

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE UGANDA COMMUNICATIONS ACT, 2013
AND IN THE MATTER OF A COMPLAINT
BY
ADLEGAL INTERNATIONAL LIMITED
AGAINST
NBS TELEVISION LIMITED

SUBMISSIONS IN REJOINDER

1. First Central Issue

WHETHER THE USE OF "SQUEEZE BACKS" BY NBS TV DURING CURRENT AFFAIRS BROADCASTS AMOUNTS TO PROHIBITED SPLIT-SCREEN ADVERTISING UNDER THE ADVERTISING STANDARDS, 2019?

- 1.1. NBS argues that AdLegal has improperly imported and expanded the term editorial content into Annex 7. It is unfortunate that counsel for NBS did not take time to read and appreciate the Advertising Standards as a whole. There is no "importation" or "expansion" of the term "editorial content" because the Standards themselves expressly use it. **Annex 1, at page 25**, clearly defines "split screen" as an advertising technique which allows the simultaneous presentation of **editorial content** and commercial information on the same screen, divided into two or more parts. Therefore, the reference to editorial content is not an invention of AdLegal but a direct reliance on the governing instrument.
- 1.2. **Secondly**, it is disturbing that counsel for NBS fails to understand the meaning "editorial content". NBS says that not all editorial content is news nor all current affairs is editorial content. This is a wrong interpretation.

We submit, both on principle and in law, that in advertising regulation, "Editorial Content" is distinct from "Advertising Content."

- i. "Advertising content" is content that is purely commercial. To any reasonable person, it is evident that such material is intended to



promote, market, or persuade the audience to purchase a product, service, brand, or idea. It is usually paid-for or sponsored content.

- ii. "Editorial content", on the other hand, is material whose primary purpose is to inform, educate, analyse, or entertain the audience. This includes news, current affairs programmes, movies, talk shows, documentaries, and similar content. Importantly, the viewer understands from the outset that the content is not commercial in nature.

The assertion that "not all editorial content is news, nor all current affairs is editorial content" is **misconceived**. Editorial content is by its purpose, which is to inform, educate, analyse, or entertain. Current affairs programmes are, therefore, a subset of editorial content because their objective is to inform and analyse issues of public interest, not to promote commercial products or services.

Annex 7 of the Advertising Standards seeks to prohibit the use of split-screens, where editorial content particularly current affairs programmes is broadcast concurrently with advertising content.

NBS's use of split-screens to combine editorial (current affairs) content with commercial advertising directly contravenes this prohibition.

1.3. **Thirdly**, it is deeply disheartening that Counsel for NBS contends that the current Advertising Standards do not explicitly define "current affairs." This proposition is incorrect. Under **Annex 1, Page 26** of the Advertising Standards, "current affairs" in the context of split screens is clearly defined as:

"A program which contains debate, explanation and analysis of current events and ideas, including political, cultural, social, religious, business and economic that affects the general public."

It is evident that Counsel for NBS did not engage with the Advertising Standards in their entirety and, as a result, has misinterpreted, poorly analysed, and inadequately appreciated the substance of our complaint. This lack of thorough engagement with the Standards has led to a flawed understanding of the central issues, particularly regarding the regulation of split-screen broadcasts.



1.4. **Fourthly**, Counsel for NBS wrongly argues that the *prohibition* in Annex 7 does not translate to *analytical current affairs programming* such as *Morning Breeze* or *Frontline* because these are not live news reports but structured, in-depth discussions and debates.

This is a wrong appreciation of Annex 7 as well as an admission of the central elements of what constitutes a current affairs programme under Annex 1.

The argument and indeed NBS's own characterization that *Morning Breeze* and *Frontline* programmes are "**structured, in-depth discussions and debates**" is to their disadvantage and significantly weakens their case when the definition of prohibited current affairs programmes (for which split screens/squeeze-backs are prohibited) is applied.

Annex 1, Page 26 of the Advertising Standards clearly defines "current affairs" as:

"A program which contains debate, explanation and analysis of current events and ideas, including political, cultural, social, religious, business and economic that affects the general public."

