

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 FOR RELATED MATTERS, 2021

Sponsored by Hon. Francis Ejiroghene Waive

[] 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. Amendment of
National
Broadcasting
Commission Act
- 3 2. Section 2 sub-sections 1 of the Principal Act is hereby amended Amendment of
Section 2
- 4 by deleting existing paragraph u and inserting new paragraphs (u), (v) and
- 5 (w) as follows:
- 6 (u) Maintaining and promoting fair and efficient market conduct
- 7 and effective competition in the broadcast industry in Nigeria, or, in the
- 8 absence of a competitive market, to prevent the misuse of monopoly or
- 9 market power or anti-competitive and unfair practices by other broadcasters
- 10 or facilities providers or equipment suppliers in the broadcast industry.
- 11 (v) developing codes of practice relating to content acquisition,
- 12 sharing of content rights for rebroadcasting and technical standards for
- 13 media services; and to standards of fair market conduct in any media
- 14 industry, and monitor compliance with such codes.
- 15 (w) carrying out such other activities as are necessary or expedient
- 16 for the full discharge of all or any of the functions conferred on it under or
- 17 pursuant to this Act.

of an 2^{oth} follows:

3 13A. COMPETITION

4 (1) The Commission shall within 90 days of the coming into force of
5 this amendment, by publication in the National Broadcasting Code, issue one
6 or more codes of practice and standards of performance for all or any of the
7 following purposes:

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

10 (b) To safeguard the interests of consumers of media services and of
11 the public generally;

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

14 (d) For the regulation of activities and conduct in any media industry,
15 and for matters connected therewith;

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

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

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

25 (4) A licensee shall immediately after the coming into force of this
26 Amendment be prohibited from entering into any form of a agreement contract
27 concerted practices or take any decision which have as their object and
28 intendment the prevention, restriction or distortion of competition in, or in any
29 part of, the media and broadcasting industry in Nigeria: and for this purpose no
30 licensee shall enter into any form of broadcasting right either in Nigeria or

1 anywhere in the world to acquire any broadcasting, right(s) to the exclusion
2 of any other person in Nigeria.

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

5 (6) The Commission may from time to time publish guidelines or
6 regulations which clarify the meaning of "agreement, decisions or concerted
7 practices, which have as their object or intendment, the prevention,
8 restriction or distortion of competition" in the Nigerian broadcast industry
9 and such guidelines or regulations may include but shall not be limited to
10 references to:

11 (a) the relevant economic market;

12 (b) global trends in the relevant market;

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

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

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

17 (f) the impact of the conduct on the cost and profit structures in the
18 market; and

19 (g) any other matters which the Commission is satisfied are
20 relevant.

21 (7) The Commission shall in a code of practice, publish guidelines
22 and regulations which clarify how it shall apply the test of "dominant
23 position" to persons, corporate entities, affiliated companies and/or
24 licensees; and the guidelines and regulations in subsection (6) of this section
25 may specify the matters which the Commission may take into account,
26 including but not limited to:

27 (a) the relevant economic market;

28 (b) global technology and commercial trends affecting market
29 power;

30 (c) the market share of the licensee;

1 (d) the licensee's power to make independent rate setting decisions;

2 (e) the degree of product or service differentiation and sales
3 promotion in the market; and

4 (f) any other matter which the commission is satisfied is relevant.

5 (8) The Commission shall have the power to direct a licensee in a
6 dominant position in the broadcast industry to cease a conduct in that market
7 which has or may have the effect of substantially preventing, restricting and/or
8 distorting competition in the broadcast industry and to implement appropriate
9 penalties and/or remedies.

10 (9) The Commission shall in a code of practice, prohibit any conduct
11 on the part of one or more persons, corporate entities, affiliated companies,
12 subsidiaries and/or Broadcaster(s) which amounts to the abuse of a dominant
13 position in, or in any part of, any media industry in Nigeria if in its discretion, it
14 may or would adversely hinder the maintenance and preservation of
15 competition in any media industry in Nigeria.

16 (10) For the purposes of this section, the Commission shall have the
17 obligation, a code of practice, to specify the Broadcaster(s) whom it considers
18 to have a dominant or non-dominant position in, or in any part of, any media
19 industry in Nigeria.

20 (11) The Commission shall also have the power to compel any
21 licensee or broadcaster in the broadcast industry to license its broadcast and/or
22 signal rights in any genre of programme(s) being broadcast in Nigeria if the
23 following circumstances are present:

24 (a) If the genre of programme(s) enjoys compelling viewership by
25 50% of Nigerians or more;

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

28 (c) it is likely to lead to the elimination of effective competition on the
29 downstream market;

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

1 (12) The Commission in invoking its powers under subsection (12)
2 of this section will make an assessment whether competitors can create an
3 alternative source of efficient supply, which would be capable to be disposed
4 in the downstream market.

