ANALYSIS OF THE NATIONAL BROADCASTING COMMISSION (AMENDMENT) BILL, 2023 (HB 2039).

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An analysis of the National Broadcasting Commission (Amendment) Bill, 2023 (HB. 2039), sponsored by Hon. Jubrin Abdulmumin, *assessing market competition rules, monopolistic practices, and fair play in broadcast content acquisition and distribution*

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By
Centre for Media and Society (CEMESO)
3, Emina Crescent, Off Toyin Street,
Ikeja, Lagos, Nigeria.

Phone:
(+234) 813-709-2766

Emails:
info@cemesong.org;
cemesong@hotmail.com

Website:
www.cemesong.org

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1. BACKGROUND

The National Broadcasting Commission (Amendment) Bill, 2025 (HB.2039), sponsored by Hon. Abdulmumin Jubrin, represents a significant legislative intervention aimed at modernizing Nigeria's broadcasting regulatory framework. It seeks to address long-standing concerns over market concentration, anti-competitive conduct, and limited consumer choice in the Nigerian media landscape. The bill proposes robust amendments to the National Broadcasting Commission (NBC) Act, Cap N11, Laws of the Federation of Nigeria, 2004, to enhance the Commission's mandate and equip it with the tools necessary to regulate competition and ensure fairness in the broadcasting industry.

The bill introduces new regulatory powers that would empower the NBC to develop and enforce codes of practice on market conduct, competition, and content acquisition. It prohibits exclusive licensing arrangements that restrict access to broadcast rights, particularly where such rights enjoy significant public interest. The bill introduces comprehensive provisions to prevent the abuse of dominant market positions by broadcasters and service providers, empowering the NBC to proactively address market distortions, collusion, and practices detrimental to consumer welfare. It marks a significant overhaul of Nigeria's broadcasting regulatory framework by embedding clear competition rules, prohibiting monopolistic conduct, and strengthening the Commission's capacity to enforce equitable access to broadcast content and distribution rights in line with contemporary antitrust and economic principles.

By expanding the NBC's responsibilities and enforcement powers, the bill aligns Nigeria's regulatory posture more closely with global best practices, especially in digital broadcasting and market liberalization[1, 2]. If passed, the amendment will not only promote competitive pricing and programming diversity but also foster greater inclusion of Nigerian broadcasters in a market traditionally dominated by a few major players. This legislative move is timely, given increasing calls for media reforms that prioritize consumer protection, economic fairness, and technological innovation in the Nigerian broadcast sector[3, 4].

2. KEY PROVISIONS OF THE BILL

The bill is proposing the following amendment to the National Broadcasting Commission Act

a. Strengthening NBC's Regulatory Mandate (Section 2)

The bill is proposing an amendment to Section 2(1):

- Promoting fair market conduct and effective competition, and preventing monopolistic behaviour and anti-competitive practices
- Developing codes on content acquisition, technical standards, and fair market behaviour.
- Authorizing NBC to undertake additional activities necessary to fully discharge its functions.
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b. Introduction of a New Section 13A – Competition Regulation

This is the heart of the Bill. It empowers NBC to:

i. Issue codes of practice and standards for competitive behaviour within 90 days to guid fair market behaviour, protect consumers, and regulate the media industry.

ii. Prohibit exclusive contracts or practices that prevent or restrict competition,
especially those securing exclusive broadcasting rights. Any such anti-competitive agreement is automatically void.

iii. Investigate and sanction monopolistic or abusive behaviour, including, market
dominance, refusal to license high-demand content, and price manipulation or entry barriers.

iv. Compel broadcasters to license their content if certain thresholds are met, such as if:

- It has 50%+ national viewership.
- It's necessary to compete downstream.
- Refusal would eliminate effective competition or deprive consumers.

v. Apply these rules to both local and foreign entities operating in the Nigerian broadcast space.

vi. Investigate suspected breaches of competition rules

vii. Offenders are entitled to notice and an opportunity to respond.

viii. Impose fines of at least ₦10 million for anti-competitive behaviour.

ix. Where there is an infringement of any kind, sanctions can be issued in writing as follow

- Direct compliance or cessation of infringing conduct.
- Require modifications to agreements or business practices.

c. Revised Interpretation Clause (Section 26)

The bill introduces and adds clarity to new key terms such as:

- Market dominance, subscription platforms, stipulated prices, and minimum qualifying criteria.
- Cap wholesale content pricing at ₦4,000 per subscriber/month for premium content like sports, movie, and news.
- Recognize various delivery platforms (e.g., Direct to Home (DTH), Digital Terrestrial Television (DTT), Internet Protocol Television (IPTV), mobile).
- Defines NBC's power to regulate wholesale pricing and retail content delivery standards.

3. LEGAL GAPS AND REGULATORY IMPLICATIONS OF THE BILL

a. Expansion of Regulatory Powers

The Bill significantly expands the legal powers of the National Broadcasting Commission (NBC) beyond content regulation to include economic and competition regulation within the broadcast industry. Specifically, the amendment empowers NBC to promote fair market conduct and prevent anti-competitive practices (Section 2(1)(u)–(w), Section 13A(1)(a)), and issue binding codes of practice and performance standards, with the force of law.

