

A large, stylized microphone graphic in white and orange, positioned in the upper right quadrant of the cover. The microphone has a classic grille pattern and a central stem.

MEMORANDUM
ON
**THE BROADCASTING
REGULATORY FRAMEWORK**

IN

A series of overlapping green geometric shapes, including triangles and polygons, located in the lower-left and bottom-center areas of the cover. The colors range from a bright green to a lighter, lime green.

NIGERIA

2021



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**THE BROADCASTING
REGULATORY FRAMEWORK**
IN
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Presented by

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FOREWORD

An appropriate and best-practice regulatory framework is essential for effective functioning of the broadcast media in the electoral and broader democratic processes.

For several years, the Institute for Media and Society(IMS) has engaged with media industry stakeholders, including professionals from media houses and broadcast industry regulator, through various capacity-building initiatives. The focus has been to achieve improvement in media professionalism, delivery of civic and voter education, promotion of inclusion and performance in regulation.

We have collated, from the capacity-building conversations, a package of stakeholders' observations which appear to occupy the front-burner on the regulation of broadcasting at the present time.

The intention is to disseminate it widely among stakeholders, for use as a tool to engage the reform process to produce best practices in the broadcast industry regulatory framework in Nigeria.

Each issue addressed is presented in a simple style: current situation, followed by observations and proposals. A response section provides clarification or progress made towards reform, which have been articulated by stakeholders.

We wish to thank the European Union for its support that helped to make this important publication a reality.

Dr. Akin Akingbulu
Executive Director
Institute for Media and Society(IMS)
Nigeria.



PART 1

1. **LICENSING**

A. *THE LICENSING PROCESS*

I. Advertising Licence Availability

Current Situation

The major licensing approaches in Nigeria are: direct applications and the bidding system.

Licensing for private commercial and third sector broadcasters is mainly done through the direct application system.

Availability of broadcast frequencies and other vital information are usually not publicised to enable prospective applicants have an understanding of spaces for which they could submit applications.

Observations:

Publication of available broadcast frequencies by the regulator enables prospective applicants to have an understanding of spaces for which they could submit applications. It is now a recognised international practice that vital information on the licensing process, including available broadcast frequencies, are advertised periodically by the regulatory body.

Proposals:

i. The regulator should publicise, periodically, broadcast frequency availability for locations in all parts of the country.

II. Stages of the Licensing Process

Current Situation

There are currently seven (7) stages of the broadcast licensing process articulated by the regulator on its website. These stages are:

- i. Registration of a limited liability company (which article and memorandum of association must include broadcasting) by a prospective applicant.
- ii. Application by the company to the commission seeking approval to purchase a set of application forms.
- iii. Purchasing a set of application forms by the company (upon receiving the commission's approval).
- iv. Completing and returning the purchased form along with a comprehensive feasibility study and business plan for the proposed station, to the Director General, National Broadcasting Commission (NBC).
- v. Processing of application by the commission, recommendation to its Board, transmission to Information Minister and transmission to and approval by the President.
- vi. Payment by the successful applicant (after Presidential approval) of the prescribed licence fee and signing a licence agreement with the NBC.
- vii. Allocation of appropriate frequency to successful applicant by the NBC

Observations:

- i. The apparent justification for the requirement for applicants to apply for purchase of application forms is to enable the regulator determine from its records on availability of frequencies in applicants' proposed locations. However, there have been cases where the regulator has indicated unavailability of frequencies after Presidential approval has been granted. It implies that this stage of the process is unnecessary
- ii. The involvement of the Information Ministry and Presidency in the stages of licencing elongates the process, subjects' technical decisions to political



considerations and denies the regulator its appropriate independence and full regulatory powers

- iii. The popular practice across the world today is that regulatory authorities, especially those in charge of broadcasting, should be distinct and independent from any other public or private body, and should be able to carry out the full remit of regulatory functions. For example, the Declaration of Principles of Freedom of Expression in Africa (adopted by the African Commission on Human and Peoples' Rights in 2002) provides that:

Any public authority that exercises power in the areas of Broadcast or telecommunications regulation should be Independent and adequately protected against interference, particularly of a political or economic nature

Response:

The approach of the Commission is to request prospective applicants to write first requesting for application form. Upon receipt of such request, the Commission will check availability of frequencies in the proposed location of such stations. It will then advise such people whether to go ahead and collect application forms and submit applications based on finding on frequency availability.

This approach ensures that people are not allowed to apply and later find out that frequencies are not available.

Proposals:

- i. The current first stage of licensing where applicants are required to apply for NBC approval to purchase application forms should be abolished
- ii. The participation of the Information Ministry and the Presidency in the licensing process should be abolished. The NBC should have full independence to perform the full gamut of regulatory functions, including licensing

Response:

1. The current first stage where applicants are required to apply for the regulator's approval to purchase application forms is considered helpful to the applicant by the regulator because, if this is not in place, large numbers of prospective applicants will just apply and later get feedback that frequencies are not available in their chosen locations. The regulator would not like to be accused of making money out of the license application process without appropriate guidance for applicants.

2. The proposed exclusion of information ministry and presidency from the broadcast licensing process is an issue that requires amendment of legislation, specifically the NBC Act.

III. Processing of Licence Applications**Current Situation:**

The processing of licence application is done at the NBC Headquarters in Abuja. After an applicant submits his/her application, feedback on the status of the application is not provided by the regulator. The applicant does not know whether his/her application is making progress in the processing mill. Many applicants wait for long periods without any information from the NBC.

Observation:

This feedback gap affects the credibility of the licensing process.

