

AN EVALUATION OF THE PROTECTION OF NIGERIAN CONSUMERS UNDER THE FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION ACT*

Abstract

The introduction of a codified set of competition rules into Nigeria's regulatory framework came as a long anticipated change. The aim of the legislation is to ensure that market distortions across all sectors are minimized and the rules of fair play are respected in the market place across various commercial transactions in Nigeria. The Federal Competition and Consumer Protection Commission Act (FCCPA) 2018 amongst other things repealed the Consumer Protection Council Act 2004; dissolved the Consumer Protection Council (CPC) and established the Federal Competition and Consumer Protection Commission (FCCPC) in its stead. The FCCPA is an interwoven legislation encompassing competition law, consumer rights, consumer protection, product liability, misleading advertisement and other unfair trade practices. The rights and protection afforded consumers under the FCCPA are more explicit and comprehensive than the rights and protection afforded consumers under the repealed CPC Act. Further, the FCCPA provides variety of options availing consumers in the enforcement of their rights thus affording consumers the liberty to choose the most suitable option to enforce their rights. This article examined the highlights and changes into the Nigerian consumer protection regime which the FCCPC Act introduced and particularly the extent to which the regulatory oversight of the FCCPC envisages a holistic protection of Nigerian consumers. The article concluded that the extensive powers of the FCCPC are likely to create areas of conflict due to its overlapping functions as a co-regulator with other specific regulators of industry in matters of competition and consumer protection. It recommended that for the FCCPC to discharge its mandate under the Act, there must be effective implementation by a synergy with those specific regulators of industry.

Keywords: Consumer Protection, Federal Competition And Consumer Protection Commission Act, Nigeria, Evaluation

1. Introduction

There are various laws which have been passed in Nigeria aimed at protecting the Nigerian consumer but despite the existence of these laws,¹ the Nigerian markets are still replete with fake, adulterated and substandard goods, while the services rendered to consumers are not commensurate with the price for which the consumers pay for it. Hence, consumers in Nigeria face the high incidence of daily exploitation in the hands of manufacturers, importers, distributors, middlemen, sellers and service providers. These laws have also been couched in the form of product liability laws, since product liability refers to the manufacturers' liability under the law in respect of their products meant for public consumption. In the past it was observed that manufacturers of products had the upper hand over the consumers of their goods. The consumers were unable to negotiate for their economic rights. The manufacturers produced what they had and sold with little or no regard for the merchantability of the goods for their selfish economic gains. Hence manufacturers engaged in what is called deceptive or unfair trade practices.

Deceptive and unfair practices include, causing a dishonest and unjust relationship in the process of the exchange of goods and services and other facilities for economic gains. It covers causing consumers to accept as true or genuine something (goods, services, credit facilities, rights) that is false. It connotes misleading information and pictorial misrepresentation and all forms of trade malpractices. It is also a term that refers to all manifestations of unconscionable practices by unscrupulous traders against consumers;² there was the need for government intervention by means of these laws aimed to ensure minimum standards considered necessary for the protection of users of products and services.

The protection of consumers in the market place is also to ensure the enforcement of such standards. The law attaches penalty for non-compliance and set up regulatory bodies. The most protective of the legislations was the Consumer Protection Council Act³ which was aimed at preserving the consumer's right of action for compensation and empowered the Council to apply to court to prevent the circulation of any product which

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¹ Some of these laws include the repealed Consumer Protection Council Act 2004, the Standards Organization Act 2015, the National Food and Drugs Administration and Control Act 2004.

² *Nigerian Bottling Plc v Audu* (2009) LPELR-8863 (CA) per Omoleye JCA (Pp. 20-24 para A)

³ Consumer Protection Council Act Cap C25 Laws of the Federation of Nigeria 2004.

constitutes an imminent public hazard, ban the sale, distribution, advertisement of products which do not comply with safety or health regulations.⁴

The President of the Federal Republic of Nigeria signed into law the Federal Competition and Consumer Protection Act (FCCPA) in 2019.⁵ However, it is noteworthy that Nigeria joined a regional competition authority – the ECOWAS Regional Competition Authority in July 2018 before establishing its own national competition law. Therefore this new legislation is a welcome development given the fact that the FCCPA was enacted to promote and maintain fair and efficient competitive markets in the Nigerian economy; promote economic efficiency; protect and promote the interests, rights and welfare of consumers by providing access to wider variety of quality products at competitive prices.⁶ The FCCPA repealed the Consumer Protection Council Act, and established the Federal Competition and Consumer Protection Commission (FCCPC) in its stead. The FCCPC by virtue of the FCCPA is the main authority charged with the primary responsibility of protecting and safeguarding the rights of the consumers in Nigeria.

