its own initiative, only if it is satisfied that the matter is of
23 significant interest to either the public or to current or prospective transport
24 service operators.

25 (3) The Commission shall hold a public enquiry in all instances that it
26 is mandatorily required to hold an enquiry under this Act.

27 (4) The Commission may combine two or more inquiries into a single
28 enquiry and an enquiry under this Part shall be conducted as and when the
29 Commission deems fit.

30 (4) The Commission may, for the purposes of an enquiry, exercise any

1 or all of its investigation and information-gathering powers under Parts XII
2 and XIII of this Act.

3 **59.**-(1) Where the Commission decides to hold a public enquiry, Public Enquiry
4 the Commission shall publish, in a national daily newspaper and on the
5 internet notice of the enquiry.

6 (2) The notice shall specify the:

7 (a) purpose of the enquiry;

8 (b) period during which the enquiry is to be held;

9 (c) nature of the matter to which the enquiry relates;

10 (d) period, of at least 21 days, within which, and the form in which,
11 members of the public are invited to make submissions to the Commission
12 including details of public hearings;

13 (e) matters that the Commission would like the submissions to deal
14 with; and

15 (f) address or addresses to which the submissions may be sent.

16 (3) The Commission shall send a copy of any notice published
17 under this section to every relevant person or body that the Commission
18 considers should be notified.

19 (4) The Commission shall consider all submissions received
20 within the time limit as specified in the notice and the submissions made by
21 the members of the public shall be as specified in the notice.

22 **60.**-(1) The Commission may determine that an enquiry or a part of Private Enquiry
23 an enquiry may be conducted in private if the Commission is satisfied that:

24 (a) the documents or information that may be given, or a matter that
25 may arise during the enquiry or a part of the enquiry, is of a confidential
26 nature or commercially sensitive nature;

27 (b) it would be in the public interest; or

28 (c) the enquiry or part of the enquiry or a matter, or part of a matter,
29 in public domain, would not be conducive to the exercise of its functions
30 under this Act.

1 (2) If an enquiry takes place in public and the Commission is of the
2 opinion that the:

3 (a) evidence or other material presented to the enquiry; or

4 (b) material in written submissions lodged with the Commission is of
5 a confidential nature,

6 the Commission may direct that:

7 (i) the evidence or material should not be published; or

8 (ii) its disclosure be restricted.

9 (3) A person shall not without an excuse that is considered reasonable
10 by the Commission fail to comply with a direction under subsection (2) of this
11 section.

12 (4) Where an enquiry or part of an enquiry takes place in private, the
13 Commission:

14 (a) shall give a direction as to the persons who may be present at the
15 enquiry or part of the enquiry; and

16 (b) may give a direction restricting the disclosure of evidence or other
17 material presented at the enquiry or part of the enquiry.

18 (5) A person who without reasonable excuse fails to comply with a
19 direction given under subsection (4) of this Section commits an offence and
20 shall be liable on conviction to a fine of not less than N500,000.00.

Publication of
Report

21 **61.-(1)** The Commission shall publish a final report setting out its
22 findings from any enquiry it conducts and the report shall be published within
23 45 days of the conclusion of the enquiry.

24 (2) The Commission shall not include in the report any material:

25 (a) that is, in the opinion of the Commission, of a confidential nature;

26 and

27 (b) the disclosure of which would likely prejudice the fair trial of a
28 person.

29 (3) If, in the opinion of the Commission, a final report will contain
30 confidential or commercially sensitive information, the Commission shall

1 divide the report into:

2 (a) a document containing the confidential or commercially

3 sensitive information; and

4 (b) another document containing the rest of the report.

5 (4) The Commission shall maintain a register of all reports made
6 pursuant to an enquiry under this Part, in accordance with the provisions of
7 this Act.

8 **62.** -(1) Subject to this Act, the Commission may conduct an Conduct of
Enquiry
9 enquiry in such manner as the Commission considers appropriate.

10 (2) In conducting an enquiry, the Commission is not bound by
11 rules or practice as to evidence, but may inform itself in relation to any
12 matter in such manner as the Commission considers appropriate.

13 (3) The Commission may receive written submissions or
14 statements during an enquiry.

15 (4) The Commission:

16 (a) shall hold at least one public hearing in case of a public enquiry;

17 and

18 (b) has discretion as to whether any person may appear before the
19 Commission in person or be represented by another person.

20 (5) In conducting an enquiry the Commission may:

21 (a) consult with any person that it considers appropriate;

22 (b) hold public seminars and conduct workshops;

23 (c) establish working groups and task forces.

24 **PART XIII - INVESTIGATION AND POWERS OF ENTRY**

25 **63.** Notwithstanding the provisions of any other law, the Investigation
26 Commission shall investigate any matter pertaining to the administration of
27 this Act if the Commission has any ground to believe that an infringement,
28 civil or criminal, of the provisions of this Act was, is or will be committed.

29 **64.** -(1) The Commission may conduct an investigation on a Complaint
30 matter referred to it upon a written complaint by a person and the complaint

1 shall specify the person against whom the complaint is made.

2 (2) Where a complaint has been made to the Commission under this
3 section, the Commission may make inquiries of the respondent for the purpose
4 of deciding whether the Commission should, in its discretion, investigate the
5 matter.

6 (3) Where the Commission decides not to investigate a matter to
7 which a complaint relates, or to stop the investigation of a matter after its
8 commencement, it shall, not later than 60 days from the date of receipt of the
9 complaint and in such manner as it deems fit, inform the complainant and the
10 respondent of the decision and the reasons for the decision.