Applicants are entitled to know the status of their applications. If they do, their trust in the process will be enhanced

Proposals:

i. The Commission should within 30 days of receiving an application for licence, inform the applicants by written notice on the status of the application- the processing stage, the grant of licence, the refusal of licence, etc. This feedback should be repeated at quarterly intervals. In the event of refusal of application/licence, reason(s) for refusal should be given, and there should be space for





applicants to appeal refusal.

- ii. The details of all applications should be published by the regulator on such platforms as its Website and Newsletter.

Response:

1. The current practice in the regulator is to provide feedback to applicants at intervals. Sometimes because of the nature of certain checks which must be conducted, feedback may take longer time.

The regulator has put in place a template of timelines for various stages of the licensing process, on its website. These timelines however end with activities within the regulator and not those covered by other agencies such as, the Ministry of Information and the Presidency.

2. Some applicants provide untraceable contact details which make it difficult for the regulator to provide feedback within defined timelines.

B. Awarding Licences

I. Licence Conditions Current Situation:

The licensing framework articulates certain criteria for the grant of broadcasting licences. According to Section 9 of the NBC Act, these criteria are that:

- (I) The applicant shall be a corporate body registered under the Companies and Allied Matters Act or a station owned established or operated by the federal, state or local government.
- (ii) He can demonstrate to the satisfaction of NBC that he is not applying on behalf of any foreign interest.
- (iii) He can comply with the objectives of the National Mass Communication policy, as is applicable to the broadcast media.
- (iv) He can give an undertaking that the station shall be used to promote national unity and cohesion, but not used to offend religious sensibilities or promote ethnicity, sectionalism, hatred and disaffection among Nigerians.

(v) He can satisfy the NBC on his structure of shareholding, the number of its shareholdings in other media establishment and the distribution of those stations and establishments as between urban, rural, commercial or another categorisation. It should also demonstrate that it does not have controlling shares in more than two of each of the broadcast sectors of transmission.

(vi) Availability of broadcast frequencies.

Section 10 of the Act, further provides that the applicant shall not be a religious organisation or a political party. However, Section 9 (3) of the NBC Act stipulates that compliance with the first four criteria above shall not still entitle an applicant to a grant of a licence although “the grant of a licence by the Commission shall not be unreasonably restricted”.

Observations:

- i. The provision in section 9(3) which says that compliance with several of the stipulated requirements shall still not entitle the applicant to a licence is an unnecessary provision because it appears to take away with the left hand what has been given with the right hand.
- ii. The provision in section 9(4) which makes the structure of shareholding in the broadcasting organisation one of its criteria appears to ignore the fact that the concept of shareholding is limited to commercial licence applicants. Third sector broadcasting licence applicants (Community Corporate entities) do not allocate shares.

Proposals:

- i. Section 9(3) of the NBC Act which provides that compliance with several of the stipulated requirements shall not entitle the applicant to a licence is an unnecessary provision and should be removed.

Section 9(4a) which provides for the structure of shareholding in the broadcasting organisation should be amended and restricted to commercial licence





applicants.

Response:

1. The licensing process currently ensures that distinction is made between applications for community/campus and commercial licenses. It recognises that community/campus applicants are from community groups/campuses of academic institutions while commercial license applicants are from commercial/business entities.

2. The licensing process also involves other inputs such as security checks. This implies that security considerations, for example, could come into play even when other things are in place.

II. Licence Fees

Current Situation:

The licence fees for Radio and Television stations are in two categories.

For private commercial Radio stations, the fees are namely: N 20million for Lagos, Abuja and Rivers States and N15 million for all other locations.

Observations:

The current schedule of fees appears to ignore the socio-economic realities across the country, and viability potentials for the development of broadcasting in various parts of Nigeria. This partly accounts for the skewed distribution of commercial broadcast stations across the country.

Proposals:

(i) The schedule of licence fees should be reviewed considering such socio-economic and other factors.

(ii) The current two-tier licence fee schedule should be further spread for more segments of the population to access.

Response:

1. The current fee schedule appears to be realistic, in the consideration of the regulator.
As part of conditions to make fees affordable, community radio stations pay N250, 000 for a period of 5 years.
2. Many licenses have been issued in some parts of the country, but instead of setting up stations, some licensees try to sell their licences.
Meanwhile, unused licenses become expired after 2 years, according to the NBC Act.
3. In a particular zone of the country, state governments got approval for AM and SW Licenses in addition to FM licenses. The intention was to enable them provide wider coverage of the region. Somehow, they prefer to use the FM stations with which limited coverage is achieved.

ii. National Spread of Licences

Current Situation:

The Federal government (through FRCN) and state-owned radio stations operate across the country (except in few States where FRCN stations are not operational). All state governments own and operate radio stations. There are also federal government agencies licensed to run radio stations. Examples are: The Nigerian Army, Federal Road Safety Corps (FRSC), National Youth Service Corps (NYSC) etc. Most state governments own—television stations; the federal government (through the NTA) covers all the states of the country. Private commercial broadcasters are mainly concentrated in commercially strong locations across the country. These private commercial licences have scanty presence in rural and international border locations. Radio stations are licensed in academic institutions and grassroot communities. But the overall presence of outlets in this sector is still low.

Observations:

- (i) Diversity is an important element in the development of the broadcasting sector. Crucial in this is the geographical dimension, meaning that all parts of the country, including border areas should be served by broadcasting services.



- (ii) The development of third sector broadcasting appears to be getting stunted in view of the relatively low proportion allocated to it in licence batches in recent years.

Proposals:

- (i) Regulation should ensure that government broadcasters cover the territories allocated to them.
- (ii) Licensing attention should prioritize third sector broadcasting (community and campus) to ensure that they are present and functioning in all parts of the country.
- (iii) Regulator should regularly publicise availability of frequencies in all parts in order to attract investors' attention to underserved parts of the country.

