

KEYNOTE ADDRESS AT THE INDUSTRY PARLEY ON LOTTERY REGULATIONS

Theme: **ENSURING COMPLIANCE AND CONTINUITY IN LOTTERY
OPERATIONS AMIDST A SHIFTING REGULATORY LANDSCAPE**

Distinguished Industry Leaders, Regulatory Authorities, Telecommunications and Lottery Sector Stakeholders, my Learned Colleagues, Ladies and Gentlemen,

It is with great honor and privilege that I stand before you today to deliver this keynote address at the Industry Parley on Lottery Regulations, organized by the Association of Licensed Telecommunication Operators of Nigeria (ALTON) in collaboration with the Wireless Applications Service Providers Association of Nigeria (WASPAN).

This event could not have come at a more crucial time, as the recent Supreme Court judgment in **Attorney General of Lagos State & 21 Ors v. Attorney General of the Federation & 15 Ors (SC/01/2008)** has significantly altered the legal and regulatory framework governing lottery operations in Nigeria. The decision, which invalidated the National Lottery Act 2005, has raised pressing concerns about compliance, regulatory oversight, and the continued operation of lottery services, particularly within the telecommunications and Value-Added Services (VAS) sectors.

As we gather here today, it is imperative that we critically examine the implications of this judgement, the challenges it poses for industry operators, and the pathways toward ensuring regulatory compliance and business continuity. The task before us is not just to understand the judgment but also to develop proactive solutions that will ensure stability and sustained growth in the lottery and telecommunications industries.

STATE OF THE REGULATORY REGIME BEFORE THE SUPREME COURT JUDGEMENT.

The Lagos State House of Assembly had enacted the following laws to regulate lotteries, casino and gaming activities within the State, they are as follows:

- Lagos State Lotteries Law 2004.
- Casino and Gaming Regulatory Authority Law 2007,
- Casino and Gaming Regulations 2008

- The Pools and Betting Control Law 2003,
- The Pools Betting Tax Law 2003.
- The Lagos State Lotteries (Amendment) Law 2008.
- The Lagos State Lotteries and Gaming Authority Law 2021

In 2021, the Lagos State Government enacted the Lagos State Lotteries and Gaming Authority Law 2021. The long title of the 2021 Law describes it as:

“A law to establish the Lagos State Lotteries and Gaming Authority, to harmonise all laws relating to gaming activities in Lagos State, provide for the regulation and control of all gaming activities, and for connected purposes.”

In effect, section 107 of the 2021 Law expressly repealed the above stated legislation on lotteries and gaming within Lagos State.

From these repealed laws and regulations, it is evident that the Lagos State Government has, since 2003, asserted its legislative authority over matters connected with lotteries, casino and games of chance. Notably, the Lagos State Lotteries Law 2004 predates the now-nullified National Lottery Act of 2005. The implication is that, since 2003, the Lagos State Government, through its laws, has regulated every aspect of gaming and lottery activities in the state, including control and taxation. The government, through its enforcement agencies, has consistently ensured compliance with all its gaming laws by individuals and corporate entities.

With the enactment of the National Lottery Act 2005 by the National Assembly which had nationwide application, a jurisdictional dispute arose, leading to confusion among stakeholders in the gaming and lottery business, as they were caught between compliance with federal law and State law.

Up until November 22, 2024 when the Supreme Court finally settled the matter by nullifying the entire provisions of the National Lottery Act, 2005 as unconstitutional, operators in the gaming and lottery industry appeared to comply with both the now-defunct federal law and the Lagos State laws. For instance, obtaining a license from the National Lottery Regulatory Commission (NLRC) was insufficient to operate or carry on gaming or lottery business in Lagos State

without obtaining a corresponding license from the Lagos State Government under the provisions of the Lagos State Lotteries and Gaming Authority Law 2021. In fact, Section 33(3) of the 2021 Law prohibits any person from operating or conducting any game of chance in Lagos State without obtaining a license or authorization from the Lagos State Lotteries and Gaming Authority.

In early 2024, the Lagos State Lottery and Gaming Authority took stringent enforcement actions against gambling operators in the state who were identified as conducting gambling business or activities without proper licensing or authorization from the state. Interestingly, many of the affected operators had been licensed by the now-defunct National Lottery Regulatory Commission under the National Lottery Act 2005. Earlier, in May 2020, the Lagos State Government had also declared certain gaming sites operating within the state illegal because they lacked a Lagos State license, even though they were licensed by the National Lottery Regulatory Commission, which had then claimed its license had nationwide applicability.

