



**A Review of the Amendment to the 6th Edition
of the Nigerian Broadcasting Code: Effect
of the Federal High Court Decision Nullifying
the Amendment**



Introduction

The National Broadcasting Commission (NBC) in 2020 released the amendment to the 6th Edition of the Nigerian Broadcasting Code (the “Code”) (“the Amendment”). The Amendment, which sought to promote local content in the Nigerian broadcast industry, proscribe monopolistic and anti-competition practices and provide for increased advertising revenue for local broadcast stations and content producers, came under serious debate and criticism from business owners and operators in the broadcast industry. In our August 2020 article, we concluded that the Amendment, as drafted, was disincentivising to investors in the broadcast industry and majority of the provisions of the Amendment were outside the powers of the NBC and outside the realm of matters to be regulated upon in the Code. We then suggested that NBC should review the Amendment taking into account stakeholders and investors’ concerns. Two years later, in June 2022, the Federal High Court (FHC) sitting in Lagos nullified the Amendment.

This article seeks to examine the effect of the judgement of the FHC in *Femi Davies v. NBC* FHC/L/CS/1152.2020 (Unreported) on the legality or otherwise of the Amendment.

Summary of the Amendment

The Amendment prohibited broadcasters and licensees, particularly broadcasters in a “dominant position”, from entering into any form of agreement, contract, concerted practices or taking any decision which has as its object and intendment, the prevention, restriction, or distortion of competition in, or any part of, the broadcast media industry in Nigeria¹. While prohibiting the exclusivity of sporting rights, the Amendment also made it mandatory for NBC to ratify all sports rights acquisitions before broadcast. Furthermore, to promote competition, the Amendment prohibited broadcasters and licensees from entering into any form of broadcasting rights acquisition in Nigeria or anywhere in the world to acquire any broadcasting right(s) which exclude(s) persons, broadcasters, or licensees in Nigeria from sub-licensing the same.² Finally, the Amendment introduces local content requirements which apply to all categories of programming and prescribes local content thresholds.

Summary of the Challenges Invoked by the Amendment

Many of the changes introduced by the Amendment invoke several challenges for investors some of which include:³

- I. Overreach of the statutory powers of the NBC
- ii. Conflation of Exclusivity with Anti-Competition
- iii. Potential breach of intellectual property rights

¹Article 9.0.1 of the Amendment

²Article 9.0.1 of the Amendment

³A. Odofin, S. Sogbetun, and T. Akeju (2020), A Review of the Amendment to The Nigerian Broadcasting Code accessed on <https://www.alp.company/sites/default/files/A%20Review%20of%20the%20Amendment%20to%20the%206th%20Edition%20of%20the%20Nigerian%20Broadcasting%20Code.pdf> 03 April 2023



- iv. Free-market principles and parties' freedom to contract
- v. Compulsory expropriation of investors' property and rights

Effect of the Decision of the Federal High Court on the Amendment

The amendment of the 6th Edition of the NBC was met with serious criticism by advertising industry, broadcasting operators, and content creators. These criticisms largely revolve around the legality of amendment to ownership of intellectual property as guaranteed under the Constitution of the Federal Republic of Nigeria⁴, the Copyright Act, and several international treaties to which Nigeria is a signatory. There was also criticism on the attempts made by NBC under the Amendment to abrogate the freedom of parties to enter into a legal and binding contract by regulating all the innovations above.

In the case of **Femi Davies v. NBC**⁵, an action filed by an aggrieved Lagos-based journalist, Mr. Femi Davies against the NBC before Honourable Justice Lewis-Allagoa of the Federal High Court (FHC/the Court) sitting in Lagos, the Court held that NBC lacks the statutory power to prohibit exclusive arrangements and compel the sub-licencing of privately acquired broadcasting rights, as such the amendment so published is in violation of the provisions of the Constitution of the Federal Republic of Nigeria⁶ and the Copyright Act. The Court also held that the NBC acted beyond its powers in seeking to regulate the practice of advertising in Nigeria contrary to the provisions of the extant Advertising Practitioners (Regulation) Act 2004 and further that an acquisition of exclusive rights to broadcast a particular programme is an investment for returns and no one should be forced to surrender same when it is lawfully acquired.⁷

The Court therefore set aside the Amendment for being ultra vires, incompetent, and null and void, while also granting a perpetual injunction restraining the NBC from further implementing the Amendment.

The effect of the decision of the FHC is therefore that whatever innovation introduced by the amendment is inapplicable and cannot be enforced to command compliance with same by affected operators or content creators.

Conclusion

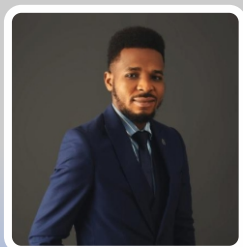
The decision of the FHC is not farfetched from the expectant outcome of the arbitrary power of the NBC. Although the NBC claims that the purpose of the Amendment is to protect the interest of the local stakeholders in the industry, the Amendment does confer ultra vires powers on the NBC, and as Honourable Justice Lewis-Allagoa rightly stated, it was in violation of the fundamental principles of fair hearing and natural justice.

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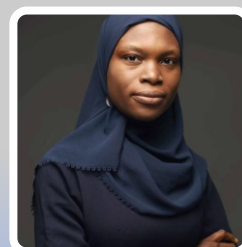
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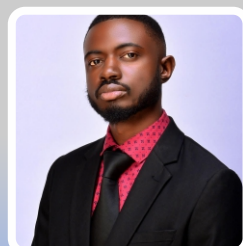
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⁴ 1999 (as Amended)

⁵ FHC/L/CS/1152.2020 (Unreported)

⁶ 1999 (as Amended)

⁷ ThisDay. Court Nullifies NBC Code, Gives Broadcast Industry Hope Court Nullifies NBC Code, Gives Broadcast Industry Hope – THISDAYLIVE accessed 03 April 2023
See Femi Davies v. NBC FHC/L/CS/1152.2020 (Unreported)