Conduct of
Investigation

11 **65.**-(1) Before beginning an investigation of a matter to which the
12 complaint relates, the Commission shall inform the respondent that the matter
13 is to be investigated.

14 (2) An investigation under this Part shall be conducted as the
15 Commission considers appropriate and the Commission may, for the purposes
16 of an investigation, obtain information from any person as it deems fit.

17 (3) Subject to subsection (4) of this section, a complainant or
18 respondent may, at the Commission's discretion, be given an opportunity to
19 appear before the Commission in connection with an investigation.

20 (4) The Commission shall not, as a result of the investigation, make a
21 finding that is adverse to a complainant or a respondent unless it has given the
22 complainant or respondent an opportunity to make written submissions about a
23 matter to which the investigation relates within a time period of not less than 21
24 days.

25 (5) The Commission shall consider the submissions made by the
26 complainant or the respondent under subsection (4) of this section before
27 making its decision.

28 (6) After concluding an investigation, the Commission may prepare
29 and publish a report which shall cover:

30 (a) the conduct of the investigation;

1 (b) any findings that the Commission has made as a result of the
2 investigation;

3 (c) the evidence and other material on which those findings were
4 based; and

5 (d) such other matters relating to, or arising out of the investigation
6 as the Commission thinks fit.

7 **66.-(1) The Commission may in writing authorise any of its**
8 **officials or appoint external inspectors on its behalf to exercise the powers of**
9 **monitoring and enforcement vested in the Commission under this Act.**

Power to enter
Premises

10 (2) The Commission may direct its authorised officials or
11 appointed inspectors to investigate the activities of a transport service
12 provider or other person with regard to his compliance with this Act or its
13 subsidiary legislation as the Commission deems necessary for the
14 performance of its functions under this Act.

15 (3) In exercising any of the powers specified in subsection (2) of
16 this section and notwithstanding any other provision of this Act, an
17 authorised official of the Commission or its appointed inspector:

18 (a) shall on demand produce to the person against whom he is
19 acting, the authority issued to him by the Commission; and

20 (b) may at any reasonable time and without prior notice, enter the
21 premises of any affected person or premises of a transport service provider
22 and:

23 (i) inspect and make copies of or extracts from books, records,
24 documents or other information storage systems; and

25 (ii) demand the production of and inspect the relevant licence,
26 permit, certificate or authority.

27 (c) shall obtain a Court warrant prior to the entry into the premises
28 of any affected person who is not a transport service provider under the
29 meaning of this Act.

1 PART XIV - COLLECTION AND USE OF INFORMATION

General Power
to obtain
Information and
Documents

2 67.-(1) This section shall apply to any person who is subject to this
3 Act and who the Commission has reason to believe:

4 (a) has any information including accounts and records or any
5 document that may assist the Commission in the exercise of the Commission's
6 powers and functions under this Act or its subsidiary legislation; or

7 (b) is capable of giving any evidence which the Commission has
8 reason to believe is relevant to the exercise of the Commission's powers and
9 functions under this Act or its subsidiary legislation.

10 (2) The Commission may, by written notice, direct any person who is
11 subject to this Act, in relation to the information contemplated in subsection (1)
12 of this section to:

13 (a) give the Commission such information, within the period and in
14 the manner and form specified in the notice;

15 (b) produce to the Commission, within the period and in the manner
16 specified in the notice, any such documents, whether in a physical form or in
17 electronic media;

18 (c) make copies of any such documents and to produce those copies to
19 the Commission within the period and in the manner specified in the notice.

20 (3) The Commission shall allow the person so directed under
21 subsection (2) of this section a reasonable time to give and to produce any
22 information or documents specified in the notice.

23 (4) Any person who is subject to this Act and who is required to
24 provide information under subsection (2) of this section shall ensure that the
25 information provided is true, accurate and complete and such person shall
26 provide a representation to that effect, including a representation that he is not
27 aware of any other information which would make the information provided
28 false or misleading.

Refusal to Provide
Information

29 68.-(1) A person who fails to disclose or omits to give any relevant
30 information or evidence or document, or fails to comply with any request made

1 by the Commission under this Part commits an offence and shall be liable on
2 conviction to a fine of not less than N500, 000.00

3 (2) Notwithstanding the provisions of Sections 67 of this Act and
4 subsection (1) of this section, a person who is subject to this Act and who
5 provides information or evidence or document that he knows or has reason
6 to believe is false or misleading, in response to a direction issued by the
7 Commission, commits an offence and shall on conviction be liable to a fine
8 of not less than N500,000.00 or to imprisonment for a term not exceeding 1
9 year or to both such fine and imprisonment and if a company shall be liable
10 to a fine of not less than N1,500,000.00.

11 (3) A person shall not:

12 (a) threaten, intimidate or coerce another person; or

13 (b) take, threaten to take, incite or be involved in any action that
14 causes another person to suffer any loss, injury or disadvantage because that
15 other person complied, or intends to comply, with a request made under this
16 section.

17 (4) A person who contravenes the provision of subsection (3) of
18 this section commits an offence and shall be liable on conviction to a fine of
19 not less than N500,000.00 or to imprisonment for a term not exceeding 1
20 year or to both such fine and imprisonment.

21 (5) A person is not liable in any way for any loss, damage or injury
22 suffered by another person because of giving any information or a document
23 to the Commission in good faith, under this section.

24 **69.** A person who is subject to this Act shall, if at any time called
25 upon in writing by the Commission to do so, produce to the Commission all
26 such evidence and provide all such information as the person may have
27 relating to his compliance with any of the provisions of this Act or its
28 subsidiary legislation, as the Commission may generally, or in relation to
29 any particular case, require.

