

EXAMINATION OF THE LEGAL FRAMEWORK FOR COMPETITION AND CONSUMER PROTECTION IN NIGERIA\*

**Abstract**

Markets have been in existence all over the world for centuries as points of exchange for value. They represent a platform where the invisible hand can draw and design while humans 'look on'. Markets involve goods (and services) and those goods come from an antecedent process- production or manufacture by a firm. The firm is an important unit of economic analysis, in the sense that it supplies goods to individuals and the individuals in turn supply it with labour.<sup>1</sup> A market is an indispensable part of the economy but one that cannot be allowed to function without the appropriate amount and form of regulation by the Government. The theory of government intervention is premised on the idea that there is need to regulate the market by a party for efficiency and oversight, since, if the market is left unchecked, the consumers will not be adequately protected.<sup>2</sup> This study examines the attendant issues.

**Keywords:** Competition, Consumer Protection, Legal Framework, Nigeria

**1. Introduction**

Market Competition means the rivalry between companies selling similar products and services with the goal of achieving revenue, profit, and market share growth.<sup>3</sup> Market Competition is defined by Wikipedia as a condition where different economic firms seek to obtain a share of a limited good by varying the elements of the marketing mix: price, product, promotion and place. Competition causes commercial firms to develop new products, services and technologies, which would give consumers greater selection and better products. This invariably causes lower prices for the products, compared to what the price would be if there was no competition or lower competition.<sup>4</sup> Competition requires companies to act independently of each other, and allow the market forces (the invisible hand) to determine the price of goods.<sup>5</sup> The constitutional and legislative regulations that have established a competition and consumer protection law in Nigeria are as follows: Constitution of the Federal Republic of Nigeria, 1999 (As amended). And Federal Competition and Consumer Protection Act, 2018.

**2. The Legal Framework**

**Constitution of the Federal Republic of Nigeria 1999 (As Amended)**

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) is supreme and binds all persons, governments, authorities, institutions and the federating units in Nigeria. Section 1 of the CFRN, 1999 provides for the supremacy of the Constitution. In the case of *Abacha v. Fawehinmi*.<sup>6</sup> M.O. Kekere-Ekun, J.S.C (as he then was) held that the Constitution is the supreme law of the land. It is the *grundnorm* i.e it is the basic law from which all other laws of the society derive their validity.

The case for government intervention in the market in Nigeria has its legal backing in the CFRN, 1999 (as amended). The constitution provides for the economic, social and cultural rights in grand and lofty terms in the form of fundamental Objectives and Directive Principles of State Policy in Chapter II of the constitution. Section 16 of the Constitution provides for the economic objectives of state policy. As the Nigerian government increasingly divests its interests in public assets and deregulate the entry and exit of private sector players in critical sectors of the economy, it becomes more imperative for a legal framework to be put in place: regulating activities of large corporations and big investor groups capable of using their vantage positions to crowd out small and medium-sized entrepreneurs, thereby establishing monopolies to the disadvantage of consumers and the utmost detriment of the overall economy.<sup>7</sup> Suffice to say that with the growth of business enterprises, it has become crucial to regulate the methods of doing business for various reasons, and in a free market economy, inclusive development and economic growth cannot occur in a fair and orderly environment if there are no effective and appropriate Competition and Antitrust Laws.<sup>8</sup>

**Federal Competition and Consumer Protection Act 2018 (FCCPA)**

Competition law is the legal framework put in place to promote or maintain market competition by regulating anti-competitive conduct by companies or other market operators.<sup>9</sup> Competition law is that area of law that regulates business practices so that national or regional markets are not dominated by certain big players, but rather, it makes the market open

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<sup>1</sup> A. Adeniran, 'Competition Policy and Nigerian Commercial Governance' <<https://cppresearch.org/nu-en-pl/competition-policy-nigerian-commercial-governance>> Accessed on 25<sup>th</sup> February, 2025

<sup>2</sup> Ibid

<sup>3</sup> What is competition in Marketing. <https://study.com>academy>> accessed on 29<sup>th</sup> January, 2025

<sup>4</sup> 'Competition (Economics)' <<https://en.m.wikipedia.org>> accessed 29<sup>th</sup> January, 2025

<sup>5</sup> Anthony and Osatahan, Op. cit, at 94

<sup>6</sup> (2000) 6 N.W.L.R (Part 660) 228

<sup>7</sup> Banwo & Igadalo, 'Why Nigeria is Ripe for a Competition Law' <[www.banwo&igadalo.com/assets/grey.../cc24f356e22d4ef31a5aeafb789b5a4c.pdf](http://www.banwo&igadalo.com/assets/grey.../cc24f356e22d4ef31a5aeafb789b5a4c.pdf)> Accessed on 26<sup>th</sup> February, 2025.

<sup>8</sup> Ibid

<sup>9</sup> Anthony and Osatahan, op. cit., at 94.

to all players on a somewhat level playing field.<sup>10</sup> Competition law, lies at the core of the cluster of laws and regulations that cumulatively sustain the free market system, informally defined, competition law is a set of rules (statutory and common law) used by governments, individuals and firms to evaluate and address both public and private conduct that causes distortion to the free flow of competitive market interaction.<sup>11</sup> Competition Law has also been defined as ‘the law that aims to promote healthy competition. It bans anti-competitive agreements between firms such as agreements to fix prices or to carve up markets, and it makes it illegal for businesses to abuse a dominant market position’.<sup>12</sup> As a consequence, a harmonized system of competition laws is a neoteric development in Nigeria. A systemized legal framework was birthed in Nigeria with the signing into law of the FCCPA, 2018 by President Muhammadu Buhari in February, 2019. Unlike in other advanced and some developing jurisdictions where a Competition Commission exists for administering a distinct Anti-Trust Law for competition issues arising in any segment of the economy, what was obtainable in Nigeria is a sector-based approach to competition whereby the laws regulating certain industries contain provisions regulating competition as far as it relates to the specific industries. Specifically, the Investments and Securities Act 2007; the Nigerian Communications Act 2003; the Electric Power Sector Reform Act 2005; the Civil Aviation Act 2006 and so on contain provisions dealing with competition as it relates to matters within the purview of such laws.<sup>13</sup>

