

# Nigerian Competition and Consumer Protection Law

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On January 30<sup>th</sup>, 2019, the President signed into law the Federal Competition and Consumer Protection Act 2019 (the **Act**). Prior to the passing of the Act, there was no singular competition law or regulator in Nigeria that applied to all sectors, businesses, market participants. This lacuna led to certain sector-specific legislations empowering the promulgation of regulations to protect competition such as regulations by the National Communications Commission for the telecommunications industry and regulations by the National Electrical Regulatory Commission for the electricity industry in matters affecting competition. The Investment and Securities Act 2007 (**ISA**), which is the primary legislation regulating the Nigerian capital market was the closest attempt Nigeria had to widely addressing anti-competitive mergers, but the ISA did not cover other anti-competitive conduct and behaviour.

Despite the several sector-specific competition regulations in Nigeria, this new Act signals the commencement of a unified regime that will apply to all sectors, industries, and undertakings. The Act is aimed at promoting economic efficiency, maintaining competitiveness in the Nigerian market and protecting the rights and welfare of consumers. The Act repeals the Consumer Protection Act, Cap C25, LFN 2004 and codifies the laws pertaining to consumer rights and consumer protection. Some of the key highlights of the Act is discussed below:

- 1.Scope of Application

The Act applies to all sectors, industries, undertakings and commercial activities including companies, business ventures, both government owned or controlled and all commercial activities within, or having effect within, Nigeria. The Act also applies to business conduct outside Nigeria by a Nigerian citizen, resident, Nigerian registered company or business.

Thus, foreign businesses which have a controlling interest in Nigerian businesses or whose commercial activities have effect within Nigeria and goods and services being imported into Nigeria are brought within the scope of the Act.

- 2.The Commission and the Tribunal

The Act establishes the **Federal Competition and Consumer Protection Commission** (“the Commission”) which will facilitate access by consumers to safe products and secure the protection of consumers’ rights in Nigeria, initiate policies and administer the Act and the **Competition and Consumer Protection Tribunal** (“the Tribunal”) which will handle disputes arising from the operations of the Act, hear appeals arising from the decisions of the Commission and government agencies (in respect of competition and consumer protection matters) and also to try offenders who would violate the provisions of the Act.

- 3. Anti-Competition

The Act prohibits in its entirety anti-competitive acts. Examples of such anti-competitive acts are restrictive agreements such as agreements for price fixing, price rigging, collusive tendering; an abuse of a dominant position such as pricing abuse; and monopolies.

These anti-competitive acts are offences which attract on conviction imprisonment or a fine up to N50,000,000 or both.

- The Act however provides for exemptions to certain agreements from the prohibitions on restrictive agreements and abuse of dominant position. Such excluded agreements are authorised if the Commission is satisfied that the agreement or conduct:
  - (i). Contributes to the improvement of production or distribution of goods, services or the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
  - (ii). Imposes on the undertakings concerned only such restrictions as are indispensable to the attainment of the objectives; and
  - (iii). Does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.
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- 4. Price Regulations

By this Act, the President of Nigeria is empowered to regulate the prices of certain goods and services by publishing an order in the Federal Gazette to this effect on the recommendation of the Commission. The regulation of prices will thus limit the ability of players to unilaterally influence prices and ensure that certain goods and services have a prescribed price.

- 5. Regulated Industries

The Act confers concurrent jurisdiction on the Commission and government agencies whose mandates include the enforcement of competition and consumer protection laws.

This means that business entities in regulated industries will still be required to comply with the regulations prescribed by regulatory agencies in their sectors in addition to those set by the Commission.

- 6. Mergers and Acquisitions

The Act introduces significant changes to the regulation of mergers and acquisitions in Nigeria by repealing the relevant provisions of the ISA pertaining to mergers and bringing them under the purview of the Act. Thus, as the Act has not repealed the sections of the ISA dealing with acquisitions, there may be some overlap of function between the Securities and Exchange Commission (SEC) and the Commission in this regard.

The Commission, in reviewing merger applications, is empowered to determine whether the merger is likely to substantially prevent or lessen competition or whether it can be justified on

substantial public interest grounds. The provisions for assessing these considerations are the same as previously provided under the ISA.

On 3 May 2019, the Commission together with SEC released a notice to provide appropriate directions to the public regarding mergers notifications pending before the SEC at the time of the enactment of the Act. Based on this notice, there will be a transition period, which commences immediately pursuant to the said notice, to ensure continuing and seamless commercial transactions and market operations. During this transition period, all notifications or filings will be reviewed under existing SEC Regulations, Guidelines and Fees. Notifications will be filed either at the FCCPC office, or at the SEC/FCCPC Interim Joint Merger Review Desk offices. All fees will be paid to the FCCPC. While the notifications will be jointly reviewed by SEC and FCCPC, decisions regarding the notifications will be conveyed by the FCCPC.

- 7. Consumers' Rights

The Act also outlines the rights of the consumer. These rights range from the right to information in plain and understandable language to the right to return goods and receive a full refund of any consideration paid for those goods in specific circumstances.

- The contravention of any of the consumer rights is an offence under the Act which attracts on conviction, imprisonment up to 5 years or a fine up to N10,000,000 or both for individuals and a fine of N100,000,000 for companies or 10% of its turnover in the preceding business year (whichever is higher).

- 8. Tax

The Act imposes a tax known as the Consumer Protection Tax (CPT) which is 0.5% of the after-tax profits on all companies in Nigeria, payable to the Commission within 30 days of the end of company's accounting year end. This tax is to be used for the management of the Commission and the provision of full or partial reimbursement of losses to victims of abuse by businesses or individuals in circumstances where the offender cannot adequately compensate the victim.

## **CONCLUSION**

The wide scope of application of the Act is an important one as it will apply to all players including individuals, businesses and governmental entities alike in regulating competition. This is a welcome development in a deregulated economy like Nigeria, where a select few have a marked influence over how aspects of the market operate. As the economy becomes more privatized, the Act will play a key role in discouraging anti-competitive behaviour by players with market dominance and foster a fair and open market where market forces drive prices and influence the quality of goods and services available.

The Act will ultimately aim to become the Apex law on all matters relating to consumer protection and competition and it will be vital to see how effective it will be in sharing its jurisdiction on these matters with other existing regulatory agencies.