The FCCPC is also empowered by law to amongst other things; enforce the FCCPA and any other enactment with respect to competition and protection of consumers. Unlike the defunct Consumer Protection Council (CPC), the FCCPC's oversight extends beyond consumer protection issues but covers all entities in Nigeria, whether they are engaged in commercial activities as bodies corporate or as government agencies and bodies.⁷

2. The Relevance of Competition Law in the Protection of Consumer Protection.

The relevance of competition law to consumer protection has long been identified in developed economies. These economies while pursuing the free market enterprise yet place emphasis on fair trading and competition in the supply of goods and services to the consumer. This is to ensure that monopolies are eliminated in the market place. The belief is that competition in the market place makes for the manufacturers to improve the quality of goods and services to the consumer, by working hard to outdo the other. Consumers will not only benefit from improved quality of goods and services, but will also get them at fair and reasonable prices.⁸ The relevance of Competition law is therefore interwoven with the idea behind consumer protection. In the simple transaction of the market place, no doubt the consumer is his own guide. When he buys a pound of tomatoes, he has himself to blame if they are unripe. Yet even in medieval times, the law stepped in to protect the buyer of adulterated wine or mould bread. Now with an enormous variety of goods available for purchase, many of them prepacked or mechanical or of intricate workmanship, so that any deficiencies are inevitably hidden; far greater protection is called for.⁹

Competition law is therefore the effective regulation of the quality of consumer goods by the relevant regulatory agencies through the implementation of the applicable laws for sustainable consumer protection. Its relevance for an optimal consumer protection has also long been recognized by the international community. The United Nations Guidelines for Consumer protection¹⁰ in its objectives has recognized that consumers often face imbalances in economic terms, educational levels and bargaining power; bearing in mind that consumers should have a right of access to non-hazardous products, governments need to develop or maintain consumer policies taking into account the economic, social and environmental circumstances of their country and the needs of its population, thereby setting priorities for the protection of consumers. The enactment of the FCCPA in Nigeria is therefore germane to the protection of consumers in Nigeria as the explanatory memorandum clearly states.¹¹ The FCCP Act incorporates the law on competition, consumer protection and product liability.

⁴The FCCPA, 2018, Section 165(1); and Section 167 of the Act which provided for 'repealed enactments'

⁵ There had also been several attempts made at drafting a bill to regulate competition law. In August 2015, the Federal Competition and Consumer Protection Bill, 2015 was introduced by the National Assembly and successfully, on the 5th of February, 2019, President Muhammadu Bello assented to the Federal Competition and Consumer Protection Act 2018 which repealed the Consumer

⁶ A Rotimi, 'The Impact of the Federal Competition and Consumer Protection Act on Competition Regulation and Consumer Protection in the Telecommunication Industry' www.advocat.law.com. Accessed on 12/5/2021.

⁷ F Olusanya *et al*, 'The Enactment of the Nigerian Federal Competition and Consumer Protection Act' www.jacksonettiandedu.com. Accessed on 16/6/2021.

⁸ S Apinega, 'The Goal of Anti-Trust Laws and the Concept of Consumer Welfare' (2008-2006) 4 (1) *A.B.U Law Journal* 161-174

⁹ G Borrie, and A Diamond, *The Consumer, Society and the Law*, Aylesbury Bucks: Hazel Watson and Viney Ltd., 1964) p.9

¹⁰ United Nations Guidelines for Consumer Protection (UNGCP) as expanded in 1999 and presently in 2015.

¹¹ The Explanatory Memorandum to the FCCPA 2018 states that 'This Act establishes the Federal Competition and Consumer Protection Commission and Consumer Protection Tribunal for the promotion of competition in the Nigerian markets at all levels by eliminating monopolies, prohibiting abuse of a dominant market position and penalizing other restrictive trade and business practices.'

3. An Overview of the Salient Provisions of the Federal Competition and Consumer Protection Act 2018

The FCCPA introduced into the Nigerian regulatory framework some novel provisions aimed at ensuring a holistic competition and consumer protection regime. This section deals with the exposition of the protection accorded consumers in the specific areas of competition law, product liability and consumer protection.