It is worth noting that these laws facilitate private sector participation and opened the door to increased economic competitiveness among players. However, there were genuine concerns as to the mechanism for promoting healthy competition among the market players. It therefore became pertinent that a specific Competition Law (different from the sector-specific laws and which should be administered by a distinct body), be enacted to govern all trade and business practices with the aim of prohibiting anti-competitive practices between firms, such as agreements to fix prices or terms of trade or to carve up markets or customers: discriminate between customers without legitimate basis and; prevent, restrict or distort competition as well as abuse a dominant market position.<sup>14</sup>

The FCCPA, 2018 combines the regulation of Competition and Consumer Protection. Competition law is not strictly about consumer protection, or trading standards, although both may benefit from the application of competition law. It is therefore a common practice in most jurisdictions to vest in only one agency, the powers to regulate both Competition and Consumer Protection.<sup>15</sup> The FCCPA, 2018 repeals the Consumer Protection Act, Cap C25, LFN, 2004 and establishes the FCCPC and the CCPT; for the development and promotion of fair, efficient and competitive markets in the Nigerian economy, facilitate access by all citizens to safe products, secure the protection of rights for all consumers in Nigeria and for other related matters. The objectives of the Act are reflected in the Explanatory Memorandum, in the Preamble, and under Section 1 of the Act which are to: a) promote and maintain competitive markets in the Nigerian economy; b) promote economic efficiency; c) protect and promote the interests and welfare of consumers by providing consumers with competitive prices and product choices; d) prohibit restrictive business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria; and contribute to the sustainable development of the Nigerian economy. The Act has established the FCCPC, and it provides for the supremacy of the Act.<sup>16</sup> Consequently, the FCCPC has superior powers over all other regulatory bodies created under any laws, save for the Constitution of the Federal Republic of Nigeria, in all matters relating to competition and consumer protection. The FCCPA, 2018 regulates all competition-related issues which are of serious concern to market players such as; restrictive agreements (restraint of trade), monopoly, abuse of a dominant position, price regulation, mergers, business combination and the issues concerning consumer rights. Anti-competitive offences are also created; such as price-fixing, bid-rigging, giving of false or misleading information and failure to attend or give evidence when summoned and appropriate sanctions and penalties are specified. The FCCPA, 2018 also establishes the CCPT which is bestowed with the powers, authority and jurisdiction to adjudicate: over conducts prohibited under the Act. The CCPT shall hear appeals from or review any decision of the FCCPC made either directly on any issue or indirectly on any decision from the exercise of the powers of the any sector specific regulatory authority in a regulated industry, in respect of competition and consumer protection matters. The appeals from the decision of the CCPT to the Court of Appeal. The Extra-territorial application of the FCCPA, 2018: The term extraterritoriality is normally used to describe the exercise by a sovereign state of jurisdiction over foreigners in respect of acts done outside the borders of the state. One could say that in a very broad sense the EU applies its competition rules in an extra-territorial manner when it makes use of the ‘effects’ doctrine.<sup>17</sup> The import of Section 2 of the Act is that the FCCPA, 2018 has extra-territorial application. It provides that Act applies to all undertakings and commercial activities within, or having effect in Nigeria (underlining mine for emphasis). ‘... or having effect in Nigeria’ suggest that the Act has extraterritorial application.

Extraterritorial application of competition law refers to the situation where national authorities of one state apply domestic competition law on the alleged illegal activities conducted outside the territory of the state by foreigners. However, such

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<sup>10</sup> F. Temisin, ‘Competition Law and Policy as a Viable Tool for the Economic Development in the Nigerian legal system: A Comparative analysis’; Etomi G., *Commercial Law in Nigeria*; Text, Cases and Materials. Mill Professional Publishers Ltd. 2014 at p. 476 <<https://www.academia.edu/37282514>> accessed 23<sup>rd</sup> February, 2025

<sup>11</sup> Dimgba, Op. Cit., at 120

<sup>12</sup> A quick guide to competition and consumer protection laws that affect your business <<https://assetestablishing.service.gov.uk>> accessed 29<sup>th</sup> January, 2025

<sup>13</sup> Banwo & Igalalo, op. cit., at 157

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Section 1 of the FCCPA, 2018

<sup>17</sup> <<https://www.concurrences.com/en/glossary/Extra-territoriality>> accessed 24<sup>th</sup> January, 2025

application falls outside of the traditional grounds of jurisdiction and creates potential risk of being in breach of principles of sovereignty and non-interference.<sup>18</sup> The purpose of the phrase ‘... or having effect in Nigeria’ in Section 2 of the Act is that Nigeria can apply its Competition Law within the jurisdiction of another country where the business practices of firm(s) in one country had an effect in Nigeria and which Nigeria considers to be in violation of its laws. Here is an example to illustrate and explain the extraterritorial application of competition laws. A merger between two competing firms in one country resulting in substantial lessening of competition in the markets of another country. This situation can arise where the merging companies are primarily export-oriented and account for the bulk of the market in the importing country.<sup>19</sup>

The EU applies its competition rules in an extraterritorial manner. Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits any agreements or cartels between Member States that could disrupt free competition within the internal market. It was introduced as part of the EU's general anti-trust rules to prohibit 'any agreement or concerted practice which is made between two or more undertakings, which may affect trade between Member States and which has the object or effect of preventing, restricting or distorting competition.'<sup>20</sup> It was pointed out that; 'Article 101 is to protect effective competition by ensuring that markets remain open and competitive.'<sup>21</sup> Any activity that would be likely to distort competition with the EU is therefore, prohibited by this Article even if the agreement is signed outside of the EU since Article 101 effects all trade that would have an impact on the internal market. Whilst Article 101 only impacts trade between Member States, the scope of this Article is rather wide since it covers any trade that would be likely to have an impact upon the free competition of the internal market. Therefore, if there is a possibility of trade moving across borders then this will be sufficient enough to fall within the ambit of Article 101.<sup>22</sup>