Response:

1. Since 2015, the licensing of community radio has progressed.

Several batches of licenses have been approved.

2. Many current applicants do not seem to understand the concept of community radio. Hence, some want to get the license as individuals or commercial entities while others want to upgrade such licences to commercial levels after receiving approval.

3. The number of applications processed and forwarded by the regulator to higher authorities is not usually the number that is approved

PART 2

CONTENT REGULATION

A. Content Standards

(i) Public Service Programming by Broadcasters.

Current Situation

The original (6th edition of the) Nigeria Broadcasting Code (in Subsection 9.4.3) limits obligations of private/commercial broadcasters on public service programmes and announcements to a minimum of 5% of their total weekly broadcast hours.

The new amendment to the code requires private/commercial broadcasters to allot “a minimum of 20 per cent of weekly broadcast hours to public service programmes on emergencies, current trends and issues”. It provides further that “such programmes shall be given prominence during family belt and shall not be less than 120 minutes per transmission day”

A breach of this provision is classified as CLASS B offence.

Observations

1. The public service programme requirements of public or state broadcasters are usually high. This is because this tier of broadcasting is funded from the public purse. The situation is different in the case of private commercial broadcasters who, in the Nigerian context, have to source all or most of their funding.
2. In the present difficult economic climate, it will be unfair to compel private/ commercial broadcasters to allot “a minimum of 20 percent of weekly broadcast hours to public service programmes”.

Proposal

1. The requirement of a minimum of 20% programming to be devoted to public service



programme by private commercial broadcasters should be reviewed downward to the previous 5 per cent.

(ii) **Hate Speech / Inciting Speech**

Current Situation

Provisions are made on the regulation of hate/inciting speech in several sections of the 6th Code. Section 3.1.2 states that “broadcasting shall promote human dignity and “therefore, hate speech is prohibited”. It provides further that:

A breach of any of the foregoing provisions is categorised as a CLASS A (high end) offence. The regulator has specially stated that the penalty for hate speech is a fine of N5 million.

Observations:

Hate speech can be found at the intersection of freedom of expression and other rights, which could be individual, group and minority rights. It has become globally important to the extent that international and national instruments have been enacted to address it.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) states that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. But it also recognises that freedom of expression must be accompanied by responsibilities and that it may be subject to certain restrictions as are provided by law and are necessary for respect of the rights or reputation of others and for the protection of national security or of public order or of public health or morals.

Article 20 of ICCPR provides for states to prohibit, by law, any incitement to hatred by “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

Country – level constitutional provisions and legal frameworks also address hate speech. For example, Section 39 of the constitution of Nigeria (as amended)

makes provisions similar to those of the ICCPR.

However, the challenge with dealing with hate speech has mainly been with definition, implementation and enforcement. Very often, country legislations do not clearly define hate speech or details such as the grounds for incitement to hatred and what constitutes incitement. Sometimes, the country legislation is not implemented. At other times, there is overly broad, overzealous and politicized application of legislation.

Proposals

1. The regulator and other government authorities should facilitate more speech to deal with hate speech:
 - a) Promote public education initiatives which focus on cultural and other differences among citizens.
 - b) Expand expression diversity through provision of more outlets that give voice to underserved groups.
 - c) Expand civic and voter education in innovative ways.
2. Build and strengthen partnerships with and among electoral actors such as government agencies, the Election Management Body, civil society groups, media and political parties.
3. Strengthen early Warning System (EWS and deal with it early before elections.
4. Monitors, analyse and report on media content
5. Train and re-train media professionals, politicians and political party leaders
6. Ensure that regulations are applied in a consistent manner..

Response:

1. There are many instances of hate speech which are seriously extreme and could lead to break down of law and order, requiring urgent regulatory intervention. There are various classes of this breach: Class A (high), Class B (medium), Class C (low).



2. The contribution of other stakeholders will go a long way in dealing with hate and extreme speech.
3. The regulator also collaborates with stations in training staff or personnel on the requirements of the broadcasting code.

(iii) Disability Inclusion Issues

Current Situation

The National Broadcasting Code (6th Edition) has provisions on disability in its Chapter 3 which deals with General Programming Standards.

Section 3.8.(c) provides that **The Broadcaster shall ensure that: “the physically and mentally challenged are not exploited or presented in a manner embarrassing to the challenged or members of their families”**

Section 3.1.11 also states that **“Persons under the age of 18, the physically challenged or any vulnerable group shall be protected from offensive and harmful portrayal at a programme”**.

Observation

1. Inclusion has become a major issue of concern to broadcasting regulation across the world. Specifically, the issue of giving appropriate portrayal and access to People with Disabilities (PWDs) have taken the front burner globally.
2. PWDs and issues affecting them need to be professionally reported or covered by the Media. Their voices need to be heard like those of other citizens, through the media.
3. In many parts of the world today, broadcasters provide “access services: through methods such as subtitling, signing and audio-description. These are in addition to coverage methods such as in news and other broadcast programmes.

Proposals

1. The provisions on disability access/participation

- 12 issues in the Code should be updated to global standards.
2. The updating process should involve consultations with stakeholder groups which include broadcasters, groups representing PWDs, scholars, civil society, etc.

Response:

1. The regulator is in the process of updating provisions on disability inclusion.

(VI) Sanctions

Current Situation

Breaches of regulation have sanctions attached to them in the Code.

Chapter 15 elaborates provisions on the sanctions system which include classes of sanctions, consequences of revocation, illegal broadcasting and penalties.

There are 3 classes of sanctions:

1. Class C (the low end) covers written admonition to remedy a breach within 24 hours; written warning after failure to comply; and payment of a fine after a subsequent failure to comply.
2. Class B (medium level) covers warning to remedy a breach within a time frame (undefined); reduction of daily broadcast hours in the event of failure to comply; and a suspension of broadcast licence for a period of 30 days, in the case of subsequent failure to comply. The re-commencement of full broadcast shall then attract a fine.