This expansion positions the NBC as a quasi-competition regulator in the broadcast sector, raising questions about overlap with existing agencies like the Federal Competition and Consumer Protection Commission (FCCPC) established under the FCCPC Act, 2018.

b. Codification of Competition Law Principles

The proposed Section 13A creates a framework mirroring international competition law principles, such as:

- Prohibition of agreements or practices that distort market competition (Section 13A(4)–(5)). This reflects Article 101 of the Treaty on the

Functioning of the European Union (TFEU), which bans agreements that restrict competition, such as exclusive licensing that forecloses market access to competitors[5, 6, 7].

- Requires the Commission to define relevant markets, assess market shares, and consider barriers to entry and other economic factors (Section 13A(6)-(7)). These are standard analytical tools in international competition law, used to determine market power and the potential for anti-competitive effects.[8, 9]
- Regulation of dominant market positions and abuse thereof (Section 13A(7)–(9)). This reflects Article 102 TFEU and similar provisions in other jurisdictions that includes preventing conduct that hinders competition, such as refusal to supply essential content or discriminatory practices.[10, 11]
- Possibility of compelled licensing and content sharing, especially for high-viewership programmes (Section 13A(11)). This is analogous to the "essential facilities" doctrine in EU and US antitrust law, where dominant firms may be required to grant access to critical infrastructure or content under specific circumstances to prevent market foreclosure.[12, 13]
- Grant the Commission powers to investigate, make determinations, and issue binding directives Section 13A(15)–(17)).[14, 15]
- Enforce extraterritorial application to entities outside Nigeria, if they broadcast into Nigeria (Section 13A(19)).[16, 17]

These provisions aim to dismantle monopolistic practices, but they could trigger constitutional or judicial scrutiny over NBC's legal mandate, particularly regarding property rights and commercial freedoms under Sections 44 and 39 of the 1999 Constitution (as amended).

c. Jurisdictional Overreach and Inter-Agency Conflict

By asserting authority over market conduct, pricing, signal access, and licensing arrangements, NBC's role may now conflict with the Federal Competition and Consumer Protection Commission (FCCPC), which has statutory responsibility for competition and consumer protection under Sections 17 and 72 of the FCCPC Act as well as, the Nigerian Communications Commission (NCC), which regulates broadcast transmission infrastructure and may interpret overlapping jurisdiction in signal distribution.[18]

This creates a regulatory turf war, possibly undermining legal certainty, investor confidence, and enforcement efficiency.

d. Consumer Rights and Access

The Bill mandates NBC to safeguard consumer interests and prevent consumer deprivation (Section 13A(11)(d)). It also introduces pricing caps (e.g., N4,000 monthly ceiling for premium content under Section 26). While it appears consumer-friendly, such statutory price controls may violate market liberalization policies and potentially breach WTO trade commitments or investor-state agreements (e.g., under the ECOWAS Common Investment Market).[19, 20, 21]

5. Enforcement and Sanctions

The Bill gives NBC powers to conduct investigations (Section 13A(15)), issue directives and impose penalties, including fines of at least ₦10 million for anti-competitive practices (Section 13A(18)), and bind foreign-based broadcasters or content owners broadcasting into Nigeria (Section 13A(19)). This cross-border reach may raise enforceability issues in international law and necessitate bilateral cooperation frameworks[22, 23]. It also raises due process concerns, especially regarding administrative penalties without judicial review mechanisms[24, 25].

6. Legal Certainty and Constitutional Considerations

The new powers granted to NBC according to Section 2(1) require clarification through subsidiary legislation and harmonization with existing laws. There are possible constitutional challenges under Section 36 (Fair Hearing) if penalties are imposed without judicial proceedings[26], and Section 44 (Right to Property) regarding forced licensing or revocation of exclusive content rights[26].

4. STRENGTHS OF THE BILL

a. Empowers the NBC to prevent anti-competitive practices, misuse of monopoly, and market dominance in the broadcasting industry.

b. Expands NBC's regulatory role to include market monitoring, price control, and content democratization.

c. Prioritizes the interests of consumers by promoting fair pricing, diversified content options, and preventing market exclusion.

d. Grants the Commission authority to issue binding codes of practice, set performance standards, and impose penalties for violations.

e. Enforces a level playing field for local and new entrants in the broadcasting space. Ensuring that both local and foreign individuals or companies involved in Nigerian broadcasting are subject to the same rules.

f. Mandates public issuance of guidelines and gives stakeholders the opportunity to make representations before sanctions are imposed.

g. Clearly outlines what constitutes dominance and its abuse, and empowers the Commission to act against it.

h. Allows NBC to mandate content/signal rights sharing if certain programmes attract wide public viewership (50%+), preventing consumer.

i. Prevents broadcasters from exclusive content agreements that block other players from entering or competing effectively in the market.

j. Introduces a specific fine (minimum ₦10 million) for practices that overtly or covertly restrict competition.

k. Reflects global best practices in market regulation and competition law.