Article 101 prohibits anticompetitive agreements with a distortive ‘object or effect’ ‘within the internal market’. A perfect example of the exercise of the EU's extraterritorial powers was in the Boeing/McDonnell Douglas merger case.<sup>23</sup> on the 01/07/97 the U.S Federal Trade Commission (FTC) announced its approval of the merger of Boeing Corporation and McDonnell Douglas Corporation. The union of the two aircraft manufacturers reduced the number of competitors building large commercial jet airliners to just two i.e. Boeing and Airbus Industries. Douglas Aircraft Company (DAC) was no longer an effective player in the market; the FTC would have little impact on competition. The FTC held that the merger will not substantially lessen competition or tend to create a monopoly. Upon the merger, Boeing was to have more than 70% of the market for large airlines. However, the European Community invoking its extraterritorial jurisdiction under the EU Competition Laws refused to approve the merger without certain concessions from Boeing. The U.S tried to persuade the EC to approve the merger on terms favorable to Boeing but the EC, which under its Merger Regulation<sup>24</sup> can impose a fine of 10% of a company's worldwide turnover for the violation of the regulation.

Although numerous scholars have analysed extraterritoriality in competition law in the United States and the European Union, little work has been done on this issue from the perspective of developing countries. It is unclear to what extent extraterritoriality is recognized, embraced or embedded in competition laws and policy of developing countries. If recognized, it is largely unknown in what circumstances such domestic legislation can be applied extraterritorially and on what basis. The decisional practice of competition agencies and courts in developing countries on this matter is largely unknown. Data on this issue has not been collected and studied in a comprehensive manner. The developing world's growing significance, increasing interconnectedness and lack of access to multilateral institutions or instruments addressing transnational competitive harm, emphasize the need to better understand developing countries' rules and policies.<sup>25</sup>

### **3. Anti-Competition Provisions**

The FCCPA, 2018 in the main, aims at preventing practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade. The Explanatory Memorandum to the Act states that:

This Act establishes the Federal Competition and Consumer Protection Commission and the Competition 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.

Section 1 of the Act provides the objectives of the Act, to wit:

- a. To promote and maintain competitive markets in the Nigerian economy,
- b. Promote economic efficiency,

<sup>18</sup>J. H. J. Bourgeois, *Assessing Extraterritorial Application of EU Competition Law* <[https://lib.ugent.be/fulltext/RUG01/002/349/640/RUG01-002349640\\_2017\\_0001\\_AC.pdf](https://lib.ugent.be/fulltext/RUG01/002/349/640/RUG01-002349640_2017_0001_AC.pdf)> accessed 21<sup>st</sup> April, 2025

<sup>19</sup> *Ibid*

<sup>20</sup>E. Ida, ‘EU Competition Law and Liberal Professions: An Uneasy Relationship?’ (Martinus Nijhoff Publishing)496: <https://www.lawteacher.net/acts/article-101-tfeu.php>> accessed 28<sup>th</sup> February, 2025

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

<sup>25</sup>‘Developing Countries’ Experience with extraterritoriality in Competition Law’ <<https://unctad.org/en/page/DITC/CompetitionLaw/ResearchPartnership/extraterritoriality-in-competition-law.aspx>> accessed 28<sup>th</sup> February, 2025

- c. Protect and promote the interests and welfare of consumers by providing consumers with wider variety of quality products at competitive prices,
- d. Prohibit restrictive or unfair business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria and
- e. Contribute to the sustainable development of the economy.

Suffice to say that the entire Act is geared to achieving this objective, it identifies and defines anti-competitive conduct. It establishes an investigatory mechanism for revealing prohibited activities and provides an extensive range of criminal and administrative redress against companies engaging in behavior that tends to reduce competition.<sup>26</sup>

The anti-competitive provisions in the FCCPA, 2018 are contained in-

1. Part VII - Restrictive Agreements (Sections 59-69);
2. Part IX - Abuse of a Dominant Position (Sections 70-75):
3. Part X - Monopoly (Sections 76-87):
4. Part XI - Price Regulation (Sections 88-91):
5. Part XII - Mergers (Sections 92-103);
6. Part XIII - Regulated Industries (Sections 104-106):
7. Part XIV - Specific Offences Against Competition (Sections 107-113);

Each of the anti-competitive provisions shall be examined subsequently.

### **Restrictive Agreements (PART VII)**

Restrictive Agreements are anti-competitive agreements decided upon between two bodies with the intent to distort the competition within the market, through either a written agreement or an oral agreement.<sup>27</sup> Companies can distort competition by cooperating with competitors. fixing prices or dividing the market up so that each one has a monopoly in part of the market. Anti-competitive agreements can be open or secret (e.g, cartels). They may be written down (either as an agreement between companies or in the decisions or rules of professional associations) or be, less formal agreements.<sup>28</sup> The FCCPA, 2018 prohibits an undertaking or a person or any association from entering into anti-competitive agreements, such agreements are declared to be void. Section 59 of the Act makes void and of no effect 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, an undertaking or association of undertakings shall not request another undertaking or association of undertakings to refuse to sell or purchase any goods or services with the intention of harming certain undertakings.<sup>29</sup> The prohibited acts include directly or indirectly fixing a purchase or selling price of goods or services; dividing markets by allocating customers, suppliers, territories or specific types of goods or services, limiting or controlling production or distribution of any goods and services. markets, technical development or investment; engaging in collusive tendering, or making a conclusion of an agreement subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such agreement. However, some of the prohibited acts may be approved by the FCCPC where it is satisfied that the agreement or decision 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; and does not eliminate competition.<sup>30</sup>