In the new amendment, Class B sanction will cover “a written warning to remedy/rectify a breach within a frame”, while failure to comply will attract “a reduction of daily broadcast hours for a given period. But “recommencement of full broadcast hours shall be subject to a heavy penalty for public and commercial broadcasters and light penalty for community broadcasters”

Class A (the high end): covers immediate order of suspension of broadcast services; suspension of licence and immediate shut down/seal up of



transmitter; and revocation of licence, seizure and forfeiture of transmitting equipment.

The consequences of suspension and revocation are also articulated: the broadcaster shall immediately comply with the order; the police and other security agencies may assist the Commission to shut down the station. It states further that “the broadcaster whose licence is revoked shall not be absolved of its responsibilities or obligations, prior to the date of revocation”. Once a licence is revoked by the Commission, “re-application for a broadcast licence shall not be considered from the same company until after 5 years”

The Code puts the responsibility for action against “illegal broadcasting” into the hands of the Police. Section 15.4.1 states that “the Police shall prosecute any person engaged in any form of broadcasting or in possession of any broadcast equipment or apparatus in the country without a licence or permit for the purpose”

Penalties: The code provides for 3 categories of financial penalties in respect of broadcasters' breaches.

1. Light penalty: attracted a fine which ranged from N250,000.00 to N500,000.00 in the original 6th Code, but now amended to start from N200,000.00 to N500,000.00.
2. Heavy penalty: a fine which initially ranged from N 2 million to N 10 million, but amended to be from N 500,000.00 to N4,999,000.
3. Severe penalty: earlier fixed at N 20 million and above, but now adjusted to N 5 million and above.

In Section 9.1.6.11 (b) the Code specifically stipulates a penalty of not below N 10 million” for failure to comply with the no-exclusivity in licencing rule.

According to the foregoing schedule, the penalties shall apply to all categories of broadcasting except community broadcasting which “shall be subject to a sanction as shall be determined by the Commission, based on the nature of the breach”

Process: The actual procedure for sanctioning is not articulated in the 6th Code although it was addressed in earlier editions.

Observations

1. Sanctions appear on the scene when programmes that have been broadcast break content rules. Usually, the broadcaster has responsibility for content which it broadcasts whether it is produced in-house, made through an independent production outfit or acquired. The broadcaster is expected to be aware of all content before it is broadcast, meaning that unsuitable or inappropriate material would have been edited out before content is disseminated.

It is essential that a sanction is imposed through a process. This helps to ensure fairness and transparency. It helps to ensure that the broadcaster's right to fair hearing is respected.

2. Where a fine is to be imposed as penalty for a breach, several factors should be taken into account. They include: the seriousness of the breach, the broadcaster's record of breaches, possible financial benefit the broadcaster might have enjoyed as a result of the broadcast, the proportionality of the fine to the offence and the overall financial state of the broadcaster. It is important that fines are not up to a size that endangers the broadcaster's existence.
3. There has been tremendous transformation in the technology of broadcasting. The "broadcast equipment" of today would include devices such as laptops and phones which are used in everyday business and communication. In this context, how realistic will it be to prohibit or criminalize the "possession of any broadcast equipment or apparatus without a licence or permit for the purpose", as the Code seeks to do?

Proposals

1. The NBC should establish a sanctions process which, among other things, provides for fair hearing for broadcasters on alleged breaches and an appeal mechanism which would be subject to court adjudication.
2. These sanctions should be widely published.





3. The current fine portfolio should also be re-visited using important criteria listed above.
4. The provision in Section 15.4.1 which criminalizes the possession of “broadcast equipment or apparatus without a licence or permit for the purpose” should be removed.

Response:

1. The regulator interacts with stations in various ways, which include dialogue, written engagements in its monitoring and sanctioning process.
2. There are sometimes when station contents have very strong potential to cause public disorder and so require urgent regulatory intervention.
3. There are new appeal mechanisms in the sanctioning process. There are cases where stations' appeals are upheld.

B. The Process of Content Regulation

(i) Monitoring

Current Situation

The regulator carries out monitoring activities. Broadcast content is monitored from its offices at the Headquarters (Abuja), Zonal and State offices across the country. The responsibility is handled by a Directorate of Broadcast Monitoring, headed by a Director at the Abuja headquarter. There are also independent experts hired to monitor content and report to the Commission.

To complement real-time content monitoring, the regulator also accesses programme schedules, log books and off-air recording which broadcasters are required to put in place. Section 1.6.1 of the 6th Code provides that:

The broadcaster shall forward to the Commission its quarterly programme schedule and synopsis of new or repackaged programmes not less than one

week before the beginning of the quarter.

This is followed up by Section 1.6.2. which obliges the broadcaster to “establish an Electronic Programme Guide (EPG) which contains all the details required in 1.6.1”; by Section 1.7.1 and 1.7.2 which compel the broadcaster to maintain log books and log all transmissions and other operations; and by Section 1.8.1 which asks the broadcaster to retain recording of programmes for at least 90 days and to produce the log recording, script or manuscript if demanded by the Commission.

Observations

1. It is important for the regulator to know whether and how its licences are complying with content obligations. One way of handling this is monitoring.
2. The modern regulatory monitoring system requires skilled personnel, up-to-date technology in terms of equipment/ facilities.
3. It appears that while skills are available within the NBC, the same cannot be said of the required quantity of personnel and equipment/facilities required to carry out the monitoring function in the field offices across the country.
4. There have been reports that while broadcasters' compliance level on submission of quarterly programme schedule to NBC may be high, they sometimes hide the schedules from the public. This speaks to transparency.