1. **The Supreme Court Judgement and Its Implications**

The Lagos State Government through the office of the Attorney General of the State and 21 Attorney Generals of other States in 2008 invoked the original Jurisdiction of the Supreme Court to seek a resolution of the dispute between it and the Federal Government on the validity and enforceability of the National Lottery Act 2005, Cap. N 145 LFN 2004 within the territory of Lagos State. Being a constitutional matter, a full panel of the Supreme Court comprising of seven justices heard and determine it. In the suit, the Plaintiffs sought the following declaratory and injunctive reliefs;

- A. **A DECLARATION** that lottery or game of chance is not one of the 68 items in the Exclusive Legislative List in Part I to the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended) in respect of which the National Assembly has the powers to make laws for the whole of Nigeria and not incidental or supplementary to any matter mentioned in the list.

- B. A DECLARATION** that having regard to the clear provisions of Section 4(2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the National Assembly lacks the vires to legally and constitutionally make any law to regulate and control the operation of lottery in Nigeria.
- C. A DECLARATION** that having regard to the clear provisions of Section 4(4) (a), (b) and Part II of the Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), matters relating to lottery do not fall within items which the National Assembly and the state house of assembly are concurrently empowered to make laws with regard thereto.
- D. A DECLARATION** that having regard to the clear provisions of Section 4(7)(a) and (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Lagos State Government (represented by the 1st Plaintiff) and 2nd - 22nd Plaintiffs' State, have the power, to the exclusion of the 1st and 2nd Defendants, to make laws to regulate and control the operation of lottery within their states.
- E. A DECLARATION** that having regard to the clear provisions of Section 4(4)(b), (7)(a) and Section 299(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the power of the National Assembly to make laws to regulate and control the operations of lottery is limited by the 1999 Constitution to only the Federal Capital Territory.
- F. A DECLARATION** that Sections 17, 18, 19, 20 and 21 of the National Lottery Act N145, Laws of the Federation of Nigeria, made by the National Assembly are inconsistent with the provisions of the 1999 Constitution.
- G. A DECLARATION** that the National Lottery Act, N145, Laws of the Federation of Nigeria is inconsistent with the provisions of the 1999 Constitution.
- H. AN ORDER** nullifying Sections 17, 18, 19, 20 and 21 of the National Lottery Act, Cap N145, Laws of the Federation of Nigeria.

- I. **AN ORDER** nullifying the entirety of the National Lottery Act CAP N145, Laws of the Federation of Nigeria.
- J. **AN ORDER** of perpetual injunction restraining the 1st defendant either by himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from implementing the provisions of Sections 17, 18, 19, 20 and 21 of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the States of the Plaintiffs.
- K. **AN ORDER** of perpetual injunction restraining the 1st Defendant either by himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from taking any step or actions aimed at enforcing or continuing to enforce any/or all of the provisions of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the states of the plaintiff.

There are several questions raised in the suit that may be summarized as follows:

“Whether having regard to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Federal Government through the National Assembly has any power to make laws on and/or regulate lotteries, gaming, and casino matters otherwise than within the Federal Capital Territory or on matters in the Exclusive and Concurrent Legislative Lists.” In resolving the issues raised in the suit, M.B IDRIS JSC who read the leading Judgement of the court adopted the issues formulated by the Defendants which read as follows:-

‘Whether the National Assembly is competent to enact the National Lottery Act 2005 having regard to its legislative competence and powers as donated by Sections 4(2) (3) (4) (7), Section 16(1)(a)(b)(c) and 2(a) and (b), Items 60(a) and 62(a) of the Exclusive legislative list as contained under Part 1 of the Second Schedule and Item 7 (a) of the Concurrent Legislative list under Part 2 of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended)?’

In its landmark judgement, the Supreme Court unanimously held as follows:

'I hold that lottery does not constitute "trade and commerce" as envisaged under Item 62(a) of the Exclusive Legislative List as lottery is fundamentally a game of chance lacking the certainty, mutual exchange and reciprocity typically associated with trade and commerce. Unlike traditional commercial transactions involving a defined exchange of goods or services between parties, a lottery merely offers participants the prospect of winning without any assured return or specific value in exchange. Therefore, a lottery cannot be classified as "trade and commerce" under the relevant item in the Exclusive Legislative List, as it fails to meet the criteria of an economic transaction involving the definite transfer of goods or services. Consequently, as lottery activities do not fall within the scope of "commercial intercourse" as defined in AG OGUN STATE VS. ABERUAGBA & ORS 1985) LAW PAVILLION ELECTRONIC LAW REPROT (LPELR) - 3164 (SC) and analysed above, does the National Assembly have the requisite vires to legislate on the subject matter of lottery? '