Furthermore, the FCCPA provides that any term or condition of an agreement for the sale of any goods or services is void to the extent that it purports to establish minimum prices to be charged on the resale of goods and services in Nigeria. However, the Act does not preclude an undertaking or association, or person acting on the undertaking's behalf, from notifying the dealers or otherwise publishing prices recommended as appropriate for the resale of goods or services supplied or to be supplied by that undertaking.<sup>31</sup> The above provision shall apply to patented goods, including goods made by a patented process.<sup>32</sup> Where the FCCPC determines that an agreement or decision contravenes the provisions of the Act it shall serve an order on the parties concerned stating the reasons for its decision and requiring the parties to cease their anti-competitive practices. Also, any person who has suffered a loss as a result of any restrictive agreement or decision may make a complaint to the FOCP and it may, if it is satisfied that the circumstances of the case so warrant, exercise any of the powers granted to it under the Act as it deems fit, including making interim orders mandating the cessation of the restrictive agreement pending the conclusion of investigation. Any person who may have suffered loss as a result of such agreement or not satisfied with the decision of the FCCPC may apply to the CCPT for review.<sup>33</sup> The exceptions to restrictive agreements are listed in Section 68 of the Act. The FCCPC shall from time to time, publish a list of professional bodies and may subject to the regulation of professional bodies, issue guidelines for the application of certain provisions of the Act to supply of

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<sup>26</sup> A. Singh and H. Kaur, *Competition Law* (Eastern Book Company, 2012)

<sup>27</sup> M. Rennie, 'what are Restrictive Agreement?' (2018) <<https://www.delta-net.com>> faqs

<sup>28</sup> Delivering for Consumers. 'Anti-Competitive Agreements' (2012) [https://ee.europa.eu/agreements\\_en](https://ee.europa.eu/agreements_en)> accessed 30<sup>th</sup> January, 2025

<sup>29</sup> Section 61 of the Act.

<sup>30</sup> Section 60 of the FCCPA, 2018

<sup>31</sup> Section 63 of the FCCPA, 2018

<sup>32</sup> Section 64 of the FCCPA, 2018

<sup>33</sup> Section 67 of the FCCPA, 2018

professional services or conduct of business by members of such professional association.<sup>34</sup> The Act provides for the penalties for a breach of the prohibition of agreements in restraint of trade or competition.<sup>35</sup>

### **Abuse of a Dominant Position (PART IX)**

A dominant position is being created when one or more undertakings in a particular market use their position in that market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and consumers.<sup>36</sup> Dominance relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.<sup>37</sup> An undertaking is considered to be in a dominant position if it is able to act without taking account of the reaction of its customers, consumers or competitors.<sup>38</sup> Therefore, a dominant position exists in a relevant market where an undertaking enjoys a position of economic strength enabling it to prevent effective competition being maintained on a relevant market and having the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers.<sup>39</sup> The criteria for identifying the relevant market includes the geographical boundaries that identify groups of sellers and buyers of goods and services within which competition is likely to be restrained; goods and services which are regarded as interchangeable or substitutable by the consumer by reason of their characteristics, prices and the intended use; and suppliers to which consumers may turn to in the short term, if the abuse of dominance leads to a significant increase in price or to other detrimental effect upon the consumer.<sup>40</sup>

An abuse of dominant position occurs where an undertaking(s) in a dominant position charges an excessive price to the detriment of consumers, refuses to give a competitor access to an essential facility when it is economically feasible to do so, engages in an exclusionary act, if the anti-competitive effect of that act outweighs its technological efficiency and other pro-competitive gains, engages in any of the following exclusionary acts:

- i. Requiring or inducing a supplier or customer not to deal with a competitor.
- ii. Refusing to supply scarce goods to a competitor when supplying those goods is economically feasible,
- iii. Selling goods or services on condition that the buyer purchases separate goods and services unrelated to the object of the contract, or forcing a buyer to accept a condition unrelated to the object of a contract.
- iv. Selling goods or services below their marginal or average cost, or
- v. Buying up a scarce supply of intermediate goods or resources required by a competitor.<sup>41</sup>

Other factors to be taken into account in assessing market dominance include the market share of the undertaking(s) concerned in the relevant market; its, or their financial power, access to supplies or markets, links with other undertakings, ability to shift supply or demand to other goods or services: legal or factual barriers to the market entry by other undertakings; actual or potential competition by undertakings established within or outside the scope of application of the Act and the ability of the opposite market side to resort to other undertakings.<sup>42</sup> It is worth noting that an undertaking shall not be treated as abusing a dominant position if its conduct contributes to the improvement of production or distribution of goods and services or the promotion of technological or economic progress, while allowing consumers a fair share of resulting benefit, is indispensable to the attainment of the objectives aforementioned, and does not afford the undertaking the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.<sup>43</sup> Sections 73 and 74 of the Act outlines the consequences and penalties of the abuse of a dominant position<sup>44</sup> and Section 75 for instances where the said punishment or penalties shall be suspended by the FCCPC.

### **Monopoly (PART X)**

Monopoly is defined as a market structure characterized by a single seller, selling a unique product in the market. In a monopoly market, the seller faces no competition, as he is the sole seller of goods with no close substitute.<sup>45</sup> Characteristics associated with a monopoly market make the single seller the market controller as well as the price maker. He enjoys the power of setting the price for his goods.<sup>46</sup> Where it appears to the FCCPC that there are grounds for believing that a monopoly situation may exist in relation to the production and distribution of goods and services of any description, or in relation to exports of goods and services of any description from Nigeria, it shall cause an investigation to be held into a particular sector of the economy or into a particular type of agreements across various sectors to determine the extent of the situation in relation to the market.<sup>47</sup> The FCCPC shall determine a monopoly situation to exist in relation to the supply of goods and

<sup>34</sup> Section 68(2) (3) of the FCCPA, 2018

<sup>35</sup> Section 69 of the FCCPA, 2018

<sup>36</sup> Shilpi, 'Abuse of Dominant Position' <[www.legalservicesindia.com/article](http://www.legalservicesindia.com/article)> accessed 29<sup>th</sup> January, 2025

<sup>37</sup> Ibid

<sup>38</sup> Section 70 of the FCCPA, 2018

<sup>39</sup> Section 70(2) of the FCCPA, 2018

<sup>40</sup> Section 71 of the FCCPA, 2018

<sup>41</sup> Section 72 of the FCCPA, 2018

<sup>42</sup> Section 72(2) of the FCCPA, 2018

<sup>43</sup> Section 72(3) of the FCCPA, 2018

<sup>44</sup> Section 74(2) of the FCCPA, 2018

<sup>45</sup> 'Definition of Monopoly' <<https://economictimes.indiatimes.com>> Accessed 29<sup>th</sup> January, 2020.