Proposals

1. The NBC should be better resourced. Financial allocation for its operations should be improved.
2. The regulator should invest in human and material resources – more personnel should be hired and regularly trained, up-to-date and adequate equipment should be procured and deployed for the use of the staff in all operational centres.
3. After broadcasters submit quarterly programme schedule to the NBC, they should be required to publish the schedule to the public through various



platforms such as websites, etc.

Response:

1. The regulator requires more resources in terms of personnel and facilities. Submissions have been made to government.
2. The regulator does not have financial independence and this limits the extent to which they can go in generating resources to meet its needs.

(ii) **Public/ Audience Complaints.**

Current Situation

The right of members of the public to complain about broadcast content or broadcasters is recognised in regulation. Section 15 of the 6th code provides that:

Any person or group has a right to complain about any broadcast content or conduct of the broadcaster. Therefore, the broadcaster shall transmit, at least twice a day, information on how to lodge complaints about its content or general conduct.

More elaboration is provided in Section 14. According to this section, the range of issues on which complaints can be made to the regulator include: content and conduct of the broadcaster; terms, conditions and obligations of the broadcast licence; the Act, the Code and any other regulation of the NBC.

A complaint to the NBC, which can be in oral or written form, must contain such details as broadcaster's name, title of the programme, date and time of the broadcast, essence of the complaint or observation, and the complainant's details such as name, address, telephone number and/or email address and signature.

Complaints have a limitation period of 14 days, meaning that only complaints lodged within 14 days of occurrence of the alleged act or omission will be entertained by the NBC.

There is a procedure for handling complaints: asking the affected broadcaster to provide a written response along

with a recording of the relevant materials, requesting for copies of the relevant correspondence from the complainant, investigating and arbitrating on the matter, and notifying the parties of the progress of the investigation, findings and action taken. The regulator may make the outcome of the investigation public.

A broadcaster may be sanctioned over a complaint proven against it or over its failure to comply with the regulator's directives. Besides it (broadcaster) shall bear the administrative costs of the regulator's investigation if found liable.

While Section 1.5 stipulates a Class B sanction for broadcaster's failure to provide information to the public on how to lodge complaints about its content or general conduct, Section 14.3 omits the corresponding class of sanctions for the offences it creates.

Observations

1. The requirement that broadcasters should transmit information on how the public could lodge complaints is rarely observed – by broadcasters.
2. Media literacy is very low in the country and there is rarely a complaints culture.

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Proposals

1. The NBC should enforce the provision in the code which requires broadcasters to transmit information to the public on how to lodge complaints to the regulator on broadcasters' content and conduct. One of the steps of the regulator might be to include this requirement in broadcasters' licence obligations.
2. The NBC, working with other stakeholders, should embark on a vigorous media literacy programme across the country.
3. The regulator should harmonize the sanctions contemplated in Sections 1.5 and 14.3 of the code.



PART 3

SUPPORTING DOMESTIC INDUSTRY

Regulation provides for support to domestic broadcasting industry in diverse ways.

(A) Local Content

Current Situation

The objectives of local content, according to the 6th Code, are the promotion and sustenance of Nigeria's diverse cultures, mores, folklores and community life, and provision of diversity in types of programming content which demonstrates the wide variety in Nigeria's cultural landscape. Hence, Section 3.14.2 of the code requires the broadcaster to “promote Nigerian content and encourage the production and projection of Nigerian life within and outside its borders; strive to attain 100% local content”, and “establish a dynamic creative and economically vibrant Nigerian broadcast industry”.

In the Code's amendment, the character of local content is further defined. Section 3.15.1 states that for a programme to qualify as local content, its conceptualization production, target audience must be Nigeria, along with the following conditions: the producer (s), director(s) and author (s) are Nigerians (s); a minimum of 75% of the leading authors and major supporting cast including voice actors, or on-screen presenters are Nigerians; at least 75% of programme and post-production expenses are paid for services provided by Nigerians or Nigerians companies, obtained from various sources and initiatives, which must not be subject to “foreign ownership or arbitrary interference”. Where a production is a collaboration with a foreign entity, its producer(s) are required to ensure that Nigerian production locations, talents, skills, set, etc form at least 75% of the entire production.

The broadcaster is permitted to source its local content from independent producers when it is not a direct production of the broadcaster.

According to Section 3.16 productions targeted at the

Nigerian market shall meet minimum of 60% local content.

Observation

1. The 75 percent proposition: will this be available immediately in all cases, including funding for example?

Proposal

1. Spread the attainment of the 75 per cent benchmark across timelines.

B Music

Current Situation

There are also local content requirements for music to be used by the broadcaster. According to Section 3.18, such musical work must meet any of the following requirements: lyrics/music written by a Nigerian, music principally performed by musicians who are Nigerians, live performance or recording performed or broadcast in Nigeria; music or lyrics co-written, co-produced with Nigerians.

For free-to-air terrestrial broadcasts, Section 3.18.2 states that broadcasters must ensure that Nigerian music constitutes 80 percent of all its musical content.

Compensation arrangements for creators of musical works are articulated in newly created provisions.

Section 3.18.2 (e) requires the broadcaster to ensure prompt payment of royalties for all artistic and musical works.

Section 3.18.3 provides that prior to the use of an artistic work, a broadcaster shall obtain the appropriate licence from the owner or licence and pay all applicable copyright fees, pay applicable fees to collective management organization and obtain appropriate clearance. Failure to do the foregoing would amount to a Class B offence under the Code without prejudice to the right owner's right to report to the Nigerian Copyright Commission for prosecution or seek civil remedies where applicable. It further recognises the Nigerian Copyright Commission as the final decision maker or to determine the



applicable collective management organization to receive the broadcaster's payment and issue a clearance.

