



S.O Oloruntimehin & Co.



COMPETITION & CONSUMER PROTECTION IN NIGERIA

In 2018, the National Assembly enacted the Federal Competition and Consumer Protection Act 2018. The Act seeks to, amongst several others, promote and maintain competitive markets in the Nigerian economy, protect and promote the interests and welfare of consumers, etc.

Despite Nigeria's economic size, there was no law to manage anti-competitive trade practices like monopoly, abuse of dominance and price regulation until the Act was enacted. The government in particular had monopoly over the telecommunication industry for several years until the early 2000's. Several international and multinational companies in Nigeria also hold significant monopoly over various sectors. With the enactment of this

legislation, companies are properly regulated/monitored by the new Federal Competition and Consumer Protection Commission.

In this article, we shall be looking at the key features of the Federal Competition and Consumer Protection Act 2018 (Act), how the Act prevents anti-competition and protects consumers.



1. **Establishment of the Federal Competition and Consumer Protection Commission:**

The Commission is expected to be independent in carrying out its functions, powers, duties and responsibilities. A governing board made up of 8 commissioners are charged with administering the affairs of the Commission. The Commission is responsible for the administration and enforcement of the provisions of the Act and the review of economic activities in Nigeria to identify anti-competitive, anti-consumer practices, amongst others. The comprehensive functions and powers of the Commission are contained in Section 17 and 18 of the Act respectively.

2. **Establishment of the Competition and Consumer Protection Tribunal:**

The Tribunal is empowered to adjudicate over conducts prohibited under the Act. The Tribunal is made up of a chairman who shall be a legal practitioner and 6 other members.

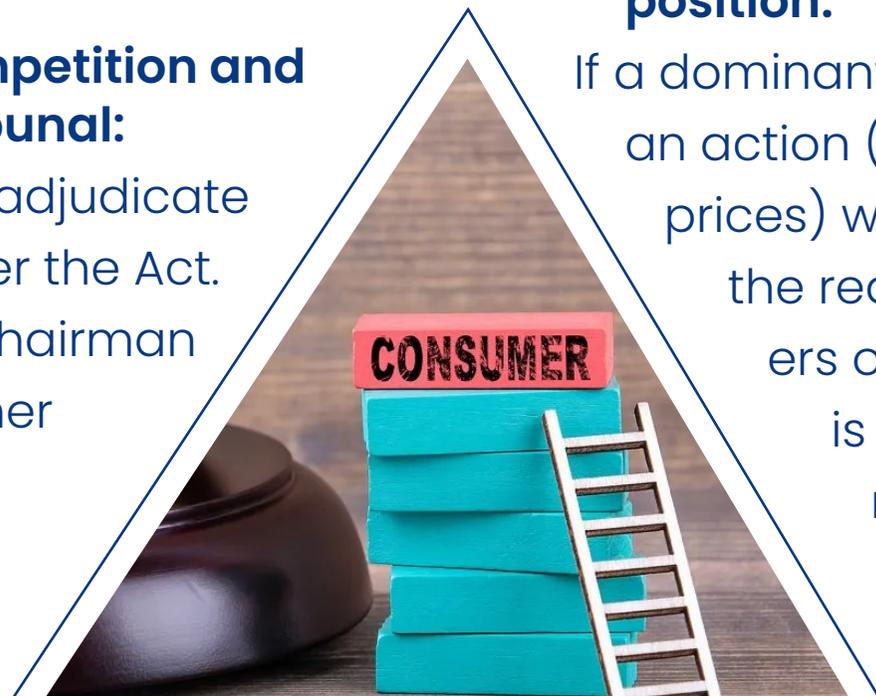
The Tribunal may impose administrative penalties, order an undertaking to sell any portion or all of a company's shares, interests or assets. Any appeal from the Tribunal goes directly to the Court of Appeal.

3. **Prohibition of Restrictive Agreements:**

The Act prohibits 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. Section 59 of the Act.

4. **Prohibition of abuse of a dominant position:**

If a dominant company is capable of taking an action (e.g unilaterally increasing prices) without taking into consideration the reaction of its customers, consumers or competitors, such a company is deemed to be abusing its dominant position and this is prohibited by the Act.