Establishment of the Federal Competition and Consumer Protection Commission

Pursuant to section 3 of the Act, the Federal Competition and Consumer Protection Commission ('the Commission') was established as a body corporate, capable of suing and being sued in its corporate name and may hold and dispose of property. Commission vested enormous powers and functions. The Commission Was established for the purpose of administering the Act amongst other things, as well as the responsibility of initiating broad based policies and reviewing economic activities in Nigeria. This is aimed at identifying anti-competitive, anti-consumer protection and restrictive trade practices which adversely affect the economic interests and welfare of the consumers and to make rules and regulations thereby.¹² Therefore the Commission has the mandate to eliminate all forms of anti-competition agreements, unfair, restrictive and misleading marketing practices which are unconscionable.¹³

Establishment of the Competition and Consumer Protection Tribunal

The FCCPA introduces and established the Competition and Consumer Protection Tribunal ('the Tribunal') which has the jurisdiction to handle any issues that arises from the application of the Act, particularly in the exercise of the functions of the Commission.¹⁴ The Tribunal is also empowered to hear appeals and review the decisions of the Commission in the course of implementing any of the provisions of the Act. The order of the Tribunal shall be binding on the parties involved and can be registered for enforcement at the Federal High Court. Appeals on the order, ruling or award of the Tribunal by any dissatisfied party for judicial review, lie to the Court of Appeal upon notice to the Secretary of the Tribunal within Thirty (30) days after such a ruling or award is given.¹⁵

Monopoly and Abuse of a Dominant Position

The FCCPA charges the FCCPC to prohibit restrictive or unfair business practices which restrict or distort competition or which constitute an abuse of a dominant position or market power in Nigeria.¹⁶ An undertaking is said to be in a dominant position under the Act, if it is able to act without taking into account of the reaction of its customers, consumers or competitors.¹⁷ The Act does not by implication prohibit dominant position of an undertaking which is a position of economic strength. However, it operates to prevent situations where a business or undertaking prevents effective competition maintained in the relevant market place by acting in abuse of the dominant position and having the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers.¹⁸ The various instances of activities such as charging an excessive price to the detriment of the consumers amongst others which amount to an abuse of a dominant position by a business or undertaking are portrayed in the Act¹⁹ The Act further provides for the consequences and penalties of the abuse of such dominant position.²⁰ In curtailing monopoly, the Commission where it has any reason to believe that a monopoly situation exists in relation to the production or distribution or export of goods or services of any description in Nigeria, it has the power to investigate the sector of the economy concerned.²¹ This is aimed at determining the extent of the monopoly situation in relation to the market. The meaning of monopoly and what constitutes same is determined by the Commission to the extent it has an effect on competition in Nigeria.

Consumer Rights and Protection

Consumer protection is one of the cardinal objectives of the Act. The rights and protection afforded the consumers under the FCCPA are more defined, comprehensive and explicit than the rights and protection under the repealed Consumer Protection Council Act. Part XV of the Act makes provision for the rights of consumers, some of which include:

¹² FCCPA, section 17(b)

¹³ FCCPA, section 17(g)

¹⁴ The FCCPA, section 39.

¹⁵ The FCCPA, section 55(1)

¹⁶ The FCCPA 2018, part IX Section 70(1)

¹⁷ The FCCPA 2018, part IX of Section 70(2)

¹⁸ The FCCPA 2018, section 72(2).

¹⁹ The FCCPA, section 73

²⁰ The FCCPA, section 70(2)

²¹ The FCCPA, section 114

- (a) Right to information in plain and understandable language,²²
- (b) Right to proper labeling and trade description,²³
- (c) Right to disclosure of re-conditioned or second-hand goods,²⁴
- (d) Right to cancel advance reservations, bookings or orders,²⁵
- (e) Right to examination of goods,²⁶
- (f) Right to return goods that are defective or unsafe or unsuitable for the purpose for which they are bought,²⁷
- (g) Right to fair and reasonable contract terms of the supply of goods and services,²⁸
- (h) Right pertaining to quality and safety of goods and services,²⁹
- (i) Right to safe and good quality goods suitable for intended purposes, in good working condition and free of defects.³⁰
- (j) Implied warranty of quality.³¹