5 (13) The power of the Commission to compel compliance herein,
6 shall be binding on all persons, corporate entities, affiliated companies
7 and/or Broadcaster(s) irrespective of contracts executed with right owners
8 to the contrary.

9 (14) The Commission shall in a code of practice, publish
10 guidelines and regulations which regulate the conduct of persons, corporate
11 entities, affiliated companies, subsidiaries and/or Broadcaster(s) if the
12 Commission concludes that the prior or proposed action(s) of the foregoing:

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

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

18 (15) The Commission shall conduct an investigation if there are
19 reasonable grounds for suspecting that any provision of this Part or of any
20 code of practice has been infringed or upon the petition of a broadcaster or
21 concerned person.

22 (16) Where, following an investigation conducted under this
23 section, the Commission considers that any provision of this Part or of any
24 code of practice has been infringed and the Commission proposes to make a
25 direction thereto, the Commission shall:

26 (a) give written notice to the person likely to be affected by such
27 direction; and

28 (b) give such person an opportunity to make representations to the
29 Commission.

30 (17) Without prejudice to the generality of the foregoing

1 provisions, if the Commission is satisfied that any person is infringing, likely to
2 infringe or has infringed any provision of this Part or of any code of practice,
3 the Commission may, in writing take one or more of the following actions:

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

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

9 (c) impose such other direction or restriction as the Commission
10 considers appropriate;

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

13 (e) require that person to modify or cease any conduct in question.

14 (18) Provided that if the infringement relate to any act or deed to
15 overtly or covertly prevent or restrict any other person from entering into the
16 market or obtaining a broadcasting right thereby preventing competition in
17 Nigeria, any licensee, broadcaster or person if after investigation is liable shall
18 be liable to a fine of at least N10,000,000 (Ten Million Naira) in addition or
19 apart from any of the requirement under Section 18 above.

20 (19) This Part shall apply to all individuals, whether resident in
21 Nigeria or not and whether citizens of Nigeria or not, and to all bodies
22 corporate or unincorporate, whether incorporated or carrying on business in
23 Nigeria or not; provided they are engaged in broadcasting in Nigeria or the
24 owners/exclusive licensees of content and programmes to be broadcast in
25 Nigeria or the operator's technical or other services for broadcast in Nigeria.

26 4. The Principal Act is amended by deleting the existing section 26
27 and substituting same with a new section 26 as follows:

28 *“Interpretation*

29 In this Act, unless the context otherwise requires:

30 "chairman" means the chairman of the Commission;

pretation

1 "Commission" means the National Broadcasting Commission established
2 by section 1 of this Act;

3 "member" means a member of the Commission and includes the chairman;

4 "Minimum Qualifying Criteria" means the minimum requirements that
5 must be satisfied by a potential purchaser requesting supply under this
6 section, which may include requirements relating to:

7 (a) bank Guarantee;

8 (b) technical standards for retail provision of content;

9 (c) technical standards for securing wholesale supply of content;

10 and

11 (d) encryption and security;

12 "Minister" means the Minister charged with responsibility for information;

13 and

14 "Ministry" shall be construed accordingly;

15 "person, company and/or Broadcaster" is in a dominant position when, in
16 the opinion of the Commission, that Broadcaster is able to act without
17 significant competitive restraint from its competitors;

18 "secretary" means the secretary to the Commission;

19 "station" means a place or organisation established for the purpose of
20 distribution of radio or television programmes to the public through wireless
21 or cable means;

22 "Stipulated Prices" shall mean a sum not exceeding N4,000.00 (Four
23 Thousand Naira) per subscriber per month, and applies to the wholesale
24 charge for the programme and/or channel where all the sports, movie and
25 News programme and/or channels is taken as an aggregate and offered on a
26 stand-alone basis;

27 "Subscription Platform" means any method of electronically transmitting
28 audio-visual images via a closed circuit encrypted platform such as
29 including but not limited to Direct to Home, Cable, DTT, IPTV and Mobile
30 Technologies used for the distribution of programmes to subscriber for

1 reception and viewing in Nigeria upon the payment of a fee, other than a
2 platform operated solely by the Licensee.

Short title

3 5. This Bill may be cited as the National Broadcasting Commission
4 (Amendment) Bill, 2021.

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.