Evidence of
Compliance

Compliance not
a Breach of Duty

1 **70.** Notwithstanding the provisions of any other law, a person who is a
2 member or employee of a statutory body is not to be found guilty of an offence
3 or to be in breach of a statutory duty by providing information or a copy of a
4 document to Commission if the person provides information or a copy of a
5 document to the Commission in compliance with a requirement under this
6 section.

Certified Copies
of Documents by
Commission

7 **71.**-(1) The Commission may take and retain for as long as is
8 necessary, possession of a document produced under this Part and the person
9 otherwise entitled to possession of the document is entitled to be supplied with
10 a copy certified by the Commission to be a true copy, as soon as practicable.

11 (2) Notwithstanding the provisions of any other written law, all
12 Courts and tribunals shall receive the certified copy in evidence as if it were the
13 original.

14 (3) Until a certified copy is supplied, the Commission shall, at such
15 times and places as the Commission thinks appropriate, permit the person
16 otherwise entitled to possession of the document, or a person authorised by that
17 person, to inspect and make copies of, or take extracts from the document.

Record and
Publication of
Information

18 **72.** -(1) The Commission shall maintain a record of all information,
19 evidence or documents received pursuant to the directions given under Section
20 53(1) of this Act.

21 (2) The Commission may publish information received in the course
22 of exercising its powers and functions under this Part if it is satisfied that the
23 publication is consistent with the objects of this Act provided that the
24 Commission shall consider the commercial interests of the parties to whom the
25 information relates before publishing the information.

Restriction on
Disclosure of
Confidential
Information

26 **73.** -(1) This section applies if information or a document is given by a
27 person to the Commission when at the time the information or document is
28 given, the person giving it states that it is of a confidential or commercially-
29 sensitive nature.

30 (2) The Commission must not disclose the information or the

- 1 contents of the document to any person unless:
- 2 (a) the Commission is of the opinion that:
- 3 (i) the disclosure of the information or document would not cause
- 4 detriment to the person supplying it; or
- 5 (ii) although the disclosure of the information or document would
- 6 cause detriment to the person supplying it, the public benefit in disclosing it
- 7 outweighs that detriment; and
- 8 (b) the Commission is of the opinion, in relation to any other
- 9 person who is aware of the information or the contents of the document and
- 10 who might be detrimentally affected by the disclosure:
- 11 (i) that the disclosure of the information or document would not
- 12 cause detriment to that person; or
- 13 (ii) that although the disclosure of the information or document
- 14 would cause detriment to that person, the public benefit in disclosing it
- 15 outweighs that detriment; and
- 16 (c) the Commission gives the person who supplied the information
- 17 or document written notice:
- 18 (i) stating that the Commission wishes to disclose the information
- 19 or contents of the document, specifying the nature of the intended disclosure
- 20 and setting out detailed reasons why the Commission wishes to make the
- 21 disclosure;
- 22 (ii) stating the reasons in subsection (2)(a) of this section and
- 23 setting out detailed reasons why it is of that opinion.
- 24 (d) if the Commission is aware that the person who supplied the
- 25 information or document in turn received the information or document from
- 26 another person and is aware of that other person's identity and address, the
- 27 Commission gives that other person written notice:
- 28 (i) containing the details required by subsection (2)(c) of this
- 29 section; and
- 30 (ii) stating that the Commission is of the opinion that subsection

1 (2)(b) of this Section relates to him and setting out detailed reasons why it is of
2 that opinion; and

3 (e) no Notice of Appeal is lodged in respect of any notice given under
4 subsections (2)(c) or (d) of this section within the time permitted by section 73
5 of this Act.

6 (3) Any person who contravenes the provisions of this section
7 commits an offence and shall on conviction be liable to a fine not less than
8 N500,000.00.

9 (4) Subsection (2) of this section shall not prevent the Commission
10 from:

11 (a) disclosing information or the contents of a document to:

12 (i) an employee employed under section 18 of this Act;

13 (ii) a member of staff referred to in Section 18 of this Act;

14 (iii) a member of a unit, committee or panel acting under delegation
15 by virtue of Section 18 of this Act.

16 (b) using information or a document for the purposes of an enquiry or
17 investigation; or

18 (c) supplying the information or document to the members of any
19 Appeal Panel hearing an Appeal in relation to the information or document.

20 (5) Where an Appeal is lodged under section 83 of this Act and the
21 Appeal:

22 (a) is withdrawn or dismissed, the Commission may disclose any
23 information, or the contents of any document, that was the subject of the
24 Appeal in the manner set out in the notice given under subsection (2)(c) of this
25 section;

26 (b) is granted, the Commission may disclose anything that the Appeal
27 Panel permits it to disclose under Section 86 of this Act in the manner specified
28 by the Appeal Panel.

29 (6) For the purpose of this section, the disclosure of anything that is
30 already in the public domain at the time the Commission wishes to disclose it

1 cannot cause detriment to any person referred to in subsections (2)(a) or
2 (2)(b) of this section.

3 74. -(1) A provider of prescribed services shall keep financial and
4 business records in respect of:

Financial and
Business Records

5 (a) the provision of channels for use by the respective modes of
6 transport that are separate from financial and business records for other
7 prescribed services; and

8 (b) prescribed services that are separate from any financial and
9 business records for other aspects of any business conducted by the provider
10 of prescribed services.

11 (2) The financial and business records shall be prepared and
12 maintained in accordance with guidelines made by the Commission.

13 (3) The provider of prescribed services shall make the financial
14 and business records available to the Commission when required to do so by
15 notice in writing given by the Commission.