The supreme Court went further and held that:

'Lotteries neither constitute "trade and commerce" as contemplated under Items 62(a) and (d) of the Exclusive Legislative List, nor do they qualify as an "economic activity" within the meaning of Section 16(4)(b) of the Nigerian Constitution taking cognizance of the fact that neither did the term "lottery" nor any closely related term appear explicitly in the Legislative List. It therefore follows that lotteries fall outside the legislative competence of the National Assembly. The National Assembly's power to legislate is restricted to those powers expressly granted by the Nigerian Constitution particularly Section 4(2), (4)(a) and (b) of the Nigerian Constitution, a principle already discussed in detail in this judgment and not requiring further elaboration. The Supreme Court therefore held that the National Lottery Act enacted by the National Assembly, exceeds its constitutional authority and is therefore ultra vires and unconstitutional'.

Accordingly, the Supreme Court invalidated the National Lottery Act 2005, ruling that the Federal Government, through the National Lottery Regulatory Commission (NLRC) has no power to regulate lottery or any other business involving game of chance. In addition, lotteries, gaming, and casino regulation

are by virtue of Section 4(7) of the 1999 Constitution (as amended), matters within the exclusive legislative powers and jurisdiction of the states. The Supreme Court specifically ordered as follows;

1. **An ORDER is made nullifying the entirety of the National Lottery Act CAP N145, Laws of the Federation of Nigeria.**
2. **AN ORDER of perpetual injunction is made restraining the 1st Defendant either by himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from implementing the provisions of Sections 17, 18, 19, 20 and 21 of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the States of the Plaintiffs.**
3. **AN ORDER of perpetual injunction is made restraining the 1st Defendant either by Himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from taking any step or actions aimed at enforcing or continuing to enforce any/or provisions of the National Lottery Act all of the provisions of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the states of the plaintiffs.**

KEY TAKEAWAYS FROM THE JUDGMENT:

1. The National Lottery Act 2005 is null and void. The entirety of the National Lottery Act 2005 has been nullified by the Supreme Court.
2. The National Lottery Regulatory Commission (NLRC) has no legal authority over lottery operations in any state of the Federation. The NLRC by the Judgement ceases to exist. Licenses, permits, and approvals previously issued by the NLRC for operations are no longer valid.
3. Each state now has exclusive legislative and regulatory authority over lottery operations and Games of Chance within its jurisdiction. In Lagos State the law applicable now is the **Lagos State Lotteries and Gaming Authority Law 2021.**

4. Operators must now comply with individual state laws and obtain licenses from respective state governments.
5. The National Lottery Trust Fund (NLTF), which was funded through contributions from lottery operators under the Act, no longer has a legal basis to demand payments from lottery businesses. By the Judgement of the Supreme Court, the National Lottery Trust Fund has been abolished.
6. Federal laws on lottery taxation, licensing, and compliance enforcement have become unenforceable in the states.

The judgement no doubt has ushered in a new regulatory era, where businesses must navigate a decentralized lottery regulation framework, creating both challenges and opportunities for industry players. Note that the following States who were also plaintiffs in the suit have enacted laws to regulate Lotteries and Gaming Business within their territories; Lagos, Ondo, Oyo, Ekiti, Ogun, Rivers, Cross River, Imo, Abia, Enugu, Edo, Delta.

THE LEGAL STATUS OF LICENSES AND PERMITS ISSUED BY THE NATIONAL LOTTERY REGULATORY COMMISSION

1. All licenses/permits issued by the National Lottery Regulatory Commission to lottery operators have been invalidated by the judgment.
2. Businesses operating lotteries under previous National Lottery Regulatory Commission licenses must now obtain licenses from the state(s) where they operate.
3. Telecommunications operators and Value-Added Service (VAS) aggregators that relied on National Lottery Regulatory Commission - issued permits for lottery-based promotions must now comply with state laws.
4. Existing lottery businesses must apply for new state-specific licenses.
5. Operators without valid state licenses risk sanctions or business shutdowns by state regulatory authorities.

6. VAS aggregators and telecoms operators must ensure compliance with new state-level lottery regulations.

Impact on Mobile Lottery, Mobile Gaming, and Chance-Based Promotions via Telecom Platform

1. Telecom-based lottery services (e.g., SMS-based lotteries, mobile gaming, and chance-based promotions) must now comply with state laws.
2. The uniform national licensing system is no longer valid, leading to fragmented regulations across different states.
3. States may impose different taxes, licensing fees, and compliance requirements, increasing the regulatory burden on telecom operators.
4. Operators must obtain state licenses for each state they operate in.
5. Telecom partnerships with lottery providers must now consider state-by-state compliance risks.
6. Some states may impose stricter regulations or ban lottery services entirely.

