

A BILL

FOR

AN ACT TO AMEND THE NATIONAL BROADCASTING COMMISSION ACT TO PROVIDE FOR COMPETITION IN NIGERIA TO PROMOTE EFFICIENCY AND EXPAND OPPORTUNITIES FOR NIGERIAN PARTICIPATION IN WORLD MARKETS WHILE AT THE SAME TIME RECOGNIZING THE ROLE OF FOREIGN COMPETITION IN NIGERIA AND OTHER MATTERS RELATED THERETO

Sponsored by Hon. Nnenna Elendu-Ukeje

[] Commencement

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

1 1. The National Broadcasting Commission Act (in this Act
2 referred to as "The principal Act") is hereby amended as set out hereunder.

3 2. Section 2 subsections 1 of the Principal Act is hereby amended
4 by inserting new paragraphs (v) and (u) as follows:

5 (v) Maintaining and promoting fair and efficient market conduct
6 and effective competition in the broadcast industry in Nigeria or, in the
7 absence of a competitive market, to prevent the misuse of monopoly or
8 market power or anti-competitive and unfair practises by broadcasters or
9 licenses or facilities providers or equipment suppliers in the broadcast
10 industry;

11 (u) developing codes of practice relating to content acquisition,
12 sharing of content rights for rebroadcasting and technical standards for
13 media industry, and monitor compliance with such codes.

14 (3) The Principal Act hereby amended by inserting new section
15 13A as follows:

16 13A. COMPETITION, MONOPOLY AND WHOLESALE OFFER

17 (1) The Commission shall within 90 days of the coming into force

1 of this amendment, by publication in the National Broadcasting Code, issue
2 one or more codes of practice and standards of performance for all or any of the
3 following purposes:

4 (a) To maintain fair market conduct and competition in any media
5 industry in Nigeria;

6 (b) To safeguard the public generally;

7 (c) To provide guidance in relation to the operation of any provision of
8 this Part;

9 (d) For the regulation of activities and conduct in the media industry,
10 and for matters connected therewith;

11 (e) Generally for carrying out the purposes and provisions of this Part
12 and for the due administration thereof.

13 (2) The code of practice may, in particular specify the duties and
14 obligations of any person, corporate entity or broadcaster in relation to its
15 business operations in any media industry; and provide for such fees or charges
16 as may be payable to the Commission in relation to any application or request
17 made to it.

18 (3) The Commission may, at any time, by publication in the National
19 Broadcasting Code, add to, vary or revoke any code of practice.

20 (4) A licensee shall immediately after the coming into force of this
21 Amendment be prohibited from entering into any form of agreement contract
22 concerted practices or take any decision which have as their object and
23 intendment the prevention restriction or distortion of competition in or in any
24 part of the broadcast media industry in Nigeria; and for this purpose no
25 broadcaster or licensee shall enter into any form of broadcasting rights
26 acquisition either in Nigeria or anywhere in the world to acquire any
27 broadcasting right(s) in such a manner as to exclude persons broadcasters or
28 licensee in Nigeria from acquiring same.

29 (5) An agreement or a decision which is prohibited by subsection 4 is
30 void.

1 (6) The Commission may from time to time publish guidelines or
2 regulations which clarify the meaning of “agreement, decisions or concerted
3 practices, which have as their object *or intendment* the prevention,
4 restriction or distortion of competition” in the Nigerian broadcast industry
5 and such guidelines or regulations may include but shall not be limited to
6 references to:

7 (a) the relevant economic market;

8 (b) global trends in the relevant market;

9 (c) the impact of the conduct on the number of competitors in a
10 market and their market shares;

11 (d) the impact of the conduct on barriers to entry into the market;

12 (e) the impact of the conduct on the range of services in the market;

13 (f) the impact of the conduct on the cost and profit structures in the
14 market; and

15 (g) any other matters which the Commission is satisfied are
16 relevant.