16 (4) A requirement under subsection (3) of this section shall identify
17 the information or document required and shall specify:

18 (a) when the requirement shall be complied with;

19 (b) in what form the information or copy of the document is to be
20 given to the Commission; and

21 (c) that the requirement is made under this Section.

22 (5) A person who without lawful excuse fails to comply with any
23 requirement made under this section commits an offence and is liable on
24 conviction to a fine of not less than N500,000.00.

25 PART XV - RESOLUTION OF DISPUTES -

26 75.-(1) The Commission shall have powers to resolve disputes
27 between persons regarding any matter under this Act or its subsidiary
28 legislation.

Power to Resolve
Disputes

29 (2) An attempt shall first be made by the parties to resolve any

1 which shall not be bound by technicalities, legal form or rules of evidence
2 and shall at all times act according to the ethics of justice and fair play and
3 the merits of each case.

4 (3) The Commission shall state in writing the terms and reasons for
5 a determination under this Part and shall provide the parties to the dispute
6 with a copy of its decision as soon as practicable.

7 (4) The costs of the Commission in making a determination under
8 this Part shall be borne by the non-prevailing party to the dispute.

9 78. -(1) The Commission shall register all decisions it makes under
10 this Part.

Register of
Decisions

11 (2) The Register shall contain:

12 (a) the names of the parties to the dispute;

13 (b) a general description of the matter; and

14 (c) the date of the decision,

15 but not the terms and reasons for the decision.

16 79. -(1) The decision of the Commission shall be binding on the
17 parties.

Enforcement of
Commission's
Decisions

18 (2) A decision made by the Commission under this Part may be
19 enforced by the Court as if the decision were a judgement of such Court
20 provided that the Commission has issued a certificate to the complainant for
21 leave to proceed to the Court for the enforcement of the decision.

22 (3) No certificate under subsection (2) of this section is required if
23 the enforcement action is taken by the Commission under this section.

24 PART XVI - REVIEW OF DECISIONS

25 80.-(1) A person who is aggrieved or whose interest is adversely
26 affected by any decision of the Commission made pursuant to the exercise of
27 its powers and functions under this Act may request in writing from the
28 Commission a statement of the reasons for the decision.

Request for
Statement of
Reasons

29 (2) The Commission shall, upon such written request provide a
30 copy of a statement of reasons for the decision and any relevant information

1 taken into account in making the decision.

2 (3) In this Part, "decision" includes any action, order, report or
3 direction.

Review of
Decision by
Commission

4 81. -(1) An aggrieved person may at any time within but not later than
5 30 days after the date of receipt of the Commission's statement of reasons
6 specified in section 80(2) of this Act request the Commission in writing for a
7 review of the Commission's decision and specify therein the reasons and basis
8 for his request.

9 (2) Subject to subsection (4) of this section, upon receipt of the
10 aggrieved person's written submissions the Commission shall meet to review
11 its decision taking into consideration the submissions of the aggrieved person
12 under subsection (1) of this section.

13 (3) In carrying out the review of its decision under this Part, the
14 Commission may use and exercise any of its powers under this Act; and

15 (4) The Commission shall within sixty days of making the request
16 under subsection (1) of this section conclude its review of the decision and
17 inform the aggrieved person in writing of its final decision thereon and the
18 reasons.

Judicial Review
of Decision

19 82. -(1) An aggrieved person may apply to the Court for a judicial
20 review of the Commission's decision.

21 (2) The decision or direction of the Commission that is the subject
22 matter of an application for judicial review shall subsist and remain binding
23 and valid until it is expressly reversed in a final judgement or Order of the
24 Court.

25 PART XVII - REGISTER AND UNDERTAKINGS

Register

26 83. The Commission shall maintain a Register, in both paper form and
27 electronic form, of all matters that are required to be registered under this Act.

Access to Register
by Public

28 84. -(1) A person may, on payment of a prescribed fee:

29 (a) inspect the Register; and

30 (b) make a copy of, or take extracts from the Register.

1 (2) If a person requests that a copy be provided in an electronic
2 medium, the Commission may provide the relevant information:

- 3 (a) on a data processing device; or
4 (b) by way of electronic transmission.

5 (3) The Commission shall from time to time publish Guidelines in
6 regard to its various Registers giving details of the Registers and indicating
7 access processes and procedures for members of the public.

8 **85. -(1)** A party to a written agreement who is subject to this Act
9 shall apply to the Commission for the registration of the Agreement, if this
10 Act requires such registration. Registration of
Agreements

11 (2) The Commission shall register the written agreement if the
12 Commission is satisfied that the agreement is consistent with:

- 13 (a) the objects of this Act;
14 (b) any relevant instrument under this Act; and
15 (c) any relevant provisions of this Act or its subsidiary legislation.

16 **86.-(1)** The Commission shall maintain a Register of all
17 agreements required to be registered under this Act, in accordance with the
18 provisions of this Part. Register of
Agreements

19 (2) The Register shall contain:

- 20 (a) the names of the parties to the agreement;
21 (b) a general description of the subject of the agreement; and
22 (c) the date of the agreement but not the terms and conditions of the
23 agreement.

24 **87. -(1)** A person may provide an undertaking to the Commission Undertakings
25 regarding any matter for which this Act makes express provision.

26 (2) An undertaking provided by a person under subsection (1) of
27 this section shall set out the terms and conditions of the undertaking and may
28 include the effective date of the undertaking and the date of its expiration.

29 (3) Any undertaking given to the Commission in any circumstance
30 whatsoever under this section shall be deemed as duly registered and shall

1 remain valid and enforceable at all times.

2 (4) The Commission shall maintain a register of all existing
3 undertakings, in accordance with the provisions of this Part.

