



**REVIEW OF AMENDED 6TH EDITION OF NIGERIA
BROADCASTING CODE**



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Recently, the Nigerian government announced amendments to the 6th edition of the Nigerian broadcasting code. The amendments, as published in the media, make provisions for local content in the broadcast industry, increased advertising revenue for local broadcast stations and content producers, and creates far-reaching restrictions with regards to monopolistic and anti-competitive behaviour. Highlighted below are some of the key provisions of the Code.

Anti-Competitive Objectives

The objectives are: to maintain and promote fair and efficient market standards and effective competition in the Nigerian broadcast industry; to prevent the misuse of monopoly or anti-competitive and unfair practices by broadcasters or licensees or facility providers or equipment suppliers in the broadcast industry; to establish codes of practice relating to content acquisition, sharing of content rights for rebroadcasting and technical standards for media services; and to regulate standards of fair market and monitor compliance with such codes.

Web/Online Broadcasting

The Code mandates all persons who wish to operate web/online broadcasting in Nigeria to be registered with the Nigeria Broadcasting Commission (NBC) and to ensure their contents do not breach the standards of hate speech and fake news. Where they fail, they are liable to such sanctions as are provided in the Code, including a take-down order, a block, or shutdown order.

Local Content

For a program to qualify as local content, its conceptualization, production, and target company shall be carried out by Nigerians. Similarly, the producer, director, author, a minimum of 75% of leading actors and supporting cast must be Nigerians. Further, a minimum of 75% of the program expenses and 75% of post-production expenses are paid for services, and such services must have been provided by Nigerians or Nigerian companies not subject to foreign ownership or arbitrary interference. Where the production is a collaboration with a foreign entity, the producer(s) are to ensure that Nigerian production locations, talents, skills set form a minimum of 75% of the entire production. For subscription-based services, they are to ensure that a minimum of 15% of their channel acquisition budget is spent on channels with local content.

Music

Before a broadcaster can use an artistic work by way of publishing performance, production, reproduction, translation, broadcast and/or making of a cinematograph film or a record in respect of a musical by a broadcaster, the broadcaster is to obtain the necessary license and pay the required fees to the owner or exclusive licensee as well as to the necessary Collective Management Organisation (CMO). It is unclear why the broadcaster still has to interface with the owner or exclusive licensee when in fact, the CMO is to put up a common front for artists in that space. However, failure to obtain such licenses amounts to an offence under the Code, without prejudice to other punitive or remedial measures that are available under the Copyrights Act.

Unconventional Reportage

This refers to citizens' contribution to journalism, which may be in the form of eye witness' report. The broadcaster is to take caution to ensure that such materials are verified and that they comply with the provisions of the Code. Where such materials breach any provision of the Code, the broadcaster will bear liability.

Sports Rights

Where a broadcaster bids for the acquisition of rights to sporting events that are to be broadcast in Nigeria, such broadcaster is to submit the rights to the sporting events to the Commission for ratification within two weeks, failing which such rights shall be null and void and the event shall not be broadcast within the Nigerian territory. It is apparent that the description of the right as null and void is only with reference to Nigeria.

Owners of rights to foreign sporting events shall offer the rights to broadcasters on different platforms, including satellite (DTH), Multipoint Microwave Distribution System (MMDS), Cable (Fibre Optics), DTT (Terrestrial), Internet, Mobile, Internet Protocol Television (IPTV), Radio. The Code effectively abolishes the exclusivity of sporting right as well as warehousing of sports rights (acquiring rights and not using them) in Nigeria. No Prime Foreign Sports content is to be transmitted into Nigeria unless the owner of such content has also acquired Prime Local Sport content in Nigeria of the same category with a minimum of 30% of the cost of acquiring the Prime Foreign Sports content. Advertisement of products or services during prime foreign sports content is not to be broadcast unless the advertiser equally sponsors or advertises such products and services in the broadcast of prime local sports content in the same category. Where there is a failure, refusal, or neglect by the broadcaster to comply with any of the provisions relating to sports rights, the Commission shall direct that such content shall not be broadcast in Nigeria until compliance.