The FCCPA provides that the consumer has a right to services performed in manner and quality reasonable persons are generally entitled to expect. In relation to quality of goods, the FCCPA states that every consumer has a right to goods that are of good quality, in good working order, free from defects, and which comply with any applicable standards set by industry sector regulator. In addition, there is an implied warranty in any transaction that the goods comply with the applicable quality standards set out in the FCCPA, and the customer has a right to return defective goods within a prescribed period for failure to comply with the foregoing.³² The prescribed period is within three months, and the undertaking is expected to repair or replace such goods or return a portion of the purchase price. Thus the FCCPA also provides various options available to an aggrieved consumer for the enforcement of the rights under the Act. The repealed Consumer Protection Council Act did not enlist these consumer rights as specified under the FCCPA. These rights as provided by the Act make it more easily for the consumers to get fair dealings in their market transactions.

Liability of Manufacturers for Defective products

While affording rights to the consumers, the Act also imposes duties on manufacturers, importers, distributors and suppliers of goods and services. Some of which include the duty to label goods properly, and withdraw hazardous goods from the market,³⁰ the liabilities for the supply of defective goods, liability for the breach of implied obligations by law and liability for misrepresentation.³¹ Therefore, liability for defective goods under the Act is a strict liability; the Act also places the onus or burden of proof on the manufacturers of defective products. Where it is alleged that the goods or services are defective, the burden of proof lies on the undertaking that supplied the goods or services. The requirement of this onus on the manufacturer that negates the general principle of law that 'he who asserts must prove' is aimed at safeguarding the consumer's rights and interests in the market place.³²

Enforcement of Consumer Rights

There are various ways an aggrieved consumer, accredited consumer protection group, an industry sector regulator and the FCCPC can initiate proceedings for breach of a consumer's right. A consumer can personally enforce his rights and obtain redress under the Act. The options that avail the consumers in enforcement of consumer rights against the supplier of goods and services are (1) by referring the matter directly to the supplier of the goods or (2) referring the matter to the relevant industry sector regulator (3) filling a complaint directly to the Commission (4) the aggrieved consumer may also refer to the regular courts for reliefs. The available remedies include penalties/fines, monetary restitution or compensation for the aggrieved consumer and or term of imprisonment for the defaulting party.

²² The FCCPA section 115.

²³ The FCCPA, section 116.

²⁴ The FCCPA, section 117.

²⁵ The FCCPA, section 120.

²⁶ The FCCPA, section 121.

²⁷ The FCCPA, section 122

²⁸ The FCCPA, section 127

²⁹ The FCCPA, section 130

³⁰ The FCCPA, sections 134-135.

³¹ The FCCPA, Ss. 132.

³² The FCCPA, ss. 122, 132(2), M Azeezah M and A Mavis, 'Nigeria: Consumer Protection Laws and Regulation 2021' available at www.ICLG.com, accessed on 10/7/2021.

Supremacy of the FCCPA over any other Existing Legal Framework

The FCCPC created under the Act is the competition regulator empowered to prevent and punish anti-competitive practices, regulate mergers and take-over and acquisitions and protect regulated industries in every sector in Nigeria.³³ It also performs consumer protection functions. Section 104 of the FCCPA gives supremacy to the provisions of the Act by stating ‘notwithstanding the provisions of any other law but subject to the provisions of the Constitution of Nigeria, in all matters relating to competition and consumer protection, the provisions of this Act, shall override the provisions of any other law.’ This provision of the Act is aimed at creating a uniform advantage in competition and consumer protection issues in Nigeria where the FCCPA will supersede other sector or industry regulators. The FCCPA does not specifically list out the industries to which the Act applies but states that the operation of the undertaking in an industry subject to the authority of a regulatory agency set up by an Act of the National Assembly or Laws of a State is sufficient to make such an undertaking a member of a regulated industry under the purview of the Act. These are other sector regulators who, by virtue of their enabling laws in addition to their primary responsibilities, have the responsibilities to protect consumers in Nigeria. Although the FCCPA recognizes other consumer protection legislations, rules and regulations, they are to be read with such modifications as are necessary to bring them in conformity to the provisions of the FCCPA.³⁴ In addition, the FCCPA states that other sector regulators with consumer protection oversight shall be deemed to have concurrent jurisdiction with the FCCPC, and in the event of conflict between the FCCPC and a sector regulator, the FCCPC will have precedence over the said sector regulator.³⁵