<sup>46</sup> Ibid.

<sup>47</sup> Section 76 of the FCCPA, 2018.

services of any description; or import and export of goods and services of any description from Nigeria, to the extent it has an effect on competition in a market in Nigeria.<sup>48</sup> The FCCPC in conducting a monopoly investigation may require any person or body corporate to furnish it with any information as the FCCPC may deem necessary, and the FCCPC is required to serve a notice in writing on the person or body corporate required to provide such information.<sup>49</sup> There are penalties for refusal to furnish information to the FCCPC.<sup>50</sup> Furthermore, where a person knowingly furnishes the FCCPC with false information, such person is liable to penalties.<sup>51</sup> Any person or body corporate may make a request for a monopoly investigation to the FCCPC, and such request shall be accompanied by an affidavit deposing to the facts giving rise to the request. A monopoly investigation may also be referred to the FCCPC by a court, agency of the Government or any State or Local Government of the Federation.<sup>52</sup> Upon a request for investigation or referral, the FCCPC may limit its report to whether a monopoly situation exists in relation to the matters set out in the request or reference and where it is determined that a monopoly situation exists, which provision of the Act is applicable, and the undertaking(s) in whose favour the monopoly situation exists; the acts taken by way of anti-competition practices and any act or omission on the part of the undertaking(s) concerned attributable to the existence of the monopoly situation.<sup>53</sup> Upon investigation, the FCCPC shall furnish to the CCPT reports on completed monopoly investigations.<sup>54</sup> Section 85 of the Act provides for the time frame for a report on a monopoly investigation to be made by the FCCPC. Pursuant to the findings of the FCCPC as contained in the Report, the CCPT may exercise any of its powers under the Act or make orders for the purpose of remedying or preventing the adverse effects specified in the Report.<sup>55</sup> The orders made by the CCPT shall have effect so as to apply to any undertaking in relation to its conduct outside Nigeria, unless that undertaking is a citizen of Nigeria; or a body corporate incorporated under the CAMA and carrying on business in Nigeria, either alone or in a partnership with one or more other undertakings.<sup>56</sup> An Order made by the CCPT may be extended so as to prohibit the carrying out of any agreement already in existence on the date on which the order is made.<sup>57</sup>

### **Price Regulation (PART XI)**

Price Regulation refers to Government oversight or direct government control over the price charged in a market, especially by a firm with market control. Price regulation is most commonly used for public utilities characterized as natural monopolies. If allowed to maximize profit without restraint, the price charged would exceed marginal cost and production would be inefficient. However, because such firms, as public utilities, produce output that is deemed essential or critical for the public, government steps in to regulate or control the price. The two most common methods of price regulation are marginal-cost pricing and average-cost pricing.<sup>58</sup>

### **Mergers (PART XII)**

The merger provisions are covered by Sections 92-103 of the FCCPA, 2018. Previously, the ISA, 2007 empowered the SEC to regulate mergers and acquisitions in Nigeria. However, Section 105 of the FCCPA has now repealed Sections 118-128 of the ISA, 2007, excluding Section 121(i)(d) which is retained allowing SEC to determine whether all shareholders are fairly, equitably and similarly treated and given sufficient information with regards to mergers. The role of SEC in relation to mergers will now be in the exercise of its primary function as the regulator of the capital market. The regulatory purview of the SEC will be restricted to considering the fairness among shareholders in mergers and acquisitions by or involving public companies.<sup>59</sup> By Section 92 of the FCCPA, a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking and this may be achieved through the purchase or lease of the shares, an interest or assets of the undertaking in question, the amalgamation or other combination with the other undertaking in question or a joint venture. The idea of 'Control' is described under Section 92(2) & (3) of the FCCPA. An undertaking has control over the business of another undertaking if it: beneficially owns more than one half of the issued share capital; is entitled to cast a majority of the votes; and/or is able to appoint or to veto the appointment of majority of the directors of the undertaking; is a holding company, and the undertaking is a subsidiary of the company; where the undertaking is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or charge the majority of the beneficiaries of the trust; has the ability to materially influence the policy of the undertaking.<sup>60</sup>

A 'small merger' is defined as a merger with a value at or below the threshold stipulated by the FCCPC by regulations and a 'large merger' as a merger with value above the threshold stipulated by the FCCPC by regulations.<sup>61</sup> The FCCPC is

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<sup>48</sup> Section 77 of the FCCPA, 2018.

<sup>49</sup> Section 78 and 79 of the FCCPA, 2018

<sup>50</sup> Section 80(1) of the FCCPA, 2018

<sup>51</sup> Section 80(2) of the FCCPA, 2018

<sup>52</sup> Section 82(1) of the FCCPA, 2018

<sup>53</sup> Section 82(4) of the FCCPA, 2018

<sup>54</sup> Section 84(1) of the FCCPA, 2018

<sup>55</sup> Section 86 of the FCCPA, 2018

<sup>56</sup> Section 87(3) of the FCCPA, 2018

<sup>57</sup> Section 87(4) of the FCCPA, 2018

<sup>58</sup> <<https://glossary.econguru.com/economic-term/price-regulation>> Accessed on 19<sup>th</sup> March, 2025

<sup>59</sup> Punuka Attorneys & Solicitors, 'Nigeria: Merger Control 2020' <<https://iclq.com/practice-areas/mergers-control-laws-and-regulations/nigeria>> Accessed 20<sup>th</sup> March, 2025