17 (7) The Commission shall in a code of practice, publish guidelines
18 and regulations which regulate the conduct of persons, corporate entities,
19 affiliated companies, subsidiaries and/or Broadcaster(s) if the Commission
20 concludes that the prior or proposed action(s) of the foregoing:

21 (a) is likely or shall cause substantial restraint of competition or
22 tend to create monopoly in any line of business enterprise;

23 (b) the use of such shares by voting or granting proxies or
24 otherwise shall not cause substantial restraint of competition or tend to
25 create monopoly in any line of business enterprise.

26 (8) The Commission shall publish guidelines and regulations
27 which clarify how it shall apply the test of “dominant position” to persons,
28 corporate entities, affiliated companies and/or licensees; and the guidelines
29 and regulations in subsection (6) of this section may specify the matters
30 which the Commission may take into account, including but not limited to:

- 1 (a) the relevant economic market;
- 2 (b) global technology and commercial trends affecting market power;
- 3 (c) the market share of the licensee;
- 4 (d) the licensee's power to make independent rate setting decisions;
- 5 (e) the degree of product or service differentiation and sales
- 6 promotion in the market; and
- 7 (f) any other matter which the commission is satisfied is relevant.
- 8 (9) The Commission shall have the power to direct a licensee or
- 9 broadcaster in a dominant position in the broadcast industry to cease a conduct
- 10 in that market which has or may have the effect of substantially preventing,
- 11 restricting and/or distorting competition in the broadcast industry and to
- 12 implement appropriate penalties and/or remedies.
- 13 (10) The Commission shall in a code of practice, prohibit any
- 14 conduct on the part of one or more persons, corporate entities, affiliated
- 15 companies, subsidiaries and/or Broadcaster(s) which amounts to the abuse of a
- 16 dominant position in, or in any part of, the broadcast media industry in Nigeria
- 17 if in its discretion, it may or would adversely hinder the maintenance and
- 18 preservation of competition in any media industry in Nigeria.
- 19 (11) A person, licensee and/or broadcaster is in a dominant position
- 20 when, in the opinion of the Commission, that Broadcaster is able to act without
- 21 significant competitive restraint from its competitors.
- 22 (12) For the purposes of this section, the Commission shall have the
- 23 obligation, in a code of practice, to specify the Broadcaster(s) whom it
- 24 considers to have a dominant or non-dominant position in, or in any part of, any
- 25 media industry in Nigeria.
- 26 (13) For the purpose of ensuring the widest possible distribution and
- 27 viewership of content considered critical to the success and sustainability of
- 28 new entrants in the Pay TV industry in Nigeria, the Commission shall ensure
- 29 access by all Pay TV platforms to premium content in the Sports and News
- 30 genre to generate effective competition at the wholesale level for such genres.

1 (14) In furtherance thereof, a Broadcaster, Owner and/or
2 Exclusive licensee ("Licensee") shall offer the Sports and News programme
3 and/or channels to other broadcasters for retail to residential and
4 commercial subscribers in Nigeria on the following terms:

5 (a) upon reasonable request in writing;

6 (b) within a reasonable time;

7 (c) on a non-exclusive basis;

8 (d) on fair and reasonable terms;

9 (e) without any undue discrimination; and

10 (f) in accordance with the requirements of this section and any
11 direction issued by the Commission.

12 (15) In determining the charges offered for supply under this
13 section, consideration should be had to the actual cost of acquisition of the
14 Sports and News programme and/or channels by the Owner or Exclusive
15 Licensee ("Stipulated Prices") and the retailing thereof to each potential
16 subscriber. In no event shall the charges exceed the Stipulated Prices
17 thereof.

18 (16) The Licensee shall provide the Broadcaster with standard
19 terms and conditions under which offers shall be made further to this
20 section, which shall include at least the following:

21 (a) charges which do not exceed the Stipulated Prices;

22 (b) the Minimum Qualifying Criteria for potential purchasers;

23 (c) terms of payment and billing procedures;

24 (d) the duration of agreements and notice periods.

25 (17) The Licensee shall comply with any direction or request for
26 information issued by the Commission for the purpose of ensuring,
27 monitoring or investigating compliance with this section.

28 (18) In the event that a Broadcaster accepts an offer made pursuant
29 to section, the Licensee shall use its best endeavours to enable that the
30 Broadcaster commence retailing of the programme or channel as soon as

1 practicable possible.