Production of advertising for local goods and services

It is the duty of the broadcaster to ensure that all advertising pertaining to goods and services manufactured, grown, processed, developed, created, and originating from Nigeria are wholly produced in Nigeria.

Unpaid Advertisement Rates

Where an advertiser fails to pay for advertising carried out on any broadcaster's platform and such sum remains unpaid for a period of 45 days, the broadcaster may notify the Commission which shall send a notice of default to other broadcasters, and they shall cease from advertising for such person that is in default. Any broadcaster who fails to comply is liable to sanction by the Commission.

Anti-Competition

No broadcaster or licensee is to enter into any form of broadcasting rights acquisition to acquire any form of broadcasting rights in such a manner as to exclude persons, broadcasters, or licensees in Nigeria from sub-licensing the same and where such agreement is made, it shall be void. Where the broadcaster of the licensee is in a dominant position in the broadcast industry, it shall on the order of the Commission cease conduct in that market which has or may have the effect of substantially preventing, restricting and/or distorting competition in the broadcast industry. A broadcaster is in a dominant position when, in the opinion of the Commission, that broadcaster can act without significant competitive restraint from its competitors.

Wholesale Offer

A broadcaster shall offer the sports and news program to other broadcasters for retail to residential subscribers in Nigeria on such terms as upon reasonable request in writing, within a reasonable time, on a non-exclusive basis, without any undue discrimination and in accordance with the requirements of the directions issued by the Commission.

The broadcaster shall provide the licensee with standard terms and conditions under which offers shall be made, and such conditions shall include the following: charges which do not exceed the stipulated prices, the minimum qualifying criteria for potential purchasers, terms of payment and billing procedures, the duration of agreements and notice periods.

The broadcaster shall comply with directives by the Commission that compel any broadcaster in the broadcast industry to license its broadcast and/or signal rights in any genre of programming to another licensee or broadcaster in Nigeria if certain conditions are present. These conditions are: the genre of program(s) enjoys compelling viewership by Nigerians, it relates to a product or service that is objectively necessary to be able to compete effectively on a downstream market, it is likely to lead to the elimination of effective competition on the downstream market and the refusal is likely to lead to consumer deprivation.

If the Commission is satisfied that any person is infringing, likely to infringe or has infringed any provision of this part, the broadcaster shall comply with the provision or cease infringing that provision, pay a fine provided that if the infringement relates to any act or deed to overtly, purposely and/covertly prevent or restrict any licensed broadcaster from entering into the media market or from obtaining a broadcasting right thereby preventing competition in Nigeria, any broadcast licensee found culpable upon investigation shall be liable to a fine not below the sum of ₦10,000,000.00 (Ten million naira).

Comments

The release of the NBC Code has raised so much dust as there are genuine concerns on the implications of the amendment on the broadcast industry generally, and on the PayTV sector specifically. Since PayTV thrives on the exclusivity of content, the attempt to take away this key feature is likely to threaten the business model for PayTV.

Another point of concern is as to whether the Code is too intrusive in its regulation of intellectual property rights of content owners. Because the amendment gives the NBC powers to fix the prices at which broadcasters are to sublicense intellectual property rights, there are questions around whether at all it should be able to regulate the copyrights of owners or licensees.

It is worthy of note that media reports indicate that the Board of Directors of the NBC has dissociated itself from the Amendment of the 6th edition of the Code, alleging that the Minister of Information single-handedly effected such amendment. It remains to be seen how events will play out in the coming days.

While we await the resolution of internal issues at the Commission and the ramifications of the enforcement of these provisions, it is clear that the provisions of the code are far-reaching and will trigger a new era in the broadcasting space in Nigeria. Whether this will be for the better or otherwise of the entertainment industry, is to be seen.

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