<sup>60</sup> Section 92(2) of the FCCPA, 2018

<sup>61</sup> Section 92(4) of the FCCPA, 2018

empowered to make regulations in determining the threshold for small and large mergers and the method for calculating the annual turnover to be applied in relation to the threshold.<sup>62</sup> It is worthy of note that while the SEC and ISA determined threshold based on assets and/or turnover, the FCCPA is based solely on turnover.<sup>63</sup> Section 93 also provides that small mergers, and large mergers are subject to notification and approval by the FCCPC. When considering a merger or a proposed merger, the FCCPC shall determine whether or not the merger is likely to substantially prevent or lessen competition and/or cannot be justified on substantial public interest grounds.<sup>64</sup> A party to a large merger shall notify the FCCPC of the merger in the prescribed manner and form, and the notification of the merger shall be published within five (5) business days after receipt by the FCCPC. The FCCPC has the power to invalidate or void a merger where the parties in a large merger fail to notify the FCCPC.<sup>65</sup> The FCCPC also has the power to impose administrative fines on parties for breach of the provisions of the FCCPA.<sup>66</sup> The FCCPA provides the penalties for an undertaking that violates the provision this section.<sup>67</sup> Howbeit, the FCCPC is yet to make any regulation on the imposition of the sanctions and payment of administrative fees and lines for other violations, though, existing SEC regulations will continue to apply.<sup>68</sup>

The FCCPC may direct any of its officers to investigate a merger.<sup>69</sup> The FCCPC also has the discretion to revoke its own decision approving a proposed merger or may conditionally approve small or large merger as the case may be.<sup>70</sup> A party to a merger aggrieved by the decision of the FCCPC on a merger may file an application for review to the CCPT, and where it relates to the decision of the CCPT, to the Court of Appeal.<sup>71</sup>

### **Regulated Industries (PART XIII)**

Section 104 of the FCCPA, 2018 provides that save for the CFRN, 1999 (as amended), the provisions of the FCCPA shall override the provisions of any other law in all matters relating to competition and consumer protection in Nigeria, Section 105 of the FCCPA identifies the industries to which this section applies, Where the Act applies to an industry or sector of an industry that is subject to the jurisdiction of another government agency, in matters or conducts which affect competition and consumer protection, the FCCPA shall be construed as establishing a concurrent jurisdiction between the FCCPC and the relevant government agency, with the FCCPC having precedence over and above the said agency.<sup>72</sup> The FCCPC must ensure that it negotiates agreements with all government agencies whose mandate includes the enforcement of competition and consumer protection for the purpose of coordinating and harmonizing the exercise of jurisdiction over competition and consumer protection matters within the relevant industry or sector to ensure uniformity with the provisions of the FCCPA.<sup>73</sup> The relevant government agency is also mandated to commence negotiation of agreements with the FCCPA and conclude within a year to determine who may exercise jurisdiction by way of such agreement.<sup>74</sup> Where the negotiations are inconclusive, the areas of disagreement shall be referred to the Attorney-General and Minister of Justice in case of a large merger, for advise on public interest grounds.<sup>75</sup>

### **Specific Offences against Competition (PART XIV)**

The offences against competition under Part XIV include Price-fixing, Conspiracy, Bid-rigging, giving of false or misleading information.<sup>76</sup>

**Price-fixing<sup>77</sup>:** The price-fixing is an agreement (written, verbal or inferred from conduct) among competitors that raises lowers, or stabilizes prices or competitive terms.<sup>78</sup> An undertaking shall not directly or indirectly by agreement, threat, promise or any other means, attempt to influence or conspire to influence upward or discourage the reduction of, the price at which any other undertaking supplies, offers to supply or advertises any goods or services; or refuse to supply goods and services to or otherwise discriminate against any undertaking because of the pricing policy of that undertaking.<sup>79</sup> Howbeit, this does not apply to undertakings that have a principal - agent relationship.<sup>80</sup> Violators of the provisions of this section shall be liable to punishments.<sup>81</sup>

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<sup>62</sup> Section 93(2) of the FCCPA, 2018

<sup>63</sup> Dosunmu and Mbakogu, *op. cit.*, at 109

<sup>64</sup> Section 94 of the FCCPA.

<sup>65</sup> Section 96 of the FCCPA.

<sup>66</sup> Punuka Attorneys & Solicitors, *op. cit.*, at 210

<sup>67</sup> Section 96(7) of the FCCPA, 2018

<sup>68</sup> *Ibid*

<sup>69</sup> Section 99 of the FCCPA, 2018

<sup>70</sup> Section 100 of the FCCPA, 2018

<sup>71</sup> Section 103 of the FCCPA, 2018

<sup>72</sup> Section 105(2) of the FCCPA, 2018

<sup>73</sup> Section 105(4) of the FCCPA, 2018

<sup>74</sup> Section 105(5) of the FCCPA, 2018

<sup>75</sup> Section 105(7) of the FCCPA, 2018

<sup>76</sup> Section 107 – 113 of the FCCPA, 2018

<sup>77</sup> Section 107 of the FCCPA, 2018

<sup>78</sup> Concurrences antitrust publications and events, 'Price-fixing Agreement' <https://www.concurrences.com>> Accessed 6<sup>th</sup> June, 2025

<sup>79</sup> Section 107 of the FCCPA, 2018

<sup>80</sup> Section 107 (2) of the FCCPA, 2018

<sup>81</sup> Section 107 (4) of the FCCPA, 2018

**Conspiracy**<sup>82</sup>: Undertakings are prohibited from conspiring, combining, agreeing or arranging with another undertaking to limit unduly the facilities for transporting, producing, manufacturing, storing or dealing in or supplying any goods or services; prevent, limit or reduce unduly, the manufacture or production of any goods or services or to unreasonably enhance the price of any goods or services; unduly reduce competition in the production, manufacture, purchase, barter, sale, supply, rental or transportation of any goods or services or in the price of personal or property insurance or otherwise unduly restrain or injure competition.<sup>83</sup> This section allows arrangements which relate only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public in the practice of a trade or profession relating to service or in the collection and dissemination of information relating to the service.<sup>84</sup> Section 108(3) prescribes punishments for the violators of this section.