4. Practical Implementation of the FCCPA

Some of the sector regulators include The Nigerian Communications Commission (NCC) which issued the General Consumer Code of Practice 2018, Nigerian Electricity Regulatory Commission (NERC) established by the Electric Power Sector Reform Act, 2005, the NERC issued the NERC Customer Service Standards of Performance for Distribution Companies, 2007 and the Customer Complaints Handling: Standards and Procedure, 2006, the Nigerian Civil Aviation Authority (NCAA) by virtue of the Civil Aviation Act, 2006, National Agency for Food Drug Administration and Control (NAFDAC) established under the NAFDAC Act 2004. FCCPC in the discharge of its functions under the FCCPA is empowered under section 163 to make rules and regulation for the effective implementation and operation of the provisions of the FCCPA. The provisions of the FCCPA further stipulate that any regulation, order, bye-law or notice that was issued by or for the purpose of the CPC under the CPC Act, shall be deemed to have been made or issued by, or for the purpose of the FCCPC and shall continue in force or amended by the FCCPC. Presently and in addition to the provisions of the FCCPA there are the FCCPC (Sales Promotion) Registration Regulations 2005, the FCCPC Guidelines for Sales Promotion Registration, the FCCPC Business Guidance Relating to COVID-19 on Business Cooperation/Collaboration and Certain Consumer Rights under the FCCPA 2020, Merger Review Regulations 2020. Also the FCCPC adopted the Guiding Principles for Sustainable Consumption proposed at the annual World Consumer Day of 2020.³⁶

The provisions of the FCCPA are yet to be fully tested by the FCCPC. However, in May 2020, the FCCPC in furtherance of a reasonable suspicion of illegal activities sealed Med Contour Services Ltd, a plastic surgery centre and assisted in bringing a five-count charge against the surgeon based on the contravention of sections 33(3)(a) and 113(4)(a) of the FCCPA.³⁷ In October 2020, the FCCPC signed an updated Memorandum of Understanding (MoU) with the Economic and Financial Crimes Commission, and the United States Federal Trade Commission (USFTC) for the purpose of strengthening co-operation and collaboration in addressing mutual cross border consumer protection issues. The updated MoU seeks to reaffirm the parties’ intention to

³³ Some of the sector regulators include The Nigerian Communications Commission (NCC) which issued the General Consumer Code of Practice 2018, Nigerian Electricity Regulatory Commission (NERC) established by the Electric Power Sector Reform Act, 2005, the NERC issued the NERC Customer Service Standards of Performance for Distribution Companies, 2007 and the Customer Complaints Handling: Standards and Procedure, 2006, the Nigerian Civil Aviation Authority (NCAA) by virtue of the Civil Aviation Act, 2006, National Agency for Food Drug Administration and Control (NAFDAC) established under the NAFDAC Act 2004.

³⁴ The Surgeon, Dr. Anuoluwapo Adepoju is charged alongside her clinic MedContour Services Ltd., on a five count-count charge bordering on a refusal to honor an invitation for investigation and refusal to produce an investigation document. FCCPC is also prosecuting Adepoju for blocking an investigation into customers’ complaints against her by allegedly shunning the agency’s summons. See A Innocent, ‘FCCPC calls first witness in trial of cosmetic surgeon’ www.vanguardngr.com dated July 19, 2020 Accessed on 23/7/2021.

³⁵ C Nwaoguji, ‘FCCPC Signs MoU with EFCC, FTC on fraud, Consumer Protection’ www.sunnewsonline.com dated November 5, 2020, Accessed on 23/7/2021.

³⁶ Victor O, ‘The FG Inaugurates FCCPC Governing Board, Consumer Protection Tribunal’ www.vanguardngr.com dated March 8, 2021, Accessed on 23/7/2021.

³⁷ Strategic Alliances of the Federal Competition and Consumer Protection Commission, <http://www.fccpc.gov.ng> Accessed on 23/7/2021.

work together and establish a joint implementation committee to develop joint training programs and provide assistance on specific investigations.³⁸ The Federal Government also inaugurated the governing board of the FCCPC, with the charge on members to boost the activities of the organization; the board has the responsibilities of monitoring staff performance, ensuring more accountability amongst others.³⁹

Finally, the FCCPC maintains strategic alliances with international and Regional Development Partners. It participates in the activities of and served in the technical committees to review relevant guidelines of the United Nations Conference on Trade and Development (UNCTAD) which is the focal point of the United Nations Guidelines on Consumer Protection (UNGCP) and in the United Nations for Competition Law and Policy as well as the African Consumer Protection Dialogue Conference.⁴⁰