A cursory look at NBS's own characterization of their programmes, together with the definition of the prohibited programmes in Annex 1, reveals a clear similarity. The very words used by NBS "**debates**" and "**in-depth discussions**" mirror the terms used in **the Annex 1 definition**, which expressly categorizes debate and analysis of current events as current affairs content. This means that by NBS's own description, their programmes fall squarely within the very category of current affairs programmes for which split screens are prohibited under **Annex 1 and 7**.

We submit that the Commission should note that the confusion and misdirection demonstrated by Counsel for NBS on this issue stems from his failure to address himself to the definition of "current affairs" in the Advertising Standards having **erroneously assumed that no such definition exists in the Standards**. Had Counsel properly considered the definition in Annex 1, he would not have characterised NBS's programmes in the manner he did, as his own descriptions place the programmes squarely within the category of prohibited current affairs content. In effect, Counsel's argument collapses under the weight of his own admissions.

1.5. **Fifth**, NBS wrongly contends that the 2020–2022 Stakeholder Consensus binds the entire industry at the expense of Annex 7. This assertion is fundamentally flawed. The Commission should not lend credence to such a misleading invitation.

By law, **what binds the industry and its practices are the instruments issued by UCC under the enabling** regulations, practice notes, guidelines, directives, standards, and other regulatory instruments which derive their legal force from the specific empowering provisions of the Act as the enabling law. These are the only legally enforceable instruments by UCC because the Act expressly authorizes the Commission to make them, and they form part of the regulatory framework governing industry conduct.

In contrast, **stakeholder agreements or consultations** no matter how many are held or how widely attended do not create binding legal obligations. They are merely a **procedural step in policy development**. They help the Commission collect views, promote participation, or test proposed regulatory positions, but they cannot override, substitute, or create law.

To create a binding force, the resolutions at the 2020–2022 Stakeholder Consensus (if at all made) had to formally amend the standards or be gazetted by UCC as new rules. This is why the wording in **Regulation 27 of the Uganda Communications (Content) Regulations, 2019** is intentional to state that an operator shall ensure that advertisements broadcast by the operator are in compliance with the advertising standards **GAZETTED BY THE COMMISSION.**

The alleged 2020 to 2022 Stakeholder Consensus agreements cannot override the rules under Annex 7 because they do not originate from any UCC gazetted rules and neither from the Act or its regulations.

We invite the Commission to be guided by the case of **National Drug Authority vs Park View Pharmacy DC Ltd (Civil Appeal No. 65 of 2002)** in which the Court of Appeal held that where guidelines/resolutions are made and do not originate from either the Authority Statute or Statutory Instrument made under it, such guidelines are therefore of no legal consequence.

We submit that the NBS alleged 2020 to 2022 Stakeholder Consensus **provided "advice on Policy"** which does not constitute law or amend the already existing provisions under the Annex 1 and 7 of the Advertising Standards.

It is also evident from NBS's own submissions at page 4 that the engagements they rely on were part of a "regulatory review process." We submit that, as a matter of administrative law and regulatory governance, **a regulatory review must be followed by a formal law-making process before it can create binding obligations.** The discussions cited by NBS did not culminate in any

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amendment to Annex 7, nor did they result in the Commission issuing a Practice Note, Guideline, or Directive as required by law. In the absence of such lawful steps, the alleged stakeholder understandings (if they occurred at all) cannot override the existing Advertising Standards.

Under **Section 5(1)(x) of the Uganda Communications Act, 2013**, UCC is empowered to set standards, and to monitor and enforce compliance relating to content. This includes issuing practice notes, guidelines, or directives. However, informal meetings or stakeholder understandings do not constitute rule-making instruments. Only a properly issued statutory instrument or formal regulatory guidance can amend or clarify Annex 7.

It is also on record that **UCC has never published, whether in a newspaper or on any public communication platform, a practice note or directive indicating that the rules under Annex 7 were to be waived or relaxed following the alleged 2020–2022 stakeholder consensus.** Without such formal publication and adherence to the prescribed amendment procedure, the alleged agreements cannot displace or bend the existing prohibitions. Even assuming such agreements were made, they cannot amend the Advertising Standards.

