E-waste means Electrical and Electronic Equipment, (EEE) in whole or in part, discarded as waste by the consumer or bulk consumer, as well as rejects from manufacturing, refurbishment and repair processes. Constantly evolving technology, faster networks, new applications and service improvement in rural connectivity technology, initiatives to drive access and communication services to previously unconnected and unserved areas, increasing rate of multiple device ownership, the tendency to electrify non-electrical equipment, cloud computing services, and shorter replacement cycles and other factors have all led to the proliferation of EEE, and consequently to e-waste.

Introduction

A recent report by the World Economic Forum classified E-waste as the fastest growing global waste stream with an estimated 48.5 million tonnes of e waste generated in 2018. Given the recent growth in the ICT Industry, Nigeria continues to struggle with e-waste particularly in the commercial capital - Lagos state, a direct destination for imported EEE where brokers and traders from other countries engage in the sale and purchase of second-hand electronic devices. Lagos is regarded as the leading destination in Africa for large scale shipment of EEE from the United States of America, Europe and Asia with an estimated 500 containers of approximately 500,000 used EEE arriving the country’s ports on a monthly basis. This article examines the regulatory framework released by the Nigeria Communications Commission (NCC) the regulator for the telecommunications sector in Nigeria to combat e-waste in the telecoms industry, the responsibilities of the different stakeholders, monitoring and directions and sanction for non-compliance.

The Nigerian Communications Commission (NCC) Draft E-Waste Regulations

The NCC Draft E-Waste Regulation 2018 (the Regulation), is aimed at providing a regulatory framework for the management and control of e-waste in the telecommunications Industry and it sets out provisions to promote reuse, recycling and other forms of recovery of used telecommunications’ equipment so as to reduce greenhouse emission and contribute towards sustainable development. The Regulation, amplifies the Extended Producer Responsibility (EPR) programme by setting out the responsibilities of each stakeholder in the Industry, requiring them to procure an authorization valid for 5 years, for the purpose of achieving the objective. EPR is the responsibility of any producer of electrical or electronic equipment, for channelizing of e-waste to ensure environmentally sound management of such waste.
Responsibilities of Manufacturers

The Regulation provides that every manufacturer of EEE covered by NCC’s Type Approval Standards is expected to apply for EPR authorization and implement the programme by collecting the e-waste generated from the end of life of the products manufactured or imported into Nigeria. This will be either in form of a buy-back arrangement, exchange scheme, deposit refund scheme, return to retail store, drop-off site, collection event, whether directly or through any authorized agency and channeling the waste to authorized recyclers. The manufacturer is required to affix a visible permanent label identifying its name on the product at production stage.

Among other responsibilities, the manufacturer is expected to provide measures to recover the e-waste from consumers through a collection system that allows the distributor or retailer to accept the e-waste from final holders or private households, free of charge or alternatively by concluding contracts with collection facility agents or others for the collection and sorting of e-waste from final holders or private households free of charge. Contact details including toll-free telephone numbers must be provided to consumers through the manufacturer’s website and product user documentation to facilitate return of the e-waste. If the recovery is by way of a deposit refund scheme, the manufacturer is to refund the deposit amount to the consumer, while annual returns of EPR in specified form must be filed with NCC before the end of June of each following year.

Responsibilities of Collection and Disposal Facility Agent and the Vendors

The Regulation envisages a collection agent as a new stakeholder to collect e-waste on behalf of the manufacturer, vendor, and recycler where authorized, and prohibits unlawful disposal of e-waste in trash receptacles and dump sites in a way that will adversely affect human health and the environment. The Vendor where authorized by the manufacturer, is to collect and transport the e-waste by providing the consumer a collection box, bin or a demarcated area for deposit or through take back system and send same to the collection facility, or recycler as designated by the manufacturer. Both the Agent and the Vendor are expected to ensure that no damage is caused to human health and the environment during storage and transportation of the collected e-waste, and any e-waste collected cannot be stored for more than 6 months unless otherwise permitted by the NCC.

Responsibilities of Consumers, Recyclers, and Transporters

The Regulation requires every consumer or bulk consumer to channel all e-waste through collection centres or dealers of authorized producers, or recyclers, or through the designated take-back service providers of the producer and such e-waste is not to be mixed with waste containing radioactive materials. The Regulation further requires a bulk consumer to file annual returns of the e-waste properly returned. The role of the recycler licenced by the NCC is to ensure that collection, dismantling and recycling of e-waste is done in a way that results in no damage to human health and or the environment. The recycler is further required to make its records available for scrutiny whenever demanded by NCC. An e-waste transporter is required to maintain signed copies of all e-waste manifests and/or receipts and copies are to be made available for review in the course of transportation or during an inspection visit by the officers of the NCC. A copy of the manifest is required to be forwarded to the NCC within thirty (30) days of waste removal.