**Bid-rigging**<sup>85</sup>: No two or more undertakings shall enter into an agreement whereby one or more of them agree not to submit a bid in response to a call or request for bids or tenders: or as bidders or tenderers, they submit, in response to a call or request, bids or tenders that are arrived at by agreement between or among themselves. This section does not apply to agreements entered into by undertakings who are affiliates.<sup>86</sup> Offenders under this Act shall be punished under section 109 (3) to Section 113 of the FCCPA. Take note that the FCCPC may prosecute or refer violations of criminal offences created under the Act to the office of the Attorney-General of the Federation and Minister of Justice for prosecution and imprisonment.<sup>87</sup>

#### **4. Consumer Rights (PART XV)**

Part XV of the FCCPA provides for the rights of consumers to wit:

- a. Right to information in a plain and understandable language;<sup>88</sup>
- b. Right to disclosure of price of goods and services;<sup>89</sup>
- c. Right to product labelling and trade descriptions of goods;<sup>90</sup>
- d. The right to disclosure of re-conditioned or second-hand goods;<sup>91</sup>
- e. Right to have access to sales record;<sup>92</sup>
- f. Right to select suppliers of goods and services;<sup>93</sup>
- g. Consumer's right to cancel advance reservation, booking or order;<sup>94</sup>
- h. Right to choose or examine goods;<sup>95</sup>
- i. Right to return unsafe or defective goods;<sup>96</sup>
- j. Right to fair general standards for marketing of good and services;<sup>97</sup>
- k. Right to fair dealing;<sup>98</sup>
- l. Right to fair representation test and publication testimonials;<sup>99</sup>
- m. Right to fair, reasonable or just contract terms for the supply of goods and services;<sup>100</sup>
- n. Right pertaining to quality and safety of goods and services (timely performance and goods free of defects);<sup>101</sup>
- o. Right to safe, good quality goods. Goods that are reasonably suitable for the purposes for which they are generally intended, good quality goods and in good working order free of defects.<sup>102</sup> There is an implied warranty of quality contemplated under this section. Within 3 months after the delivery of any goods to a consumer, the consumer may return the goods to the undertaking that supplied those goods, without penalty and at the undertaking's risk and expense, if the goods fail to satisfy the requirements and standards contemplated under this section of the Act, and the undertaking shall either repair or replace the failed, unsafe or defective goods or refund to the consumer the price paid by the consumer for the goods.<sup>103</sup>

The FCCPC shall promote safety monitoring and recall of goods: it shall promote the development, adoption and application of industry-wide codes of practice providing for effective and efficient systems to receive notice of consumer complaints or

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<sup>82</sup> Section 108 of the FCCPA, 2018

<sup>83</sup> Section 108 (1) of the FCCPA

<sup>84</sup> Section 108 (2) of the FCCPA, 2018

<sup>85</sup> Section 109 of the FCCPA, 2018

<sup>86</sup> Section 109 (1) of the FCCPA, 2018

<sup>87</sup> Section 113(2) of the FCCPA, 2018

<sup>88</sup> Section 114 of the FCCPA, 2018

<sup>89</sup> Section 115 of the FCCPA, 2018

<sup>90</sup> Section 116 of the FCCPA, 2018

<sup>91</sup> Section 117 of the FCCPA, 2018

<sup>92</sup> Section 118 of the FCCPA, 2018

<sup>93</sup> Section 119 of the FCCPA, 2018

<sup>94</sup> Section 120 of the FCCPA, 2018

<sup>95</sup> Section 121 of the FCCPA, 2018

<sup>96</sup> Section 122 of the FCCPA, 2018

<sup>97</sup> Section 123 of the FCCPA, 2018

<sup>98</sup> Section 124 of the FCCPA, 2018

<sup>99</sup> Section 126 of the FCCPA, 2018

<sup>100</sup> Section 127 of the FCCPA, 2018

<sup>101</sup> Section 130 of the FCCPA, 2018

<sup>102</sup> Section 131 of the FCCPA, 2018

<sup>103</sup> Section 132 of the FCCPA, 2018

reports of product failures, defects or hazards; the return of any goods because of a failure, defect or hazard personal injury, illness or damage to property caused wholly or partially as a result of a product failure, defect or hazard; monitor the sources of information and analyses the information received with the object of detecting or identifying any previously undetected or unrecognized potential risk to the public from the use of or exposure to those goods: conduct investigations into the nature, causes, extent and degree of the risk to the public; notify consumers of the nature, causes, extent and degree of the risk pertaining to those goods; and if particular goods are unsafe, recall those goods for repair or replacement or refund.<sup>104</sup>

### **5. Duties of Manufacturers, Importers, Distributors and Suppliers of Goods and Services (PART XVI)**

The duties provided under Part XVI include the duty to label goods properly in a manner that will be easily traceable to the manufacturer, importer or distributor<sup>105</sup> and a duty to withdraw hazardous goods from the market.<sup>106</sup> There are liabilities imposed by the FCCPA for the supply of defective goods, liability for the breach of implied obligations by law and liability for misrepresentation.<sup>107</sup> The Act prevents the exclusion or restriction of any liability; making any liability or its enforcement subject to restrictive or onerous conditions; excluding or restricting any right or remedy in respect of the liability or subjecting a person to any prejudice in consequence of the person pursuing any such right or remedy; and excluding or restricting rules of evidence or procedure. However, an agreement in writing to submit present or future differences to arbitration is not to be treated as excluding or restricting any liability.<sup>108</sup> Where it is alleged that goods or services are defective, the onus of proof shall lie on the undertaking that supplied the goods or services.<sup>109</sup> The FCCPA departs from the general principle of law that 'he who alleges must prove' and places a higher burden of proof on the supplier. The implication of the combined provisions under the consumer rights is aimed at safeguarding and protecting consumer rights and interest, ensuring public health and safety in the market place.<sup>110</sup>