5. CHALLENGES AND RISKS OF THE BILL

1. Regulatory Overreach and Ambiguity

The Bill grants the NBC expansive powers to regulate competition and market behaviour, including the ability to compel content sharing and revoke agreements that it considers anti- competitive. The lack of clear legal thresholds and due process mechanisms could expose the Commission's decisions to judicial review or abuse of discretion.

2. Jurisdictional Overlap with FCCPC

The bill confers competition regulatory functions on the NBC, which could conflict with the Federal Competition and Consumer Protection Commission (FCCPC)'s statutory mandate under the FCCPA 2018. This may create enforcement confusion, duplicative compliance burdens for broadcasters, and institutional rivalry.

3. Investment Deterrence

The prohibition of exclusive content rights and compulsory licensing provisions (e.g., mandatory sharing of broadcast rights with high viewership) may disincentivize private investment in original content, especially in sports and entertainment.

4. Enforceability and Practicality

Imposing a universal pricing cap (e.g., ₦4,000/month) and compelling dominant players to open their content to others could be difficult to enforce and may lead to legal challenges fromaffected operators. Also, the administrative burden on

NBC to monitor, assess, and enforce complex market dynamics may exceed its current capacity.

5. **Technical and Market Readiness**

Nigeria's broadcast market may lack the technological, legal, and institutional readiness to implement complex anti-competition measures like dominant market analysis, downstream market assessments, or cost-benefit assessments.

6. **Implementation Complexity**

NBC currently lacks the technical and institutional capacity to regulate competition at this scale[27, 28]. Therefore, enforcing pricing caps and compelling licensees to share rights may raise logistical and legal hurdles.

7. **Overregulation Risk**

The level of control proposed in the bill could discourage foreign investment or innovation if perceived as punitive or inflexible.

8. **Ambiguity and Vagueness**

Terms such as "compelling viewership" and "dominant position"[29] lack quantifiable benchmarks in the bill (though they are promised in future NBC codes). Furthermore, enforcement mechanisms are broad but may need judicial oversight to avoid abuse.

9. **Legal Risks and Investor Protection**

Retroactive application of new rules (such as making existing contracts void) could raise constitutional concerns and breach international investment treaties or trade obligations.

6. RECOMMENDATIONS

1. **Clarify NBC-FCCPC Mandates**

The Bill should clearly delineate the NBC's powers in competition regulation and establish a collaborative framework with the FCCPC to avoid overlap and enhance regulatory coherence.

2. **Introduce Safeguards for Regulatory Powers**

The bill should establish checks and balances such as mandatory stakeholder consultations before issuing binding codes, independent appeals or review mechanisms for regulatory decisions, and clearly defined criteria for determining "dominance" and "anti-competitive conduct."

3. **Balance Competition and Investment Protection**

The bill should consider exemptions or limits on mandatory licensing requirements to protect broadcasters' intellectual property rights and preserve incentives for content creation. It should also Introduce sunset clauses or periodic review of such provisions to align with market maturity.

4. **Build Institutional Capacity**

The bill should introduce provisions that addresses the funding and investment in the NBC's technical, legal, and economic expertise to analyze market behaviour and enforce competition policy fairly and effectively. It should also establish dedicated units or staff training programs in competition economics and legal enforcement.

5. **Pilot and Phase Implementation**

The bill should introduce new provisions (e.g., price caps or content sharing obligations) and consider piloting enforcement in selected market segments to test viability before full-scale
rollout.

6. **Safeguard Legal Rights**:

The bill should include explicit appeal mechanisms, independent tribunals, and clear timelines for compliance.

7. **Legislative Harmonization**

The bill should ensure there is consistency with existing laws like the FCCPA, Investment Promotion Act, and Nigeria's international obligations under treaties like the African Continental Free Trade Area (AfCFTA).

8. **Stakeholder Engagement**:

The bill should mandate consultation with broadcasters, consumer groups, and legal experts before issuing binding codes.

7. CONCLUSION

The National Broadcasting Commission (Amendment) Bill, 2025 (HB.2039), is a landmark reform that significantly repositions the NBC as a broadcast market regulator, not just a content and license watchdog. It introduces a transformative agenda for consumer protection, market fairness, and reduced monopolistic power in Nigeria's broadcasting ecosystem. If passed, carefully implemented and balanced with stakeholder interests, it has the potential to democratize access, stimulate innovation, and foster genuine competition. However, without clear definitions, institutional support, and legal safeguards, it could lead to regulatory overreach or judicial backlash.

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CEMESO Head Office:

3, Emina Crescent, Off Toyin Street,
Ikeja, Lagos, Nigeria. (+234) 813-709-2766
info@cemesong.org; cemeso2004@hotmail.com
www.cemesong.org

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