Rules on
Undertakings

4 **88.**-(1) The Commission may make and publish rules in respect of
5 undertakings and the rules shall bind the party making the undertakings and all
6 other persons relying on such undertakings as if they were respectively signed
7 by each person and contained agreements on the part of each person for himself
8 and for his successors to observe all the provisions of the rules.

9 (2) The Commission may direct a person referred to in subsection (1)
10 of this section to comply with the rules made herein and any registered
11 undertakings issued under this Part.

Withdrawal of
Undertakings

12 **89.** A person providing an undertaking may apply to withdraw the
13 undertaking at any time by notifying the Commission in writing and the
14 undertaking may be withdrawn upon such terms and conditions as the
15 Commission may specify.

Enforcement of
Undertakings

16 **90.** The Commission or a person directly affected may apply to a
17 Court for the enforcement of an undertaking against the person providing the
18 undertaking if an undertaking has not been complied with.

19 **PART XVIII - MISCELLANEOUS**

Commission's
Regulations and
Guidelines

20 **91.** The Commission may make and publish regulations and
21 guidelines in respect of any matter or thing required or permitted by this Act to
22 be prescribed or which in the opinion of the Commission is necessary or
23 convenient to be prescribed for carrying out or giving effect to this Act.

Offences by
officers of
bodies corporate

24 **92.** If a Corporate body commits an offence under this Act or its
25 subsidiary legislation a person who at the time of the commission of the offence
26 was a director, chief executive officer, manager, secretary or other similar
27 officer of the corporate body or was purporting to act in any such capacity, may
28 be charged severally or jointly in the same proceedings with the Corporate
29 body.

1 **93.** Where no specific penalty is prescribed in this Act or its General penalties
2 subsidiary legislation for any offence, a person found guilty of such offence
3 shall:

4 (a) as a first offender, be liable to a fine not exceeding
5 N500,000.00 or to imprisonment for a term not less than one year or to both
6 such fine and imprisonment; and

7 (b) for subsequent convictions, to a fine not exceeding
8 N1,500,000.00 or to imprisonment for a term not less than three years or to
9 both such fine and imprisonment.

10 **94.** A Commissioner or any employee or member of a committee Personal
11 or panel acting under a delegated authority derived from this Act is not Liability
12 personally liable for anything done or omitted to be done in good faith:

13 (a) in the exercise of a power or the performance of a function
14 under this Act or any relevant legislation; or

15 (b) in the reasonable belief that the act or omission was in the
16 exercise of a power or the performance of a function under this Act or any
17 relevant legislation.

18 **95.-(1)** A person must not disclose any confidential or Disclosure of
19 commercially-sensitive information obtained during the exercise of a power Information is
20 or the performance of a function under or in connection with this Act or any an Offence
21 relevant legislation.

22 (2) A person must not use any such information to obtain directly
23 or indirectly any pecuniary or other advantage for himself or any other
24 person.

25 (3) Any person who without lawful excuse contravenes sub-
26 sections (1) and (2) of this section commits an offence and on conviction is
27 liable to a fine of not less than N500,000.00.

28 (4) A person may disclose or use such information if:

29 (a) the disclosure or use is made in the exercise of a power or the
30 performance of a function under, or in connection with this Act or any other

1 law;

2 (b) the person has the consent of the person who supplied the
3 information;

4 (c) the disclosure or use is made in legal proceedings at the direction
5 of a Court; or

6 (d) the information is in the public domain at the time it is disclosed or
7 used.

8 (5) Subsection (4) of this section shall not interfere with any rights
9 which another person may have with regard to the disclosure or use of the
10 information.

Enforcement
Orders

11 96. The Commission may apply to the Federal High Court for an
12 injunction or declaration or both in respect of an order or direction served by
13 the Commission under this Act.

Limitation of
suits against the
Commission

14 97. -(1) Subject to the provisions of this Act, the provisions of the
15 Public Officers Protection Act, Cap P41, 2004 shall apply in relation to any suit
16 or action instituted against an official or employee of the Commission in any
17 Court.

18 (2) Notwithstanding the provisions of any other law, and subject to
19 section 82 of this Act, no Suit shall lie against the Commission or a
20 Commissioner, or employee of the Commission for any act or omission done in
21 pursuance or execution of this Act unless it is commenced:

22 (a) within three months next after the act, neglect or default
23 complained of; or

24 (b) in case of a continuation of damage or injury, within six months
25 next after the ceasing thereof.

Restriction on
levying execution
against the
Commission

26 98.-(1) In an action or a suit against the Commission, no execution or
27 attachment process in any nature thereof shall be issued against the
28 Commission unless not less than 3 months' notice of the intention to execute or
29 attach has been given to the Commission.

30 (2) Any sum of money which may by the judgment of any court be

1 awarded against the Commission shall, subject to any direction given by the
2 court, where no notice of appeal against the said judgment has been given,
3 be paid from the fund of the Commission.

4 **99.** A Commissioner, the Secretary or any official or employee of
5 the Commission shall be indemnified out of the assets of the Commission
6 against any liability incurred by him in defending any proceeding, whether
7 civil or criminal, if the proceeding is brought against him in his capacity as
8 Commissioner or employee of the Commission and he was acting at all
9 times in good faith within the scope of his office.

Indemnity of
Commission's
officials

10 **100.** The National Council on Privatization shall, in consultation
11 with the Minister of Transport, not later than three months after the coming
12 into force of this Act, take such steps as are necessary to bring into being the
13 institutional structures of the Commission.

