



A REVIEW OF THE FEDERAL
COMPETITION AND
CONSUMER PROTECTION
ACT 2018



It is indeed a great move in our country Nigeria as President Muhammadu Buhari signs the antitrust bill into law after several backs and forth. The Act repeals the **Consumer Protection Council Act, Cap 25, 2004 Laws of the Federation of Nigeria** to establish the Federal Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal.¹

Competition in business means Rivalry in which every seller tries to get what other sellers are seeking at the same time: sales, profit, and market share by offering the best practicable combination of price, quality, and service. Where the market information flows freely, competition plays a regulatory function in balancing demand and supply. Anti-competition law are laws developed to protect consumers from predatory business practices. It ensures that fair competition exists in an open-market economy. The law has evolved along with the market, vigilantly guarding against would-be monopolies and disruptions to the productive ebb and flow of competition.

This law guides against monopolistic behaviours such as exclusive supply agreements, tying the sale of two products, predatory pricing, refusal to deal etc. more than 120 countries have their own national anti-competition laws examples are Japan, Australia, Philippines, New Zealand and Thailand have strong anti-competition law which has help to protect players in the business sector and in turn boost their economy.

Federal Competition and Consumer Protection Act 2018 established the **Federal Competition and Consumer Protection Commission** and the **Competition and Consumer Protection Tribunal** for the development and promotion of fair, efficient and competitive markets in the Nigerian economy.

The Act applies to all businesses and all commercial activities within Nigeria and extends any establishment in which the Federal, State or Local Government engage in for commercial purposes or controlling stake. It also applies to conduct outside Nigeria by a citizen of Nigeria or a person resident in Nigeria in relation to the acquisition of shares or other assets outside Nigeria resulting in the change of control of a business, part of a business or any asset of a business, in Nigeria.²

The Commission will facilitate access of all citizens to safe products, secure the protection of rights for all consumers in Nigeria; and for a related matter. Various sections of the Act deal with the establishment, powers and functions of the commission which could be

¹ Section 39 of the Federal Competition and Consumer Protection Act 2018

² Section 2(1)-(3) Opcit

inquisitorial, investigative and regulatory as well as discharge of adjudicatory functions by the tribunal.

The commission has power to:³

- (a) annually on market practices and the implications for Consumer choice and competition in the consumer market;
- (b) eliminate anti-competitive agreements, misleading, unfair, deceptive or unconscionable marketing, trading and business practices.

Keeping in view the nature of the controversies arising under the provisions of this Act and public interest at large, majorly, there are three main elements intended to be controlled by the implementation of the provisions of this new Act and they have been specifically dealt with under **part VIII, IX and X** of the Act:

1. Restrictive Agreement which are also known as anti-competitive agreements⁴- this can relate to closing date, secured debt permitted, customary restrictions, class of people consuming a product, purchase of something else as a condition for the purchase of a particular good, agreement to grant or allow concession or benefit, agreement to withhold the supply of goods, agreement for exclusion of a person from trade association
2. Abuse of Dominant Position ⁵- there are several acts that may amount to abuse of dominant position such as directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions, limiting production, markets or technical development to the prejudice of consumers, applying different conditions to similar transactions with other trading partners, thereby putting them at a competitive disadvantage etc.
3. Monopoly⁶-Monopolistic activity means as actions or inaction of business entities, state bodies, aimed at non-admission, limitation or elimination of competition.

³ Section 18 Ibid

⁴ Section 57 Opcit- a restrictive agreement is any agreement among undertakings or a decision of an association of undertakings that has the purpose of actual or likely effect of preventing, restricting or distorting competition in any market. In another way a restrictive covenant is an agreement that restricts or prevents one of the parties from doing something or holding some type of property.

⁵Section 70 and 71 Opcit - an undertaking is in a dominant dominant Page 29 of 80. position if it can act without taking account of the reaction of its customers, consumers or competitors. So dominant position exists where an undertaking enjoys a position of economic strength enabling it to prevent effective competition being maintained on the relevant market and having the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers.

⁶ Section 76-86 and 60 Opcit- monopoly means the exclusive possession or control of the supply of or trade in a commodity or service

The competition Act prohibits agreements made to restrain competition such as agreements for price fixing, price rigging, collusive tendering etc. (with specific exemptions for collective bargaining agreements, employment, etc.).⁷

It repeals the provisions of the Investment and Securities Act relating to mergers (effectively stripping the Securities and Exchange Commission of its power to approve mergers)⁸ and places the responsibility of approving merger transactions on the Competition Commission.⁹

When considering a merger or a proposed merger, the Commission is empowered to determine whether the merger is likely to substantially prevent or lessen competition. The Competition Commission is entitled by the Act to receive a percentage of all the fees chargeable by other regulators for license applications, processing and issuance.¹⁰

It also empowers Nigeria's President to regulate the prices of goods and services by order published in the Federal Gazette on the recommendation of the Competition Commission. The Commission can prescribe fines and sanctions for non-compliance. A general fine imposed by this Bill for offences committed by companies is an amount up to 10% of the company's annual turnover in the preceding business year.¹¹

Reading through the Competition and Consumer Protection Act, there are some of its provisions that may pose some difficulty in their interpretation.

The provision of Section 27(3) provides;

The Commission shall, if there are grounds to believe that a violation, civil or criminal, of the provisions of this Act or regulations made under this Act, was, is being or will be committed, take any interim measure, including authorising an authorised officer to exercise powers contained in subsection (1) pending the issuance of a warrant to that effect.

The big question here is what are the grounds that justifies the officer's believe about the violation of the provision of the Act. Even though **subsection (4)** provides for a deposition to a verifying affidavit verifying the fact before an interim order can be given the provision may still lead to an abuse of power.

⁷ Section 63-66 Opcit

⁸ Section 104 Opcit

⁹ Section 93 Opcit

¹⁰ Section 94-100 Opcit

¹¹ Section 88- 91 Opcit

Also, the provisions of Section 30 of the Act which gives the officer with a search warrant to search a property even when the owner is not present stands to conflict with the provisions of the Administration of Criminal Justice Act 2015¹² and the Police Act which provides that the search of property should be done in the presence of the owner or at least in the present of an adult member of the family. More so, a search warrant should not be presented only at the request of the occupant, it should be the enabling document to enter the property for search.

In the same light, section 59 of the Act provides that:

“Any agreement among undertakings or a decision of an association of undertakings that has the purpose of actual or likely effect of preventing, restricting or distorting competition in any market is unlawful and, subject to section 61 of this Act, void and of no legal effect.”

How is the purpose of a decision determined? There should be a set of tests provided by the Act to resolve and determine restrictive or anti-competitive agreements.

Many more of such provisions are embedded in the Act which calls for a thorough understanding for business players and general public at large.

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¹² Section 150 Administration of Criminal Justice Act