Multi-sectoral Local Content Development in Nigeria:

Sailing Through Stormy Waters? (Part II – ICT, Broadcast and Creative Industries)

Thought Leadership | By Chuks Okoriekwe

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c.okoriekwe@lelawlegal.com

Introduction

The first part of this article series focused on the oil and gas and maritime industries, and is available at the *Thought Leadership* page of our website, *www.lelawlegal.com*. This sequel examines critical issues in Nigeria's LC development plan and implementation strategy in the Information Communication Technology (ICT) and Broadcast and Creative Industries (BCI).

Nigerian economy has witnessed a boom evidenced by increased inflow of foreign investment in ICT and BCI (especially in the former) over the years. However, to ensure that Nigerians benefit from these investments, it is imperative that Federal Government (FG) implement extant or put in place policies to promote Nigerian participation and patronage through Local Content (LC) optimization initiatives.

Information and Communication Technology (ICT): The New Oil?

Data from the National Bureau of Statistics (NBS) puts the contribution of the technology industry to GDP at 2.66% for Q2 2017. The FG has intensified efforts to ensure that Nigerians benefit from an industry with much potential for growth. Despite the sector having attracted about US$32 billion in mostly foreign investments since 2001, the jury was out on whether Nigerian content utilisation was commensurate with our demographics. Recently, the FG with the Executive Order (EO) on ***Support for Local Contents in Public Procurement*, 2017** (LCEO) reflecting more specific provisions *vis a vis* the ***Public Procurement Act, Cap. P44, LFN, 2004*** reinforced obligation on its Ministries, Departments and Agencies (MDAs) to spend not less than 40% of their procurement budgets on locally manufactured goods and services, including ICT. Subsequently, the National Information Technology Development Agency (NITDA) has been holding consultations to ensure that stakeholders are involved in the LCEO's implementation.

To ensure local participation in the ICT industry, the FG through NITDA had created the Office for Nigerian Content Development in ICT (ONC) to implement, and champion the growth/development of Nigerian content in ICT. In fulfilment of its LC development obligations, the ONC released the Guidelines for ***Nigerian Content Development in Information and Communication Technology 2013*** (ICT Guidelines), sequel to the ***National ICT Policy, 2012***. Under ***Para 8, ICT Guidelines,*** Original Equipment Manufacturers (OEMs), Original Design Manufacturers (ODMs), MDAs, TelCos, Independent Software Vendors (ISVs), Multinational Companies, ICT Companies, NITDA amongst others, shall ensure its compliance, breach of which shall be construed as a breach of the ***NITDA Act.***[1] Incidentally, FG on its part has been supporting Nigerian ICT industry, notable examples being President Obasanjo's hand of fellowship to Zinox and Omatek computers mandating MDAs to patronise these Nigerian OEMs,[2] and the more recent go live of FG's public accounting system, Treasury Single Account (TSA) on *Remita* platform (software developed by Nigerian firm, Systemspecs).

[1] ***Section 18(1), NITDA*** provides: "*except as otherwise provided in this Act, anybody corporate of (sic) person who commits and (sic) offence under this Act where no specific penalty is provided, is liable on conviction: (a) For a first offence, to a fine of N200,000.00 or imprisonment for a term of 1 year or to both such fine and imprisonment; and (b) For a second and subsequent offence, to a fine of N500,000.00 or to imprisonment for a term of 3 years or to both such fine and imprisonment.*"

[2] See 'Buy Only Made-in-Nigeria Computers, FG Tells MDAs' Technology Times, November 25, 2012:http://technologytimes.ng/buy-only-made-in-nigeria-pcs-federal-govt-orders-mdas/

Para 9, ICT Guidelines offers a more practical definition of LC as *"… the amount of incremental value added or created in Nigeria through the utilization of Nigerian human and material resources for the provision of goods and services in the ICT industry within acceptable quality and standards in order to stimulate the development of indigenous capabilities."* Unlike the definitions in the ***NCA*** and ***Cabotage Act***, qualification for LC must be within the acceptable quality and standards. However, its definition of 'Nigerian company' as *"… a firm formed and registered in Nigeria under the Companies and Allied Matters Act 1990 with not less than 51% equity shares owned by Nigerians and which has a domain name on the .ng domain"* essentially tracks the NCA's definition of Nigerian company.