The Role of the
National Council
on Privatization

14 **101.** In this Act unless the context otherwise requires:

Interpretation

15 "Access" means the making available of transport services and facilities by
16 one licensee to another, by a licensee to another lawful user for the purpose
17 of providing services, and includes access to physical infrastructure
18 including terminals, stations, tunnels, bridges, sidings, jetties, hangers,
19 route and cargo handling equipment;

20 "Agreement" means an agreement, whether formal or informal, written,
21 express or implied;

22 "Artificial Islands"

23 "Authorities" means the relevant Government Agencies;

24 "Board" means the Board of Commissioners established under Section 9 of
25 this Act;

26 "Cargo" includes any substance or article and any container or other item
27 used to transport any substance or article;

28 "Chairman" means a Commissioner who is appointed to chair the Board of
29 the National Transport Commission and includes any acting Chairman of
30 the Commission;

1 “Chief Executive” means the Chief Executive of the National Transport
2 Commission and includes any person acting in that capacity;

3 “Commission” means the National Transport Commission established under
4 the National Transport Commission Act 2012;

5 “Commissioner” means any person appointed as Executive Commission under
6 section 11 of this Act;

7 “Consolidated Revenue Fund” means the Fund established by Section 80 of the
8 Constitution of the Federal Republic of Nigeria 1999;

9 “Concession” means an arrangement between the Commission and a third
10 party pursuant to which such third party shall be authorized to provide a port
11 service or operate a port facility in accordance with this Act and the term
12 includes the meaning assigned to it in the ICRC Act; and the word
13 “Concessioned” or “concessionaire” shall be interpreted accordingly;

14 “Consumer” or “User” means any person who uses transport services or
15 facilities;

16 “Council” means the Federal Executive Council of the Federal Republic of
17 Nigeria;

18 “Court” means a Court of law of competent jurisdiction;

19 “Directions” mean a direction issued by the Commission under Part X of this
20 Act;

21 “Economic Regulation” means the exercise by the Government through the
22 Commission, both directly or indirectly, of control and influence over suppliers
23 of services to consumers and covers both privately and publicly owned
24 suppliers and seeks to protect the interests of public consumers;

25 “Empowering Instrument” unless otherwise specified in this Act means:

26 (a) the relevant transport sector legislation;

27 (b) a Regulation made under Section 3 of this Act.

28 “Equipment” or “Facility” includes any equipment or apparatus or facility ,
29 machinery or system used or intended to be used for the provision of transport
30 services and facilities;

- 1 “Exclusive Economic Zone” has the meaning given to it under the Exclusive
2 Economic Zone Act, Cap E17, LFN 2004;
- 3 “Federal Government” means the Government of the Federal Republic of
4 Nigeria;
- 5 “ICRC” means Infrastructure Concession Regulatory Commission;
- 6 “Instrument” includes a direction, determination or declaration;
- 7 “Land Transport” includes rail and other modes of road transportation;
- 8 “Marine Transport” means maritime and inland water transport;
- 9 “Maritime Transport” includes shipping, ports, inland waterways and all
10 forms of transportation services in Nigerian waters; transport;
- 11 “Minister” means the Federal Minister for the time being charged with the
12 responsibility for maritime, rail or road transport;
- 13 “Minister of Finance” means the Federal Minister for the time being charged
14 with the responsibility for Finance;
- 15 “Minister of Transport” means the Federal Minister for the time being
16 charged with the responsibility for maritime and rail transport;
- 17 “Ministry” means the Federal Ministry for the time being charged with the
18 responsibility for maritime, rail or road transport;
- 19 “Nigerian Waters” shall include inland waters, territorial waters or waters of
20 the Exclusive Economic zone (respectively, together or any combination
21 thereof);
- 22 “Operator” means a person who is responsible for the management and
23 operations of jetties, port terminals, any maritime transport facility, rail,
24 road or any land transport facilities pursuant to a valid concession or licence;
- 25 “Owner” means the legal or beneficial owner;
- 26 “Person” includes a natural or corporate body or partnership and where an
27 individual is required to represent a corporate body or partnership in any
28 circumstance pursuant to this Act or its subsidiary legislation it shall be
29 sufficient if in the case of a:
- 30 (a) corporate body, it is represented by an authorised officer; and

1 (b) partnership, it is represented by a partner in the partnership or an
2 authorised employee of the partnership.

3 “Port” means any place in Nigeria, including navigable river or channel
4 leading into such place having facilities for vessels to moor and load or
5 discharge and shall include offshore cargo handling facilities, dry ports,
6 harbour, berths, jetties, pontoons or buoys and wharves;

7 “Premises” includes houses, buildings, structures, lands, tenements,
8 easements and hereditaments of any tenure, whether open or enclosed, whether
9 built on or not, whether public or private, and whether maintained or not under
10 statutory authority;

11 “Prescribe” means a rule, direction, or order laid down, approved or given by
12 this Act or by its subsidiary legislation or regulations or any relevant
13 legislation;

14 “Prescribed Agency” means a person, body or agency which:

15 (a) has functions or powers under relevant safety, standard, health,
16 environment or social legislation applying to a regulated transport industry; or

17 (b) is prescribed by the enabling legislation for the purposes of this
18 Act.

19 “Prescribed Tariff” means tariff specified in Section 28 of the Act;

20 “Prescribed Services” means the services specified in Section 28 of the Act;

21 “President” means the President of the Federal Republic of Nigeria;

22 “Property” means any legal or equitable estate or interest (whether present or
23 future and whether vested or contingent) in real or personal property of any
24 description;

25 “Publication” of any information by the Commission pursuant to this Act or its
26 subsidiary legislation, except otherwise specified in any particular Section of
27 this Act, shall be deemed as sufficiently effected if it is posted at the
28 Commission's website and published in at least one widely circulated national
29 newspaper;

30 “Publication” of any information by a registered operator pursuant to this Act

1 or its subsidiary legislation, except otherwise specified in any particular
2 Section of this Act, shall be deemed as sufficiently effected if it is:

3 (a) officially sent to the Commission;

4 (b) made publicly and readily available to any member of the
5 public at the registered operators offices that deal with or relate howsoever
6 with its consumers; and

7 (c) if the Commission so directs, published in at least one widely
8 circulated national newspaper.