5. Potential Legal Issues Arising from the FCCPA

Supremacy Clause

Section 104 makes the FCCPA supreme to any other law on competition and consumer protection issue in Nigeria. This provision is rather diffuse because sections 47(2) and 105(4-6) recognize specific regulators established by other laws. The supremacy of the FCCPA is likely to pose some conflicts with respect to specific sectors that are regulated by other laws recognized by the foregoing sections of the Act. Again, competition issues are sector based, and specific sector legislations in Nigeria have created government agencies and empowered them to maintain standards in their specific sectors.⁴¹ The domination of the Act over sector specific regulator has the tendency to create an overlap and interfere with the roles and functions of the government agencies.⁴² The FCCPA may be construed to have subordinated the regulatory jurisdiction of the sector regulators to that of the FCCP Act. The Act contemplates this area of possible conflict in the discharge of the functions when it provided under section 105(2) (b) that in so far as the Act applies to an industry that is subject to the jurisdiction of another government agency by the provisions of another law, in matters which affect competition and consumer protection, the FCCPA is to take precedence over and above the regulatory agencies. The implication of this is that the Act subjected the jurisdiction of the sector specific regulators to that of the FCCPA. It has thus unwittingly created a supervisory jurisdiction for the FCCPA over the regulatory functions of the sector specific regulators. This, to say the least, may lead to absurdity wherein a generalist Commission will be supervising specialist agencies over matters it has little or no knowledge about. It has been argued that the co-regulation principle may lead to 'over legislation' on a specific subject matter by multiple regulators that would typically want to protect their sector base against intrusion from other regulators.⁴⁴ Also the possibility of companies or undertakings interfacing multiple regulators on a specific subject matter in the course of their business transactions may result to undue delays and consequently for investors, make doing business in Nigeria unattractive. To avoid conflicts and reduce friction in the discharge of functions, the Commission must negotiate agreements with any government agency whose mandate includes enforcement of competition and consumer protection in order to harmonize issues of jurisdiction over competition within the relevant industry. Further, the relevant government agency is also mandated to commence negotiation of agreement with the Commission and conclude within one year of the establishment of the FCCPC to determine who will exercise jurisdiction by way of such an agreement.⁴⁵ The agreement is to *inter alia* 'identify and establish efficient procedures for the management of areas of concurrent jurisdiction. Such agreements must however, preserve the coordinating leadership role of the FCCPC in matters relating to competition and consumer protection.

³⁸ Charles Nwaoguji, 'FCCPC signs MoU with EFCC, FTC on fraud, Consumer Protection', November 5, 2020, available at www.sunnewsonline.com accessed on 23/7/2021.

³⁹ Victor O, 'The FG inaugurates FCCPC governing board, Consumer Protection Tribunal', March 8, 2021, available at www.vanguardngr.com accessed on 23/7/2021.

⁴⁰ Strategic Alliances of the Federal Competition and Consumer Protection Commission, 2021, available at <http://www.fccpc.gov> accessed on 23/7/2021.

⁴¹ For instance, the Nigerian Communications Commission regulates the telecommunications sector, the Securities and Exchange Commission regulates the capital market, the National Electricity Regulatory Commission regulates the electricity sector etc

⁴² F Okechukwu U *et al*, 'Connecting The Dots in The Legal Framework for Competition Regulation in Nigeria' *Common Wealth Law Bulletin* Vol. 47, 2021 Issue 2.

⁴⁴ Highlights of the Federal Competition and Consumer Protection Act, available at <http://www.detailsolicitors.com> Accessed on 24/7/2021.

⁴⁵ Section 105(4) of the FCCPA

Limitation of Actions under the Act

Section 156 provides:

- (1) Subject to the provision of this Act, the provisions of the Public Officers Protection Act apply in relation to any suit instituted against any member or employee of the Commission or the Tribunal.
- (2) Further to the provisions of subsection(1), a suit shall not lie or be instituted in any court against any member of the Commission, the Secretary or any other officer or employee of the Commission or the Chairman, members, staff, officers or employees of the Tribunal for any Act done in pursuance or execution of the provisions of this Act or any other enactment or law, or of any public duty or authority in respect of any alleged neglect or default in the execution of the provision of this Act or such enactment or law, duty or authority unless:
 - (a) it is commenced within three months next after the act, neglect or default complained of: or
 - (b) in the case of a continuation of damage or injury, within six months next after the damage or injury ceases.