2 (19) In the event of a dispute as to the Stipulated Prices, the
3 Commission shall have the right to conduct a review of the Stipulated Prices
4 further to a complaint by any of the parties thereof give directives, which shall
5 be binding on all parties, within 21 days of being notified of such dispute.

6 (20) The Commission shall also have the power to compel any
7 licensee or broadcaster in the broadcast industry to license its broadcast and/or
8 signal rights in any genre of programming to another licensee or broadcaster in
9 Nigeria if the following circumstances are present:

10 (a) If the genre of programme(s) enjoys compelling viewership by
11 50% of Nigerians or more;

12 (b) it relates to a product or service that is objectively necessary to be
13 able to compete effectively on a downstream market;

14 (c) it is likely to lead to the elimination of effective competition on the
15 downstream market; and

16 (d) the refusal is likely to lead to consumer deprivation.

17 (21) The Commission in invoking its powers under subsection (20) of
18 this section will make an assessment whether competitors can create an
19 alternative source of efficient supply, which would be capable to be disposed in
20 the downstream market.

21 (22) The power of the Commission to compel compliance herein shall
22 be binding on all persons, corporate entities, affiliated companies and/or
23 broadcaster(s) irrespective of contracts executed with right owners to the
24 contrary.

25 (23) The Commission shall conduct an investigation if there are
26 reasonable grounds for suspecting that any provision of this Part or of any code
27 of practice has been infringed or upon the petition of a broadcaster or
28 concerned person.

29 (24) Where, following an investigation conducted under this section,
30 the Commission considers that any provision of this Part or of any code of

1 practice has been infringed and the Commission proposes to make a
2 direction thereto, the Commission shall:

3 (a) give written notice to the persons or corporate entities likely to
4 be affected by such direction; and

5 (b) give such persons or entities an opportunity to make
6 representations to the Commission.

7 (25) Without prejudice to the generality of the foregoing
8 provisions, if the Commission is satisfied that any person is infringing,
9 likely to infringe or has infringed any provision of this Part or of any code of
10 practice, the Commission may, in writing take one or more of the following
11 actions:

12 (a) direct one or more persons, corporate entities, affiliated
13 companies, subsidiaries and/or broadcaster(s) to comply with that provision
14 or cease infringing that provision;

15 (b) specify any procedure or action to be observed or taken by that
16 person;

17 (c) impose such other direction or restriction as the Commission
18 considers appropriate;

19 (d) require that person to modify or terminate any agreement,
20 decision or concerted practice;

21 (e) require that person to modify or cease any conduct in question;
22 and

23 (f) Provided that if the infringement relates to any act or deed to
24 overtly, purposely and/or covertly prevent or restrict any other person,
25 corporate entity, or broadcaster from entering into the media market or from
26 obtaining a broadcasting right thereby preventing competition in Nigeria,
27 any licensee, broadcaster or person found culpable upon investigation shall
28 be liable to a fine not below the sum N10,000,000 (Ten Million Naira) in
29 addition or apart from any requirement under Section 25 hereof.

30 (26) This Part shall apply to all persons, corporate entities,

1 affiliated companies, subsidiaries and/or broadcaster whether resident in
 2 Nigeria or not; provided they are engaged in broadcasting in Nigeria or the
 3 owners/exclusive licensees of channels and/or programmes to be or being
 4 broadcast in Nigeria or the operators technical or other services for broadcast in
 5 Nigeria.

6 4. For the purposes of this section:
 7 "Minimum Qualifying Criteria" means the minimum requirements that must
 8 be satisfied by a potential purchaser requesting supply under this section,
 9 which may include requirements relating to: (a) bank Guarantee; (b) technical
 10 standards for retail provision of content; (c) technical standards for securing
 11 wholesale supply of content; and (d) encryption and security.

12 5. This Bill may be cited as the National Broadcasting Commission
 13 (Amendment) Bill, 2015.

EXPLANATORY NOTES

This Bill seeks to encourage competition in the Nigeria broadcasting industry in order to expand opportunities for Nigerian participation in world markets while at the same time recognizing the role of foreign competition in Nigeria thereby providing consumers with competitive prices and product choices.

Definition Section

Citation