Observations

1. Some stakeholders have argued that issues here should be within the jurisdiction of the Nigerian Copyright Commission and that the 'incursion' of NBC along with prescription of penalties, has the potential of creating double jeopardy for practitioners.

Proposal

1. NBC should coordinate with Nigerian Copyright Commission (NCC). If NBC coverage is considered necessary, it should be backed by legislation e.g inclusion in NBC Act.

Response:

1. The regulator's role is played when music is broadcast.
2. The regulator has a working collaborative arrangement with NCC and other relevant agencies

A. Sports Rights

Current Situation

Provisions on Sports Rights in the 6th Code have been reviewed.

Broadly speaking, the amended Code requires the broadcaster to: uphold the principles of equity and fairness in the acquisition of sports rights and coverage provide the widest coverage for sporting activities, and use sports to promote national unity and cohesion Section 6.2 details the framework for acquisition of sports rights by broadcasters. Among these are that:

- (i) Nigeria should not be bundled in the same basket with other countries in the sale of football rights.
- (ii) The final bid for the acquisition of rights to sporting events to Nigeria shall be reasonable in comparison with other territories of similar economic indices.
- (iii) Broadcasters shall submit acquired rights to the

NBC within 2 weeks, failing which the right shall be void and broadcasting of the event in Nigeria shall not happen.

- (iv) The rights owner shall offer the rights to other broadcasters on the following platforms, at commercially agreeable terms.
 - a. Satellite (DTH)
 - b. Multipoint Microwave Distribution System (MDDC)
 - c. Cable (Fibre Optics)
 - d. DTT (Terrestrial)
 - e. Internet
 - f. Mobile
 - g. Internet Protocol Television (IPTV)
 - h. Radio

v. In the event of a dispute between the rights owner and the other broadcasters, the parties would try and resolves differences amicably. Where that fails, the NBC shall arbitrate under the Arbitrator and Conciliation Act and its decision shall be final.

Section 6.2.8 appears to summarize the intention of the foregoing provision, by saying that:

For the avoidance of doubt, exclusivity shall not be allowed for sporting rights in the Nigerian territory and in furtherance thereof, no broadcaster or licensee shall licence or acquire foreign sporting rights in such a manner as to exclude persons, broadcasters or licensees in Nigeria from sub-licensing the same.

There are other provisions which link to these core anti-exclusivity provisions. For example:

- (i) Warehousing of sports rights, that is, acquiring rights and not using them, is prohibited.
- (ii) For a Prime Foreign Sports Content to be transmitted in Nigerian territory, the content owner must also acquire prime local sport content of the same with a minimum of 30% of the cost of acquiring the Prime Foreign Sports Current.
- (iii) For adverts of products and services to be allowed



during Prime Foreign Sports Content, the advertiser must equally sponsor or advertise such products and services in the broadcast of prime local sports content in the same category.

- (iv) Where a broadcaster acquires the broadcast rights to prime local sports content, it shall ensure that such content is given the same coverage as other contents in its platform.

Observation

1. On the requirement that Nigeria should not be bundled in the same basket with other countries in the sale of football rights: should the responsibility of ensuring this be on the rights holder? Should government not have a role?
2. Can the NBC impose itself as an arbitrator under the Arbitration and Conciliation Act?
3. Can arbitration decision be final where there is the court of law?

Proposals

1. Government should explore discussions with international sports broadcasting rights owners.
2. Review the framework of arbitration contemplated in the Code.

Response:

1. Government played a role in the past, and to play to play its role.
2. The NBC has statutory powers of arbitrating in industry conflicts. Many industry issues have come to it for arbitration and resolutions have been achieved. The regulator is not opposed to court processes after it has carried out its functions.

Advertising

Current Situation

Section 7.8.2 of the amended 6th Code requires the broadcaster to ensure that: (a) radio and television adverts for airing on all broadcast platforms, pertaining to products and services created or originating in Nigeria,

are wholly produced in Nigeria; (b) it does not transmit adverts produced by foreign entities, companies or organizations for the Nigerian market.

Recovery of unpaid advertisement rates is also addressed. Section 7.9.1 requires the broadcaster to notify the NBC of unpaid advertisement after 45 days. The regulator will intervene by asking all broadcasters to reject adverts from the defaulting advertiser.

Observations

- (i) Some stakeholders have argued that the terrain belongs to the Advertising Practitioners Council of Nigeria (APCON).

Proposal

- (i) NBC should develop an understanding and working relationship with APCON.
- (ii) The involvement of the NBC, if agreed, will require legal backing e.g., through amendment of the NBC Act

Response:

1. The broadcasting regulator is empowered by legislation (NBC Act, Section 2.1 (u) to carry out "such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under or pursuant to this Act."

2. The regulator has working relationship with APCON and other relevant agencies

E. Anti-Competition

Current Situation

Section 9.0.6 of the amended 6th Code prohibits the broadcaster from:

... effecting informal agreements, written and oral agreements, explicit or implicit understandings or implementing concerted practices either exclusively or between market players that have as their object, intent, effect or purpose, the restriction of competition, abuse of a dominant position or of substantial market



power or create barriers to entry in the broadcast media industry in Nigeria

Section 9.0.6 speaks to the broadcaster which is already in a dominant position in the industry, saying that it shall:

... comply with an order of the Commission to cease a conduct in the market which has or may have the effect of substantiating, preventing, restricting and/ or distorting competition in the broadcast industry and to implement appropriate penalties and/or remedies.

According to the definition provided by Section 9.0.11, a broadcaster is in a dominant position when, in the opinion of the NBC, “that broadcaster is able to act without significant competitive restraint from its competitors”

Observations

- (i) It has been argued in some quarters that NBC is going into the statutory territory of the Federal Consumer and Competition Protection Council (FCCPC).