The above provision stipulates a limitation period of three months for completed action and six months for continuing acts.⁴⁶ The implication of this provision is that the limitation periods stipulated under the Act shall apply. Therefore, any action not brought within the stipulated time is statute barred.⁴⁷ It should be stressed that much as business and commerce are supposed to be transacted expeditiously, three or six months limitation period as the case may be is too short a time to commence an action from the date the cause of action arose.. The three and six months' time stipulation is tantamount to sacrificing justice on the altar of speed.

Penalty Provision

In the case of a natural person who violates the provision of the Act, the penal provision of the FCCPA stipulates a fine not exceeding one million naira or a term of imprisonment not exceeding three months, or to both the fine and imprisonment.⁴⁸ In the case of a body corporate, only the option of fine not exceeding 10million naira is applicable.⁴⁹ These penal provisions are not deterrent enough.

Protection of Online Consumers

The online consumers include persons who purchases or uses, maintains, or disposes goods or services electronically with the aid of the internet.⁵⁰ Furthermore, the Act did not provide for the protection of consumers in electronic commercial transactions. This is contrary to the directive of the United Nations as prescribed in the UN Guidelines.⁵⁰ It is curious that a supreme law on competition and consumer protection issues in Nigeria has no provision for the protection of online consumers. The implication is that those categories of consumers will fall back on other sector specific laws for their protection hence the Act did not put them into contemplation.

Definition of 'Consumer'

The Act defined consumer to include any person: 'Who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any goods or articles for sale; or (b) to whom a service is rendered: The definition of 'consumer' under the Act did not envisage the possibility of consumers in the electronic/online media. This is a confirmation of the fact that electronic commerce was not contemplated by the Act. Although this definition captured both the product and service liability aspects of consumer protection, it did not capture 'consumers' that transact on online platforms. It also excluded consumers who are not individual person such as corporate bodies from the ambit of its definition of consumer.

6. Conclusion and Recommendations

The Federal Competition and Consumer Protection Commission Act (FCCPA) 2018 amongst other things repealed the Consumer Protection Council Act; dissolved the Consumer Protection Council (CPC) and established the Federal Competition and Consumer Protection Commission (FCCPC) in its stead. The FCCPA is an interwoven legislation encompassing competition law, consumer rights, consumer protection, product

⁴⁶ FCCPA section 156

⁴⁷ *INEC v Ogdadibo Local Government Ors* 2015 LPELR-24839 SC.

⁴⁸ Section 159

⁴⁹ *ibid.*

⁵⁰ Eze Uzoamaka Gladys "Legal Framework for the Protection of Online Products Consumers in Nigeria: *Nigerian Law Journal* Vol 21, No,1 2018, p27

⁵⁰ United Nations Conference on Trade and Development (UNCTAD) Geneva, 1996.

liability, misleading advertisement and other unfair trade practices. The Act is laudable in that it went a long way to bring to the limelight the need to enable competition as a veritable tool for the protection of Nigerian consumers. The Act pursuant to section 3 established the FCCPC with mandate to eliminate all forms of anti-competition agreements, unfair, restrictive and misleading marketing practices which are unconscionable. Furthermore, the Act also made provisions for consumer rights and their enforcement through the establishment of the Competition and Consumer Protection Tribunal ('the Tribunal') which has the jurisdiction to handle any issues that arises from the application of the Act. However, there are unsettled issues arising from the operation of Act, for instance, the supremacy provision under section 104 of the Act. Furthermore, the definition of 'consumer' under the Act is also narrow. It excluded individual online consumers and corporate consumers from its definition. The penalty provisions appeared not to be deterrent enough and the time limitation for bringing an action is also too short. The paper further observed that the penalty provisions under the Act lack sufficient deterrent value.

This paper recommends as follows. At the earliest opportunity of amendment, there is a need to streamline the limits of the powers of the Commission with respect to sector specific regulatory agencies. The term 'consumer' should be given a wider interpretation so as not to exclude important end users of products and services. The time limitation for action pursuant to the Act should be expanded to a reasonable period from the date of the accrual of the cause of action. It is further recommended that the penalty provisions of the Act should be reviewed upwards so as to increase their deterrent value.