The standards can only be altered through a lawful, independent amendment process not through informal stakeholder meetings, which at most serve to inform, but cannot substitute, the formal law-making procedure.

There is no provision under the Uganda Communications Act, 2013 that empowers the Commission to craft or promulgate stakeholder agreements as binding law, nor to use such agreements to amend existing legal instruments without following the proper statutory amendment procedures. Nowhere in the laws of Uganda is stakeholder consensus—whether emerging from consultations, workshops, or engagements—recognized as a source of law or as a mechanism capable of altering existing regulations.

1.6. **Sixth**, NBS wrongly argues that the alleged 2020–2022 Stakeholder Consensus resulted in UCC choosing not to apply the strict prohibition under Annex 7 against the use of split screens or squeeze-backs during political or current affairs programmes for the entire industry. This position is misleading and we rejoin as follows:

- i. There is **no evidence** whatsoever that the 2020–2022 stakeholder engagements focused on relaxing or amending the prohibition under Annex 7. This assertion by NBS is entirely unsubstantiated.



- ii. **No other television station in Uganda uses split screens or squeeze-backs during current affairs programming—only NBS.** It is therefore illogical for NBS to suggest that UCC "chose not to enforce" the prohibition against other broadcasters when no such broadcasters were engaging in the prohibited conduct. A regulator cannot be faulted for not punishing an act that was not being committed.
- iii. **Non-enforcement does not confer legality.** Numerous breaches occur within the communications sector that UCC may not immediately address. This is not evidence of a policy decision to waive the law, but rather a reflection of institutional limitations and the fact that enforcement often follows detection or the filing of a complaint. In this case, AdLegal detected the breach and duly reported it. UCC is therefore mandated to act under Section 5(1)(j) of the Uganda Communications Act.
- iv. Non-enforcement cannot amend, repeal, or waive a statutory instrument. Regulatory silence does not create lawful exemptions, nor can it be construed as a modification of the Advertising Standards. Annex 7 remains binding until formally amended through the proper legal procedure.

ISSUE REQUIRING BROAD SCRUTINY:

Lastly and in broad terms, we submit that NBS alleges that certain resolutions or agreed action points were reached during the stakeholders' engagement. However, NBS has not furnished the Commission with any copy of those alleged resolutions, minutes, or agreed positions. It is trite law that he who alleges must prove. Bare assertions **however confidently stated** do not amount to evidence.

The Commission **would therefore be acting in error if it were to rely on unsubstantiated** statements from NBS without requiring documentary proof of the alleged resolutions. Even if the Commission were inclined to consider such allegations, **doing so without disclosure to the complainant would be procedurally unfair. The complainant is entitled to know, review, and respond to any material being relied upon in a decision that affects their rights.** Proceeding on the basis of undisclosed and unverified "resolutions" undermines the principles of transparency, accountability, and fairness in administrative decision-making.

It would be fundamentally wrong for the Commission to make a determination in favour of NBS without being presented with the resolutions as evidence. The absence of this evidence renders NBS's claims unsupported, and any reliance on them would amount



to a misdirection of the Commission's mandate and a breach of the complainant's right to a fair hearing.

2. ISSUE 4.

WHETHER NBS TV'S PRIOR DISCUSSIONS WITH UCC (2020-2022) JUSTIFY THE USE OF SQUEEZE BACK ADS IN CURRENT AFFAIRS PROGRAMS UNDER THE BROADCAST STANDARDS?

NBS wrongly contends that the Stakeholder Dialogues created a legitimate expectation, but this assertion is legally unsustainable.

We strongly dispute this claim, and our position is grounded in the following considerations;

2.1. UCC Cannot Neglect Its Statutory Duty in Favour of NBS's Wishful Legitimate Expectation

The doctrine of legitimate expectation cannot override statutory duties, and a regulator cannot promise, imply, or act in a manner that contradicts a statutory obligation.