9 “Register” means any one of the registers established and maintained by the
10 Commission for the purposes of this Act;

11 “Registration Certificate” means a certificate issued by the Commission, to
12 provider of transport services to operate a port, port terminals, jetties, inland
13 waterways, rail or road facilities;

14 “Registered Operator” means a person registered by the Commission to
15 provider of transport services to operate a port, port terminals, jetties, inland
16 waterways, rail or road facilities;

17 “Regulations” means regulations made under this Act;

18 “Regulated Transport Industry” means maritime, land transport services
19 including ports, inland waterways, road and rail transport and any other
20 industry which provides a regulated service and:

21 (a) is operating under a relevant legislation which is specified by
22 that legislation as a regulated transport industry; or

23 (b) is declared by an Order under Section 3 of this Act to be a
24 regulated transport industry.

25 “Regulated Service” means any maritime, rail, road services and any other
26 service declared by Order or Regulation under section 3 of this Act to be a
27 regulated service;

28 “Tariffs” or “Charges” or “Rates” include port fees station, terminal dues,
29 goods dues and pilotage dues, fees and other charges levied by transport
30 service operators;

1 “Terminal” means infrastructure, cargo-handling equipment, sheds and other
2 land-based structures used for the loading, storage and discharge of cargo or
3 the embarkation and disembarkation of passengers;

4 “Terminal Infrastructure” means terminal buildings, workshops, substations,
5 surfacing, rail sidings and other structures required for terminal operations
6 including water, lights, power, sewerage, telecommunications and similar
7 services within terminal boundaries;

8 “Terminal Operations” means services provided at a port, rail or road terminal
9 or station including cargo handling, storing and delivery of cargo to vessels,
10 trains and vehicles, handling of passengers howsoever and services related
11 thereto;

12 “This Act” means the National Transport Commission Act, 2014, as amended
13 from time to time and includes the regulations made under this Act;

14 “Road Transport” means all types of transportation services on roads;

15 “Transport Services” means stevedoring, cargo handling, terminal or jetty
16 operations, storage of cargo and passenger transportation within a port, rail
17 station, terminal, road vehicle station or terminal including tug services,
18 floating crane services, berthing or landing services, fire-fighting, security,
19 radio and radar services, waste disposal, repair facilities and any other services
20 provided within a port, station, terminal;

21 “Transport facilities” means terminal or infrastructure and other port, rail and
22 road terminal facilities for the handling, storage and transportation of goods
23 and passengers over water or on land adjoining the fore shore of Nigeria or a
24 floating platform and for the handling of passengers carried by vessels, rail or
25 road;

26 “Transport Service Operator” includes any private person or Government
27 Agency engaged in providing transport services.

Short title

28 **102.** This Act may be cited as the National Transport Commission
29 Bill, 2015.

1 FIRST SCHEDULE

2 [Section 9 (2)]

3 SUPPLEMENTARY PROVISIONS RELATING TO THE COMMISSION

4 *Proceedings of the Commission*

5 1. Subject to the provisions of this Act and Section 27 of the
6 Interpretation Act, the Commission may make standing orders regulating its
7 proceedings or that of any of its Committees.

8 2. The Chairman shall preside at every meeting of the
9 Commission and in his absence the members present at that meeting shall
10 appoint one of their members to preside at the meeting.

11 3. The quorum for any meeting of the Board shall be a simple
12 majority of the members.

13 4. The Commission shall meet to transact its business pursuant to
14 this Act whenever it is summoned by the Chairman and if so required by
15 notice given to him by not less than 4 (four) other members of the
16 Commission specifying, amongst others, an agenda for the meeting, the
17 Chairman shall summon a meeting of the Commission that shall be held
18 within 14 (fourteen) days from the date on which the notice is given to him to
19 discuss the items specified in the notice provided that the Commission shall
20 for the purposes of this Act meet not less than 4 (four) times in each calendar
21 year.

22 5. A member of the Commission who directly or indirectly has an
23 interest of a personal nature including financial interests in any matter being
24 deliberated upon by the Commission, or is personally interested in any
25 contract made or proposed to be made by the Commission shall so soon after
26 the facts of the matter of his interests have come to his knowledge, disclose
27 his interest and the nature thereof at a meeting of the Commission.

28 6. A disclosure under section 5 of this Schedule shall be recorded
29 in the Minutes of the Meetings of the Commission and the member
30 concerned:

1 (a) shall not, after the disclosure, take part in any deliberation or
2 decision of the Commission or vote howsoever on the matter; and

3 (b) shall be excluded for the purpose of constituting a quorum of any
4 meeting of the Commission for any deliberation or decision, with regard to the
5 subject matter in respect of which his interest is so disclosed.

6 Committees

7 7. -(1) Subject to its standing orders, the Commission may appoint
8 such number of standing or ad hoc committees as it thinks fit to consider and
9 report on any matter with which the Commission is concerned.

10 (2) A Committee appointed under this section shall:

11 (a) consist of such number of persons who may not necessarily be
12 members of the Commission as may be determined by the Commission,
13 provided that the appointment of a non-Commission member as a Committee
14 member shall be subject to such terms as would be indicated in his letter of
15 appointment; and

16 (b) be presided over by a member of the Commission.