### **6. Enforcement of Consumer Rights (PART XVII)**

A consumer may seek to enforce any right under the Act, or resolve a dispute with a supplier of goods and services by referring the matter directly to the undertaking that supplied the goods and services; referring the matter to the applicable industry sector regulator with jurisdiction or by filing a complaint directly to the FCCPC. An aggrieved consumer can also directly approach a court with appropriate jurisdiction to seek redress.<sup>111</sup> Section 148 of the FCCPA provides for the enforcement of rights by the FCCPC. Where a matter has been investigated by the FCCPC, and a decision is reached on the proposed terms of an appropriate order, the agreed terms shall be made on the order of the FCCPC and if the FCCPC deems fit, register the order in a court of competent jurisdiction and the court, without hearing any evidence, may confirm that agreement as a consent order. An order of the FCCPC or a consent order may include an award of damages to the complainant.<sup>112</sup> The FCCPC may issue a compliance notice to an undertaking or association of undertakings whom the commission on reasonable grounds believes has engaged in prohibited conduct, provided that before issuing a notice to a member of a regulated industry, the FCCPC shall consult the industry sector regulator that issued a license to that regulated entity. A compliance notice remains valid until it is set aside by a court, or until the FCCPC issues a compliance certificate upon being satisfied that there has been sufficient compliance with the compliance notice. Where an undertaking(s) fails to comply with a compliance notice, the FCCPC is empowered under the Act to shut down or close any premises until the breach is remedied; impose the administrative fine; or refer the matter to a court of competent jurisdiction for prosecution.<sup>113</sup> Where upon an investigation by the FCCPC of a complaint by a consumer, it is proved that the consumer's right has been violated; or a wrong has been committed by way of trade, provision of services, supply of information or advertisement thereby causing injury or loss to the consumer, the consumer shall in addition to the redress which the FCCPC may impose, have a right of civil action for compensation or restitution in a court of competent jurisdiction.<sup>114</sup> The penalties for the contravention of consumer rights is spelt out in Section 155 of the FCCPA.

### **7. Miscellaneous Provisions (PART XVIII)**

The Miscellaneous provisions of the FCCPA are covered by Part XVIII to wit:

- a. Limitation of suits against the Commission and the Tribunal.<sup>115</sup>
- b. Issuance of notices by or on behalf of the FCCPC/<sup>116</sup>
- c. Service of notices<sup>117</sup>
- d. Offences under part XVIII.<sup>118</sup>

<sup>104</sup> Section 133 of the FCCPA, 2018

<sup>105</sup> Section 134 of the FCCPA, 2018

<sup>106</sup> Section 135 of the FCCPA, 2018

<sup>107</sup> Section 136 – 140 of the FCCPA, 2018

<sup>108</sup> Section 141 of the FCCPA, 2018

<sup>109</sup> Section 145 of the FCCPA, 2018

<sup>110</sup> G. Biokaku & others., 'The Federal Competition and Consumer Protection Act 2018: A giant stride in the right direction' (May, 2019) <<https://www.gbc-law.com/assets/publications/The-Federal-Competition-and-Consumer-Protection-Act-2018>> 20<sup>th</sup> June, 2025

<sup>111</sup> Section 146 of the FCCPA, 2018

<sup>112</sup> Ibid

<sup>113</sup> Section 150(1) – (4) of the FCCPA, 2018

<sup>114</sup> Section 152 of the FCCPA, 2018

<sup>115</sup> Section 156 of the FCCPA, 2018

<sup>116</sup> Section 157 of the FCCPA, 2018

<sup>117</sup> Section 158 of the FCCPA, 2018

<sup>118</sup> Section 159 of the FCCPA, 2018

- e. Decisions of the FCCPC to be in writing.<sup>119</sup>
- f. Delegation by the FCCPC<sup>120</sup>
- g. Civil or criminal proceedings in respect of any action of the FCCPC.<sup>121</sup>
- h. Power of the FCCPC to make regulations.<sup>122</sup>
- i. Application of other enactments.<sup>123</sup>
- j. Repeals and savings.<sup>124</sup>
- k. Transitional provisions.<sup>125</sup>
- l. Interpretation.<sup>126</sup>
- m. Citation.<sup>127</sup>

## 8. Conclusion and Recommendations

In conclusion, this article underscores that the quest for an effective competition and consumer protection framework in Nigeria is not merely a legal or institutional endeavour, but a multidimensional commitment involving policymakers, regulators, businesses, and consumers alike. The long-term success of this framework depends on continuous legal reform, institutional strengthening, and civic engagement. It is therefore imperative that Nigeria sustains its momentum towards building a fair, transparent, and consumer-oriented market system capable of supporting inclusive economic growth in the 21st-century global economy.

There is a pressing need to consolidate and harmonize existing competition and consumer protection laws under a unified and comprehensive legislative framework. Although the Federal Competition and Consumer Protection Act (FCCPA) of 2018 represents a significant step forward, gaps remain in its implementation and coherence with sector-specific regulations. It is therefore recommended that periodic legislative reviews be conducted to align the Act with evolving market dynamics, regional trade agreements, and global best practices. Furthermore, clearer delineation of regulatory responsibilities between the Federal Competition and Consumer Protection Commission (FCCPC) and sector regulators such as the Nigerian Communications Commission (NCC) and the Central Bank of Nigeria (CBN) would prevent jurisdictional conflicts and ensure regulatory efficiency.

The effectiveness of competition and consumer protection regimes largely depends on the strength and independence of the implementing institutions. The FCCPC should be granted greater financial and administrative autonomy to enable it to discharge its statutory mandate without political interference. Additionally, the Commission should be adequately funded and staffed with experts in economics, law, and data analysis to improve investigative and enforcement capabilities. Regular capacity-building programmes, in collaboration with international bodies such as UNCTAD and OECD, would also enhance the professionalism and technical competence of regulatory personnel. Consumer protection laws are only as effective as the level of awareness among consumers. The article recommends the development of a nationwide consumer education strategy aimed at sensitizing citizens to their rights and remedies under the law. Such programmes should leverage digital platforms, educational curricula, and community-based outreach initiatives to reach both urban and rural populations. Collaboration between the FCCPC, civil society organizations, and consumer advocacy groups would further enhance grassroots awareness and encourage active consumer participation in market regulation.

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<sup>119</sup> Section 160 of the FCCPA, 2018

<sup>120</sup> Section 161 of the FCCPA, 2018

<sup>121</sup> Section 162 of the FCCPA, 2018

<sup>122</sup> Section 163 of the FCCPA, 2018

<sup>123</sup> Section 164 of the FCCPA, 2018

<sup>124</sup> Section 165 of the FCCPA, 2018

<sup>125</sup> Section 166 of the FCCPA, 2018

<sup>126</sup> Section 167 of the FCCPA, 2018

<sup>127</sup> Section 168 of the FCCPA, 2018