This position is squarely supported by the High Court in **K.M Enterprises & Others v. Uganda Revenue Authority (HCCS No. 599 of 2001)**, where Justice FMS Egonda-Ntende (as he then was) held:

"A public body cannot promise to act contrary to statutory provisions. In the present case, there is no evidence of any written or oral promise that goods would be admitted into Kenya at a zero percent duty rate upon securing necessary licenses. While one might contend that legitimate expectation arose from the understanding that goods from Uganda would be subject to 0% duty, this cannot prevail against the Respondent's statutory duty to ensure all due taxes on imported goods are paid. Therefore, the Appellant's claim of a breached legitimate expectation fails."

We submit that UCC's statutory duty under **Section 5(1)(x)** and **Section 5(1)(i)** is clear, mandatory, and cannot be contracted away in stakeholder engagements.

Section 5(1)(x) of the Uganda Communications Act mandates UCC "to enforce compliance with the standards and regulations it makes." **Section 5(1)(i)** further requires UCC "to ensure compliance with national standards and obligations prescribed under this Act."



Annex 7 of the Advertising Standards, 2019 is one of those national standards to which UCC statutory duty is attached under **Section 5(1)(x)** and **Section 5(1)(i) of the Act**.

Therefore, UCC has a **non-delegable, mandatory statutory obligation to enforce Annex 7 not selectively, not informally, not conditionally but as written**.

Just as URA in *K.M Enterprises* case cited above had a statutory duty to collect taxes and could not suspend this duty through informal promises/legitimate expectation, UCC likewise cannot suspend, soften, or ignore Annex 7 through stakeholder conversations.

Any alleged understanding/stakeholder consensus that makes UCC not enforce Annex 7 is unlawful, unenforceable, and incapable of forming a legitimate expectation. To act on it would amount to regulatory abdication and a breach of UCC's own statutory mandate.

2.2. **The doctrine cannot override or contradict regulatory provisions.** The Advertising Standards, 2019 were issued under the Uganda Communications Act and are therefore regulatory instruments with the force of law. Annex 7 expressly prohibits split-screen advertising during current-affairs programmes. In **K.M Enterprises and Others v. Uganda Revenue Authority (HCCS No. 599 of 2001)**, Justice FMS Egonda-Ntende held that "a public body cannot promise to act contrary to statutory provisions.

NBS's alleged expectation would require UCC to ignore, suspend, or contradict this statutory prohibition. The doctrine of legitimate expectation **cannot override a statutory mandate, because a public body like UCC has no power to set aside or contradict a written regulation** through an informal understanding.

2.3. **Legitimate expectation cannot be founded on an assurance that is inconsistent with the law/regulation.** A promise that effectively rewrites a law/regulatory instrument has no legal force to bind the authority or to legalise conduct inconsistent with the instrument. We invite the Commission to be guided by the case of **K.M Enterprises and Others v. Uganda Revenue Authority (HCCS No. 599 of 2001)** in which the High Court held that the expectation itself cannot serve to validate an illegality.
Annex 7 (2019) remains the operative legal instrument. There is no valid, formal amendment which allows squeeze-backs during current affairs. Any informal "stakeholder understanding" cannot lawfully override Annex 7. The



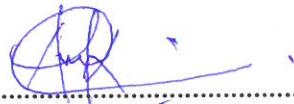
correct legal position is that Annex 7 controls the industry until lawfully varied. Therefore, NBS cannot invoke legitimate expectation.

2.4. **Stakeholder Legitimate Expectation Cannot Override the Wider Public Legitimate Expectation That Advertising Standards Must Be Enforced Until Amended.** NBS's reliance on stakeholder legitimate expectation is misplaced. Even if such an expectation existed, it cannot supersede the wider public legitimate expectation that UCC will enforce the Advertising Standards until they are lawfully amended. The public's expectation derives from the binding nature of the Standards themselves and the statutory duty of the Commission to apply them. No legitimate expectation can compel a regulator to act contrary to a regulatory instrument, and therefore the Advertising Standards remain fully enforceable until formally amended.

REITERATION OF SUBMISSIONS NOT OTHERWISE ADDRESSED

Except for the points and issues specifically addressed in this rejoinder, we reiterate our submissions previously filed in support of the issues not otherwise addressed herein.

Dated at Kampala, this 5th day of December 2025



Aziz Kitaka

Executive Director, AdLegal