17 (3) The quorum of any Committee set up by the Commission shall be
18 as may be determined from time to time by the Commission.

19 (4) A decision of a Committee of the Commission shall be of no effect
20 until it is confirmed by the Board.

21 *Miscellaneous*

22 8. The fixing of the seal of the Commission shall be authenticated by
23 the signature of the Chairman and that of the Secretary or any Member of the
24 Commission generally or specifically authorised by the Commission to act for
25 that purpose.

26 9. Any contract or instrument which, if made by a person not being a
27 body corporate, would not be required to be under seal may be made or
28 executed on behalf of the Commission by any person generally or specially
29 authorised by the Commission to act for that purpose.

30 10. Any document purporting to be a contract, instrument or other

1 document duly signed or sealed on behalf of the Commission shall be
2 received in evidence and shall, unless the contrary is proved, be presumed
3 without further proof to have been so signed or sealed.

4 **11.** Subject to the other provisions of this Act and Schedule, the
5 validity of any proceedings of the Commission or of any of its Committees
6 shall not be affected by:

7 (a) any vacancy in the membership of the Commission, or
8 Committee;

9 (b) any defect in the appointment of a member of the Commission
10 or Committee; or

11 (c) by reason of the fact that any person not entitled to do so took
12 part in the proceedings of the Commission or Committee.

13 **12.** No member of the Commission or Committee shall be
14 personally liable for any act or omission done or made in good faith while
15 engaged in the business of the Commission.

16 **SECOND SCHEDULE**

17 [Sections 10 (3), 18 (7)]

18 **CONFLICT OF INTERESTS**

19 **1.** Subject to the provisions of this Schedule, no member or staff of
20 the Commission shall have a direct or indirect financial interest or
21 investment in any part of the Nigerian transport sector throughout the tenure
22 of his office or employment with the Commission.

23 **2.** Subject to sections 3 and 4 hereof, each member or staff of the
24 Commission shall on an annual basis present a written declaration affirming
25 the non-existence of any such interest as is specified in section 1 and shall
26 pledge to disclose and inform the Commission of any such relationship or
27 interest that arises or is likely to arise during his tenure or employment with
28 the Commission.

29 **3.** Serving members of the Commission and staff of the
30 Commission as at the commencement date of this Act shall be entitled to a

1 maximum of 6 (six) months from the said commencement date within which to
2 divest themselves of their direct or indirect financial interests or investment, if
3 any, in any part of the Nigerian transport sector.

4 4. All newly appointed members of the Commission and staff of the
5 Commission after the commencement of this Act shall be entitled to a
6 maximum of 6 (six) months from their respective dates of appointments within
7 which to divest themselves of their direct or indirect financial interests or
8 investments, if any, in any part of the Nigerian transport sector.

9 5. Each member or staff of the Commission shall declare on
10 appointment or at the commencement of employment and annually thereafter,
11 for as long as he serves the Commission, any interest or investment that he:

12 (a) knowingly has; or

13 (b) knows any member of his immediate family to have, in any aspect
14 of the Nigerian transport sector.

15 6. Where a member or staff of the Commission contravenes the
16 provisions of sections 1 and 2 of this Schedule, or gives false information under
17 section 5 of this Schedule, he shall be liable, on conviction, to the payment of a
18 fine not exceeding N1,000,000.00 or imprisonment for a term not exceeding 1
19 year or to both such fine and imprisonment.

20 7. Subject to section 8 of this Schedule, the Board may from time to
21 time waive the application of the prohibitions specified in sections 1 and 2 of
22 this Schedule to any member or staff of the Commission if the Commission
23 determines that the financial interest of the relevant person is not of a material
24 nature or is minimal.

25 8. The Commission in determining whether or not the interest of a
26 member or staff of the Commission is minimal or not of a material nature, shall
27 consider factors including but not limited to the following:

28 (a) the revenue, investments, profits and managerial efforts of the
29 relevant company or other entity in regard to its transport activities compared
30 with other aspects of the company's or such entity's businesses;

1 (b) the extent to which the Commission regulates and oversees the
2 activity of such company or entity;

3 (c) the degree to which the economic interests of such company or
4 other entity may be affected by any action of the Commission; and

5 (d) the perceptions held or likely to be held by the public regarding
6 the relevant person's financial interest or investment in that company or
7 other entity.

8 **9.** The Commission may at any time review and reverse its
9 determination under section 7 of this Schedule and direct the application of
10 the prohibitions contained in this Schedule to the affected member or staff of
11 the Commission. The Commission shall not be under any obligation to
12 disclose the reasons or basis for its review to the affected member or staff.

13 **10.** In any case in which the Commission exercises the waiver
14 authority or the review thereof as specified in Sections 6 and 8 of this
15 Schedule, the Commission shall so soon thereafter publish the details
16 thereof. Such publication shall include information regarding the identity
17 of the person who has been granted the waiver or whose waiver grant has
18 been reviewed, the position held by such person and the nature of the
19 financial interests which are the subject of the waiver or review thereof.

20 **11.** For the purposes of this Schedule:
21 “company” shall include partnerships and undertakings howsoever defined;
22 “immediate family” shall mean a person's spouse, a partner living with that
23 person as if they were married to each other and children who are under the
24 age of 18.

EXPLANATORY MEMORANDUM

(This Memorandum does not form part of this Act but is intended to explain its purport)

This Act seeks to establish the National Transport Commission as an effective, impartial and independent regulatory authority in the transport sector, promote the implementation of the national transport policy and provide for an efficient economic regulation of the transport sector, and for matters connected therewith.