Proposals

- (i) NBC should develop an understanding with FCCPC.
- (ii) The involvement of NBC in this territory should be backed by law
e.g through an amendment of the NBC Act.

Response:

1. The NBC has a working relationship with the FCCPC and other relevant agencies

F. Access for PayTV

Current Situation

The amended code seeks to ensure “the widest possible distribution and viewership of content considered critical to the success and sustainability of new entrants in the PayTV industry in Nigeria”. Hence, Sect 9.1.1.1 requires the PayTV broadcaster who has or acquires content to

“ensure access by all PayTV platform to premium content in sports and new genre to generate affective competition at the wholesale level for such genres.”

The terms upon which the broadcaster shall offer the programme and/or channel to other broadcasters include request in writing, within a reasonable time, on a non-exclusive basis, without undue discrimination, and directives issued by the NBC.

In the event of a dispute over “Stipulated Prices, the Code provides in Section 9.1.1.7 that the NBC:

.... Shall have the right to conduct a review of the stipulated prices further to a complaint by any of the parties thereof and give directives which shall be binding on all parties, within 21 days of being notified of such dispute

Despite the foregoing provisions, the code goes further to make wider provision to cover all programme/content genres. Section 9.1.1.8, then requires broadcasters to comply with NBC's directives to licence their “broadcast and/or signal rights in any genre of programming to another licence or broadcaster in Nigeria”, if certain circumstances are present. The circumstances are:

- (i) If the genre of programme(s) enjoys compelling viewership of Nigerians (ii) if it relates to a product or service that is necessary to be able to compete effectively on a downstream market (iii) if it is likely to lead to the elimination of effective competition on the downstream market and (iv) the refusal is likely to lead to consumer deprivation.

Failure to comply with NBC's directives a Class A offence, which, according to Section 9.1.1.16 attracts a penalty of “not below the sum of N 10 million in addition or apart from any requirement under this section”

Observations

1. From arbitration, under Sport Rights in Section 6, the intervention mode of the NBC has shifted to “directives”, under Access for PayTV in Section 9. What is the rationale?

Proposal

1. There is need for a justification of the NBC intervention method, directives, in this situation.



PART 4

THIRD SECTOR BROADCASTING

Operators in this sector are to be found on campuses of academic institutions and grassroots communities in Nigeria. Licensing of campus broadcasters began about 2002 while that of their grassroots community counterparts started in 2015.

A. Geographical Coverage

Current Situation

Broadcasting outfits licensed as campus and community radio stations are allowed to broadcast to very small geographical space. The campus stations had approval for a maximum of 100-Watt transmitters, enjoyed by the first generation of campus licencees, such as Radio Unilag, the pioneer station at the University of Lagos. This has been scaled down over the years, to as low as 20 Watts on some locations.

For the grassroots community broadcasters, 250 Watts transmitters were approved as maximum after the first set of stations was approved in 2015.

Observations

The geographical sizes of communities vary from place to place, depending on how each community defines itself. There are community and campus radio stations whose 250 watts or 20 watts cannot cover their community territories. This has caused problems in some locations, as some sections of the communities complain of being marginalised from benefiting from the broadcasting stations.

Proposals

- I. Geographical coverage approval for community and campus broadcasters should be done on a case-by-case basis by the regulator.
- II. The basis for decision should be details in licence application – particularly on how communities define themselves in geographical terms.

B. Content Coverage

Current Situation

Regulation currently imposes coverage restrictions on political content.

Section 9.16.1 of the 6th Code provides that “the Campus Broadcaster shall not carry political adverts, campaigns, jingles or cover any political activity outside the campus”. Section 9.16.2 states further that “the broadcast of campus politics shall be in decent language and guided by broadcast regulations and relevant laws”.

There are no similar provisions for community broadcasters in the code but they are also forbidden from political content in practice.

In the application of this restriction, there is no separation between provision of voter education and coverage of political party activities.

Observations

One of the defining matrices of media development is its availability for and use as a platform for democratic discourse, including during the electoral process. Third sector broadcasters are part of this media landscape and qualify to provide space for political communication during the electoral process.

A key concern has been that, if allowed to participate in carrying/disseminating political content during the major national elections, third sector broadcasters could get swarmed and derailed from their usual development programmes. One response to this is to separate voter education and political party activities so that the community broadcasters can participate in the former.

Proposal

1. Regulation should provide that community and campus broadcasters can engage in voter education during all electoral processes.



**Response:**

1. Participation of community media in voter education is desirable and will go a long way in strengthening the electoral process.
2. There should be an arrangement in place to make the community media practitioners understand where to draw the line of coverage for voter education.

(c) Revenue Sources

Sources of revenue are also restricted for this sub-sector of broadcasting.

According to section 9.7.1, of the code, community broadcasters can be funded from only three sources. These are:

1. Resources of the community raised through contributions, membership fees and other legitimate sources
2. Donations, gifts and grants which sources are required to be disclosed to the NBC at least twice a year or upon request by the NBC
3. Local spot announcements

Section 9.15.1 specifies the funding sources for the operations of campus radio stations. It states that the sources shall among others include” the following

1. Subvention
2. Spot announcement from within the campus community (with a condition that they will not exceed 9 minutes in every hour of broadcast)
3. Donations or grants
4. Events coverage within the campus community
5. Sale of station's memorabilia
6. Staff and/or student membership fee

Sources such as advertising and sponsorship are not allowed for broadcasters in this sub-sector.

Observations

1. Secure revenue sources are crucial to the functioning and sustenance of third sector broadcasting outfits.
2. For years, broadcasters in this sector have been groaning, due to the burden of grossly inadequate revenues, occasioned by the restrictive regulatory framework.