It is also important to note that the ***ICT Guidelines*** reposed more responsibility on MDAs at all tiers and arms of government. ***Para 3.0.III, ICT Guidelines*** defined MDAs to mean, of government at all three tiers: Federal, State and Local, and in all three branches: Executive, Legislative and Judiciary. This is wider in scope than the typical EO which would usually apply to only FG's MDAs (because State MDAs are generally not subject to Federal oversight). In respect of hardware and software procurement, ***all MDAs are to source and procure all hardware and software products locally***, (***Paras 10.4.2 and 11.4.2, ICT Guidelines***). The implications of this provision could be far reaching. Whilst the ***LCEO*** stipulates a minimum of 40%, the ***ICT Guidelines*** does not afford the MDAs flexibility on this requirement. Could breach of the ***ICT Guidelines***, expose MDAs to sanctions under ***sections 17*** and ***18, NITDA Act?***[3]

NITDA needs to put in place mechanisms to ensure that its Guidelines are not observed in breach and develop capacity to monitor and evaluate compliance. Its failure to ensure compliance by perceived 'big' MDAs such as the CBN and the Vice-President's office (in charge of FG's *N-Power programme*) was met with protests from indigenous software and hardware manufacturers. Given that operators in the ICT ecosystem are registered in its database, it could leverage that resource to effectively coordinate their interactions with government MDAs.

In addition to its regulatory functions, the NITDA is to provide funding for (development of) software solutions in education and encourage the set-up of business incubator schemes to accelerate the growth of the ICT industry. This it does by utilising funds from the 1% NITDA Levy,[4] in the provision of Masters and Ph.D. scholarships to Nigerians.

Doubtless, the ICT industry has enormous potential which could be harnessed through continuous human capacity development. However, there is a disturbing trend where locally trained software engineers are attracted to more lucrative opportunities abroad thereby creating dearth of qualified engineers. NITDA therefore need to put mechanisms in place to ensure that Nigerian engineers who are beneficiaries of its LC promotion policy are incentivised to remain in Nigeria to develop their products and projects.

Broadcast and Creative Industry: Showcasing Nigeria to the World

Nigeria's Information and Culture Minister, Mr. Lai Mohammed ruffled some feathers recently when he announced FG's proposed amendment of Nigeria's broadcasting code to promote the utilization of Nigerian Content (NC) in the production and dissemination of digital content. Many observers and industry experts misconstrued the move to imply that FG was placing a ban on production of digital content abroad.

With the democratization of the media, the strong influence erstwhile welded by the Nigerian Broadcasting Commission (NBC), especially when only the government owned electronic media has waned, especially in respect of social media presence that either require no licensing or are not licensed by NBC. The NBC in 2016 revised its ***Draft Code*** with the aim of reshaping the industry's governance framework. The new ***Draft Code*** whilst recognizing the need to regulate the proliferation of media outfits, emphasises increasing the production and consumption of digital content that positively showcases Nigeria to global audiences.

The Draft Code defines LC to mean: *"production with substantially indigenous inputs in which Nigerians have editorial and creative control."* It aims to *"promote and sustain Nigeria's diverse cultures, mores, folklores and community life; provide diversity in types of programming content for the widest audience through the limitless variety in the cultural landscape of Nigeria."*[5]

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[3] *Cap N156, LFN, 2004*

[4] NITDA Levy is payable by: GSM operators and all telcos; Cyber Companies and internet Providers; Pension Managers and pension related companies; Banks and other Financial Institutions; and Insurance Companies with an annual turnover of N100 million and above. See ***section 12(2), NITDA Act, Cap. N156, LFN, 2004***

[5] *Para 3.11.1, Draft Code, 2016*

Essentially, the ***Draft Code*** places an obligation on broadcasters in the industry to promote NC in their production and dissemination of digital content, thus, making it a condition precedent for the renewal of license (***Para 2.8.1, Draft Code 2016***).