The Act also provides that a dominant position in a relevant market 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, Section 70(2) of the Act. A company that fails to cease an abusive practice after receiving an order of the Commission is deemed to have committed an offence and is liable on conviction to a fine not exceeding 10% of its turnover in the preceding business year or any amount as deemed fit by the court.

5. **Power to Investigate monopoly situations:**

Where the Commission believes that a monopoly situation may exist in relation to the production or distribution of goods and services of any description, it shall cause an investigation to be held into a particular sector of the economy or into a particular type of agreement across various sectors to determine the extent of the situation in relation to the market, Section 76 of the

6. **Price Regulation by the President:**

For the purpose of regulating and facilitating competition only, the President may from time to time, by order published in the Federal Gazette, declare that the prices for goods or services specified in the order shall be controlled in accordance with the provisions of the Act.

7. **Approval of Mergers by the Commission:**

A Merger, under this Act, occurs when one or more companies directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another company or undertaking. All proposed mergers must be notified to, and approved by, the Commission subject to the notification threshold to be determined from time to time as set out in the Act. The Act also provides an exception to notification requirements for small mergers in Section 95 of the Act. A party to a small merger is not required to notify the Commission and may implement that merger without approval unless the Commission requires it to do so. Notwithstanding the proviso for small mergers, the

8. **Investigation of proposed mergers:**

According to Section 98 of the Act, the Commission may direct any of its officers to investigate a merger. As part of the investigation, any person or company may be asked to provide information in respect of the merger.

9. **Supremacy of the Federal Competition and Consumer Protection Act:**

The Act provides, in Section 104, that save for the provisions of the Constitution of the Federal Republic of Nigeria, the provisions of the Act supersede any other law with respect to all matters relating to competition and consumer protection.

10. **Prohibition against price-fixing:**

The Act prohibits companies from directly or indirectly influencing an upward or downward review of prices. The Act specifically states, in Section 107 (3), that the publication by an undertaking, other than a retailer, of any notice or advertisement that mentions a resale price of any goods or services constitutes an attempt to

influence upward the selling price of those goods or services, unless the resale price is so expressed as to make it clear to a reasonable person that the goods or services may be sold at a lower price. Any company that violates the provision(s) against price fixing is liable on conviction to imprisonment for a term not exceeding three (3) years or to payment of a fine not exceeding N10,000,000 or both.

11. **Consumer's Rights:**

The Act details in Part XV, Sections 114 – 131, the rights of consumers which includes, the right to information that is in plain and understandable language, disclosure of the price of goods or services, product labeling and trade descriptions, disclosure of reconditioned or second-hand goods, sales records, selection of suppliers, cancel advance reservation, booking or order (subject to reasonable charge for order cancellation or reservation by the supplier/service provider), right to choose or examine goods, return goods, amongst others.



12. **Implied Warranty of Quality**

The Act entrenches the implied warranty of quality for all goods supplied to a consumer in Section 132 of the Act. Hence the combined reading of Section 131 and 132 of the Act implies that every consumer has a right to receive goods that are reasonably suitable for purpose, of good quality, in good working order, free of defects, useable and durable for a reasonable period of time and complies with applicable standards set by industry sector regulators.

13. **Duties of manufacturers, Importers, Distributors and Suppliers of Goods and Services:**

Section 134 and 135 of the Act specifies the duties of manufacturers, importers, distributors and suppliers of goods as follows:

- a. Duty to label goods properly: Goods must be easily traceable to the manufacturer, importer or distributor.
- b. Duty to withdraw hazardous goods from the market.

14. **Enforcement of consumer rights:**

Premised on Section 146 of the Act, a consumer may seek to enforce its right through any of the following options:

- a. Refer the matter directly to the company that supplied the goods and services;
- b. Refer the matter to the industry sector regulator with jurisdiction;
- c. File a complaint directly with the Federal Competition and Consumer Protection Commission; or
- d. Institute a cause of action in court to seek redress.

As can be gleaned from the Act, there are several provisions incorporated therein to ensure that competition exists, and market distortions are minimized across all sectors.

Do you want to know more about Competition and Consumer Protection in Nigeria, contact us.