Responsibilities of the Importer

Every licensed importer is required to ensure that all EEE imported are type-approved by the NCC, fit for purpose and are of comparative models of equipment in use. Importers are not permitted to import scraps or equipment containing more than the tolerable concentration value of some restricted substances. They must ensure that their products are properly packaged for protection during transportation, loading and unloading and are required to obtain approval from the NCC for EEE received as donation from any person. Equally, annual returns in specified form must be filed on or before 30th day of June of the following year.
Enforcement Mechanism

The Regulation sets out various fines ranging from N200,000 (Two Hundred Thousand Naira) approximately USD$652 to N10,000,000 (Ten Million Naira) approximately USD$32,579, for non-compliance which includes, but is not limited to operating without EPR and operating as an importer, transporter or recycler of EEE without authorization. Submission of false records attracts a fine of N10,000,000 (Ten Million naira), and the NCC may revoke the licence granted to any stakeholder if the default continues. The Regulation further permits the NCC to seize any EEE the production or importation of which violates the provisions of the Regulation.

Conclusion

There are divergent views on e-waste management and enforcement being the exclusive preserve of National Environmental Standards and Regulations Enforcement Agency (NESREA) as opposed to other sector regulators also policing environmental issues in their various sectors. This regulatory overlap is causing confusion in the management and enforcement of e-waste resulting in non-compliance with laws and regulations. This is evident by the lack of success of the National Environmental (Electrical Electronic Sector) Regulations issued by NESREA in 2011 which was anchored on the 5Rs; Reduce, Repair, Reuse, Recycle and Recover as the primary drivers in eliminating e-waste. It is perhaps expedient for the purposes of effectively meeting the challenges posed by e-waste, that the NCC and other sector regulators combine efforts with NESREA to regulate e-waste.

All the States of the Federation must also be part of the debate in eliminating e-waste. In Lagos state for instance being a popular destination of the dumping of e-waste, agencies such as Lagos State Infrastructure Maintenance and Regulatory Agency (LASIMRA) must work in conjunction with Lagos State Environmental Protection Agency (LASEPA) and the state house of assembly in developing robust laws and policies around the effective management of e-waste without prejudice to the overriding authority of the National Regulator.

While the Regulation is a welcome development as a means of sectoral commitment to tackle the growing menace of e-waste in Nigeria, there is need to also ensure that adequate steps are taken to integrate the existing informal waste recyclers into the formal recycling structure to be adopted by every producer, manufacturer, collecting agent and recycler. The telecoms sector is a major contributor to the use of EEE in the country and with this Regulation a path can be charted to effectively face the challenge through the involvement and support of all stakeholders in the industry.

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1 Definition as provided under Regulation 30, Nigerian Communications Industry Draft E-waste Regulations 2018
3 Richard Summers Legal aspects of E-Waste, a paper delivered at the IBA Regional Conference on Environment held in Cape Town, South Africa in November 2018
4 Regulation 2, Nigerian Communications Industry Draft E-waste Regulations 2018
5 Regulation 10, Nigerian Communications Industry Draft E-waste Regulations 2018
6 Standards published by the Commission pursuant to the NCC Act and these Regulations, which shall be the applicable technical standards and specifications for identified Equipment Types, including the initial standards set out in the Schedule to the Guidelines. Such equipment that has been certified to be safe and promote interpretability between communications networks.
7 Regulation 3 [1], Nigerian Communications Industry Draft E-waste Regulations 2018
8 Regulation 4, Nigerian Communications Industry Draft E-waste Regulations 2018
9 Regulation 5, Nigerian Communications Industry Draft E-waste Regulations 2018
10 Regulation 6, Nigerian Communications Industry Draft E-waste Regulations 2018
11 Regulation 7, Nigerian Communications Industry Draft E-waste Regulations 2018
12 Regulation 9, Nigerian Communications Industry Draft E-waste Regulations 2018
13 Regulation 8, Nigerian Communications Industry Draft E-waste Regulations 2018
14 The conflict is laid to rest from the onset as the Regulation 1 of the NCC Draft Regulation is made without prejudice to this Regulation.