Next Steps for VAS Providers and Aggregators

Legal and Compliance Strategy

1. Engage legal experts to conduct a compliance audit.
2. Apply for licenses in each state where lottery services will be offered.
3. Ensure telecom partners are aware of the new legal framework.
4. Negotiate state-specific agreements with telecom operators.
5. Develop alternative service models that comply with state laws.
6. Monitor state lottery regulations to stay updated on compliance requirements.

Major Compliance and Operational Challenges for Telecom-Based Lottery Services:

1. There is a risk of inconsistent regulatory approaches across different states, leading to operational complexity.
2. The absence of a unified licensing regime could lead to increased compliance costs and potential legal disputes.

These challenges necessitate a new strategic approach to regulatory compliance and business continuity in the lottery and telecom sectors.

3. Business Continuity: Strategic Responses to the Shifting Regulatory Landscape

To successfully adapt to this new regulatory reality, MNOs, VAS providers, and lottery operators must proactively implement strategies that ensure seamless operations while complying with state-specific laws.

(A) Legal and Regulatory Compliance

1. Conduct a comprehensive regulatory audit to identify states where lottery operations are active and determine the applicable licensing requirements.
2. Engage legal and regulatory experts to develop a robust compliance framework tailored to multiple state laws.
3. Monitor evolving state-level lottery regulations and anticipate future amendments.
4. Establish direct engagement channels with state governments to facilitate compliance and licensing approvals.

(B) Licensing and Operational Adjustments

1. Apply for and obtain state-level lottery licenses where required.
2. Develop state-compliant lottery products to align with diverse regulatory requirements.
3. Implement a centralized compliance management system to track and ensure adherence to multiple state regulations.

(C) Policy Advocacy and Industry Collaboration

1. Engage the Nigerian Governors' Forum (NGF) and state legislators to push for harmonized state lottery regulations.

2. Work collectively as an industry to advocate for standardized licensing and operational guidelines.
3. Encourage the Federal Government to explore constitutional amendments that may provide a more unified approach to lottery regulation.

By taking these proactive steps, industry players can minimize legal risks, ensure regulatory compliance, and sustain business operations despite the shifting legal landscape.

4. Shaping the Future of Lottery Regulation in Nigeria

The Supreme Court Judgement presents both regulatory uncertainty and an opportunity for positive transformation in the lottery sector. The way forward must be collaborative, involving:

- State governments creating clear and investor-friendly regulations.
- Industry players working together to develop best practices and compliance strategies.
- A coordinated approach to regulatory engagement to prevent excessive fragmentation.

Recommended Legal and Regulatory Actionable Steps

To minimize operational disruptions and ensure compliance, lottery businesses, telecom operators, and VAS providers should take the following steps:

Short-Term Recommendations

1. Conduct an immediate legal audit of all lottery-related operations.
2. Engage legal experts to assess compliance risks in each state.
3. Identify states with existing lottery laws and apply for relevant licenses.
4. Renegotiate tripartite agreements between telecoms, VAS providers, and lottery operators.

Long-Term Recommendations

1. Work with state governments to support the passage of clear and business-friendly lottery regulations.
2. Advocate for a possible harmonized state-level licensing framework to reduce administrative complexity.
3. Engage in compliance training for internal legal and operational teams.
4. Monitor ongoing developments, including any possible legislative amendments at the federal or state level.

This period of transition should be seen not just as a challenge but as an opportunity to create a more sustainable and efficient lottery industry.

5. Conclusion

Ladies and gentlemen, the post-National Lottery Act era requires all stakeholders to think differently, act strategically, and collaborate effectively. We must ensure that the telecommunications and lottery sectors remain viable, innovative, and legally compliant under this new decentralized regulatory framework.

The judgement though creates significant challenges for market players but it also presents an opportunity for state governments to establish clearer and more competitive regulatory frameworks. Businesses must swiftly adapt to these changes to ensure continued operations while minimizing legal and compliance risks.

I commend ALTON and WASPAN for organizing this crucial dialogue and encourage all industry players to use this opportunity to forge a harmonized approach to compliance and continuity.

As we engage in today's discussions, let us focus on solutions, regulatory clarity, and business sustainability, ensuring that our industry adapts and thrives in this new reality.

Thank you.

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