Proposals

1. NBC should review the revenue framework for third sector broadcasting
2. New revenue sources to be introduced should include:
 - (a) Commercials of local nature – which target small and medium enterprises (SMEs) within the communities.
 - (b) Programme sponsorships – which target development programmes on health, agriculture and food security, education, etc.
3. The NBC should establish and manage a Community Broadcasting Development Fund – from which community broadcasting outlets could draw support from year to year.

(d). Space Occupation by Govt Stations

Current Situation

In recent years, the regulator's approved lists of community broadcasters began to feature government agencies. Apart from those held by the traditional state/government broadcasters such as the Federal Radio Corporation of Nigeria (FRCN), licences were issued to government agencies such as the Centre for Nomadic Education, the Federal Road Safety Commission (FRSC), National Youth Service Corps (NYSC), and to organs in the Local Governments, the third tier of government in the country. These are then listed among community broadcasting licences.

Observations





The foregoing situation creates challenges which include the following:

- i. When government owned broadcasting stations are classified as community or third sector broadcasters, it creates confusion in the minds of the public.
- ii. Listing government broadcasting outfits among community broadcasters directly shows that licences earmarked for allocation to communities have been denied the allottees and diverted to government agencies.

Proposals

1. The NBC should undertake appropriate classification of broadcasting sectors.
2. It should reflect the new classification in its regulatory instruments, including press/public statements, registers, visibility materials etc.

(d.) Ownership by Ineligible Entities

Current Situation

Section 9.10.1 of the 6th Code provides that a community broadcasting licence shall not be granted to four categories. These are religious organisations, political parties, individuals and profit oriented corporate bodies.

Observations

Individuals have devised methods of beating this provision by incorporating non-profit entities and using same to apply for and secure community broadcasting licences. Politician are prominent in this group.

Proposal

The NBC should strengthen its mechanisms to ensure that the provision in the code is respected and ineligible entities do not get to acquire community broadcasting licences.

PART 5

JURISDICTION OF REGULATOR

A. Extension of Regulation to Web / Online Broadcasting

Current Situation

The amendment to the 6th Code extends the coverage of the regulator to web/online broadcasting.

Section 2.0.3 states that: “All persons who wish to operate web/online broadcasting services in the Nigerian territory shall be registered with the Commission” A breach of the provision is a Class 'A' offence.

Section 2.12.1 follows in the spirit of the provision by requiring that “web/online platform owners (ISP) shall bear liability for any content in their platform”; content on web/online platform shall conform to the provision of the Code on programming standards, especially as it relates to hate speech and fake news. A service provider or platform owner who breaches any or all of the Code, may face additional sanctions which include Take-down Order, Block or Shut-down Order. These are Class B offences.

Observations

1. In previous editions of the Code, tentative efforts were, made to include web/online broadcasting within the jurisdiction of the NBC.
2. Globally, there have been efforts by governments to regulate online content, including broadcast online content. A prominent approach has been to put the burden of regulation on platform owners or Internet Service Providers (ISP).
3. The new Nigerian approach is to regulate directly (on content owners) and indirectly (on platform owners).
4. Web/online broadcasting is growing in Nigeria



and there already exists a substantial constituency of players in the sector.

5. There is the fear among stakeholders that the planned regulation of web/online broadcasting may lead to media freedom/freedom of expression violations by government.

Proposals

1. Conduct more consultations with stakeholders.

Response:

The regulator intends to extend regulation to web/online broadcast platforms because of security and other considerations.

(A) Arbitration in Industry Conflicts

One of the terms of reference of the NBC is to engage in industry conflict resolution. Section 2(1)(9) of the NBC Act provides that the Commission shall have the responsibility of “intervening and arbitrating in conflicts in the broadcasting industry”

In furtherance of the actualization of this provision in the law, the code articulates some provisions.

Section 6.2.7 seeks to address arbitration in disputes between broadcasters who acquire sports broadcasting rights and other broadcasters who intend to benefit. The section provides for a two-stage resolution of disputes. The first is for the parties to resolve their differences amicably. If that fails, the NBC “shall arbitrate under the Arbitration and Conciliation Act” and “its decision shall be binding”

In a similar situation which involve Wholesale Offer, especially in the event of a dispute as to the stipulated prices, Section 9.1.1.7 states that the regulator “shall have the right to conduct a review of the stipulated prices further to a complaint by any of the parties thereof and give directives which shall be binding on all parties, within 21 days of being notified of such dispute”.

In yet another circumstance, which involves signal distribution, 12.5 requires that “the broadcast signal distributor shall in the event of a dispute between and a broadcaster, submit itself to the Commission for

arbitration; the Commission's decision shall be binding”.

Observations

1. Can the regulator impose itself as arbitrator within the context of the Arbitration and Conciliation Act?
2. Can the decision of an arbitrator be final, in the context of the Arbitration and Conciliation Act?
3. Why would the regulator adopt “arbitration” in one situation and “directive” in another, in two similar circumstances?

Proposal

1. Review the proposed framework of arbitration intervention.
2. Consider Consistent application of arbitration, rather than directives.





LIST OF ABBREVIATIONS / ACRONYMS

APCON – Advertising Practitioners Council of Nigeria

NBC – National Broadcasting Commission

FCCPC – Federal Competition and Consumer Protection Council

BON – Broadcasting Organisations of Nigeria

FMIC – Federal Ministry of Information and Culture

FRCN – Federal Radio Corporation of Nigeria

NTA – Nigeria Television Authority

NCC – Nigerian Copyright Commission

IMS – Institute for Media and Society

EU-SDGN – European Union Support to Democratic Governance in Nigeria.



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