For a content to qualify for LC status, it must be: *"made by authors, producers and workers who are Nigerians or residing in Nigeria; or produced under the creative control of Nigerians; or the production is supervised and controlled by a producer established in Nigeria; or the contribution in a co-production is not controlled by a producer based outside Nigeria; or* ***the production originating from any other country is made exclusively by Nigerians or in co-production with non-Nigerians established in that country."***[6] *(emphasis supplied).* While for musical content, it would comply with NC where the: *"lyrics (sic) written by a Nigerian; music written by a Nigerian; music principally performed by musicians who are Nigerians; a live performance or recording of musical work, performed or broadcast in Nigeria; or music or lyrics is co-written, co-produced or performed with Nigerians."*[7]

Some could argue that these requirements are patently flawed, being open-ended, leaving room for loopholes which could be exploited by foreign practitioners in the industry. For instance, where a show is co-produced with Nigerians abroad, it is dubbed 'Nigerian content' albeit the content is directed to be wholly consumed in Nigeria. There ought to be quantum prescriptions or thresholds, say 60% Nigerian input (and maybe performance standard) for outputs emanating from co-productions between Nigerians and non-Nigerians abroad, before such would be deemed Nigerian. Whilst some may view LC in the broadcast industry from the prism of morality, the regulator has carefully laid the criteria; '*promote and sustain Nigeria's diverse cultures, mores, folklores and community life*' as its aim for LC. Therefore, it behoves the National Film and Video Censors Board (NFVCB) to determine if such production falls within the scope of Nigeria's LC deserving of approval.

Although the Code requires Nigerian music content to constitute 80% of all music broadcast by terrestrial free-to-air television stations while subscription broadcasting services are to ensure 20% LC, proper delineation of what constitute NC is critical to implementing these requirements. It is striking that there is no direct incentive to Nigerian broadcasters who comply with the LC requirements (other than compliance being a prerequisite for renewal of licence). Maybe compliance for licence renewal purposes is enough incentive, given existential implications of non-renewal. The NBC therefore needs to provide a holistic plan to steer/promote NC by providing clear LC qualifying requirements and establishment of LC compliance desk to vet and certify production works including incentivising operators in the industry if its 100% LC drive is to be achieved.

Conclusion

LC optimization could be a key plank to fast-track FG's realization of its Economic Growth Recovery Plan (EGRP) by creating more jobs and notching up positive economic indices. To achieve this, all agencies of government must take proactive steps coupled with concerted efforts to fully implement existing LC laws and policies. Perhaps the inability of the MDAs to measure LC utilisation and development necessitated the ***LCEO*** stipulation that they must within 90 days; *"... assess the monitoring, enforcement, implementation, and compliance with this Executive Order and local content stipulations in the Public Procurement Act or any other relevant Act within their agencies; b. propose policies to ensure that the Federal Government's procurement of goods and services maximises the use of goods manufactured in Nigeria and services provided by Nigerian citizens doing business as sole proprietors, firms, or companies held wholly by them or in the majority; and c. submit such findings to the Honourable Minister of Industry, Trade & Investment."*[8]

Whilst commending this development,[9] it is noteworthy that had the ***ICT Guidelines*** been fully and effectively implemented, there would not have been the need to include ICT in the items for mandatory not less than 40% procurement by FG MDAs. On the part of operators in the private sector, it is imperative that they key into government's LC implementation plan by establishing LC compliance strategy which would in the long run make them competitive, optimising compliance cost and avoiding regulatory penalties.

[7] *Para 3.12.1, Draft Code, 2016*
[8] *Para 3.13.1 Draft Code, 2016*
[9] *Para. 5 Executive Order on Support for Local Contents in Public Procurement, 2017*
For a detailed discussion, see our August 2017 Regulatory Alert, ***Discourse: Executive Order on 'Support for Local Contents in Public Procurement by the Federal Government'*** available at .