

# International **Comparative** Legal Guides



## Consumer Protection **2021**

A practical cross-border insight into consumer protection law

**Second Edition**

### Featuring contributions from:

ALRUD

Ashurst LLP

Banwo & Ighodalo

Bányaiová Vožehová, s.r.o.  
advokátní kancelář

Blake, Cassels & Graydon LLP

Bojorge & Associates

Cozen O'Connor

Gonzalez Calvillo

Hassan Radhi & Associates

MinterEllison

Nagashima Ohno &  
Tsunematsu

Pérez Alati, Grondona, Benites  
& Arntsen (PAGBAM)

**ICLG.com**

# Expert Analysis Chapter

1

**The Relationship Between Consumer Protection and Competition Law**  
Nigel Parr, Danica Barley & Christopher Eberhardt, Ashurst LLP

## Q&A Chapters

7

**Argentina**  
Pérez Alati, Grondona, Benites & Arntsen (PAGBAM):  
Luis Diego Barry, María Carolina Abdelnabe Vila, María  
Clara Rodríguez Llanos & Sonia Alejandra Del Regno

14

**Australia**  
MinterEllison: Miranda Noble & Geoff Carter

24

**Bahrain**  
Hassan Radhi & Associates: Fatima AIAli &  
Mohamed Ali Shaban

31

**Canada**  
Blake, Cassels & Graydon LLP: Jill Lawrie & Emily  
Hazlett

38

**Czech Republic**  
Bányaiová Vožehová, s.r.o. advokátní kancelář:  
JUDr. Lucie Dolanská Bányaiová, Ph.D. & Mgr.  
Zuzana Kulhánková

46

**France**  
Ashurst LLP: Michaël Cousin & Marie Florent

58

**Germany**  
Ashurst LLP: Dr. Fabian Klein & Dr. Michael  
Holzhäuser

66

**Italy**  
Ashurst LLP: Denis Fosselard, Gabriele Accardo &  
Giulia Carnazza

75

**Japan**  
Nagashima Ohno & Tsunematsu: Oki Mori & Mai  
Umezawa

85

**Mexico**  
Gonzalez Calvillo: Edgar Grajeda, Jorge Mondragón,  
Enrique Muñoz & Lucía Fernández

94

**Nigeria**  
Banwo & Ighodalo: Azeezah Muse-Sadiq & Mavis  
Abada

103

**Russia**  
ALRUD: Ksenia Erokhina

114

**Spain**  
Bojorge & Associates: Marla Vanessa Bojorge Zúñiga

122

**United Kingdom**  
Ashurst LLP: Nigel Parr & Christopher Eberhardt

131

**USA**  
Cozen O'Connor: Michael W. McTigue Jr., Meredith  
C. Slawe & Marie Bussey-Garza

# Nigeria



Azeezah Muse-Sadiq



Mavis Abada

Banwo & Ighodalo

## 1 General

### 1.1 What legislation, regulations and guidelines are relevant to consumer protection in your jurisdiction?

The Federal Competition and Consumer Protection Act, 2018 (“**FCCPA**”) is the primary legislation which governs and protects the rights of consumers in Nigeria. The FCCPA established the Federal Competition and Consumer Protection Commission (“**FCCPC**” or “**Commission**”) to, amongst others:

- (a) protect and promote consumers’ interest and welfare by providing consumers with a wider variety of quality products at competitive prices; and
- (b) 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.

Prior to the enactment of the FCCPA, the principal legislation that protected the rights of consumers in Nigeria was the Consumer Protection Council Act, 2004 (“**CPA**”) which established the Consumer Protection Council (“**CPC**”); however, the FCCPA repealed the CPA and the FCCPC assumed all rights, interests, obligations, assets, and liabilities of the CPC.

To aid the FCCPC in discharging its functions and duties, the FCCPA empowers the FCCPC in section 163 to make rules and regulations 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 CPA Act shall be deemed to have been made or issued by, or for the purpose of, the FCCPC and shall continue in force until revoked or amended by the FCCPC. Thus, in addition to the provisions of the FCCPA, there are: (i) the FCCPC (Sales Promotion) Registration Regulations, 2005; (ii) the FCCPC Guidelines for Sales Promotion Registration; and (iii) the FCCPC Business Guidance Relating to COVID-19 on Business Co-Operation/ Collaboration and Certain Consumer Rights Under the FCCPA, 2020 (“**Business Guidance**”). Further, the FCCPC adopted the Guiding Principles for Sustainable Consumption proposed at the annual World Consumer Day of 2020 (“**Sustainable Consumption Principle**”).

Please refer to the answer to question 1.5 for other legislation, regulations and guidelines that are relevant to consumer protection in Nigeria.

### 1.2 What is the definition of “consumer” (i.e., who does consumer protection law protect)?

The FCCPA defines a consumer in section 167(1) to include any person:

- (a) who purchases or offers to purchase goods other 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 other goods or articles for sale; or
- (b) to whom a service is rendered.

### 1.3 Who is/which entities are required to comply with consumer protection law?

The FCCPA applies to and binds all undertakings (that is, any person involved in the production of or the trade in goods, or the provision of service) and all commercial activities within, or having effect within Nigeria, including:

- (a) a body corporate or agency of the Government of the Federation or of a sub-division of the Federation, if the body corporate or agency engages in commercial activities;
- (b) a body corporate or agency in which the Government of the Federation or Government of a State, or a body corporate or agency of the Government of the Federation or any State or Local Government, has a controlling interest, where such a body corporate engages in economic activities; and
- (c) all commercial activities aimed at making profit and geared towards the satisfaction of demand from the public.

In addition, the provisions of the FCCPA apply to certain conducts occurring outside Nigeria where such conduct is by:

- (a) a citizen of Nigeria or person ordinarily resident in Nigeria;
- (b) a body corporate incorporated in Nigeria or carrying out business within Nigeria; and
- (c) any person in relation to the supply or acquisition of goods or services by that person into or within Nigeria.

### 1.4 Which agency/agencies is/are responsible for enforcing consumer protection law (i.e., who is the investigator and who is the adjudicator)?

#### Enforcement/Regulatory Agency

The FCCPC, as stated in the answer to question 1.1, is established by the FCCPA to administer and enforce the provisions of the FCCPA.

### Adjudicatory Authority

The Competition and Consumer Protection Tribunal (“CCPT”) was established pursuant to section 39 of the FCCPA to adjudicate conduct prohibited under the FCCPA.

The CCPT (as it relates to the protection of consumers) has, amongst others, the powers to:

- (a) hear appeals from or review any decision of the FCCPC taken in the course of implementation of any of the provisions of the FCCPA;
- (b) hear appeals from, or review any decision from, the exercise of the powers of any sector-specific regulatory authority in a regulated industry, in respect to consumer protection matters; and
- (c) issue such orders as may be required of it under the FCCPA.

For the purpose of proceedings of the CCPT, the CCPT is to be constituted into panels of at least three members and its decision will be taken by a majority of the members of the panel.

The order, ruling, award or judgment of the CCPT is binding on the parties and must be registered with the Federal High Court of Nigeria solely for the purposes of enforcement. Appeal of an order, ruling, award or judgment of the CCPT is to be made within 30 days to the Court of Appeal of Nigeria, the second-highest court in Nigeria.

Please note, however, that all appeals or requests for review of the exercise of the power of any sector regulator, as it relates to consumer protection, shall be heard and determined by the FCCPC before such appeals can lie before or be determined by the CCPT.

### 1.5 Are there any specific bodies that regulate/enforce consumer protection law in specific sectors?

There are other sector regulators who, by virtue of their establishing/enabling laws in addition to their primary responsibilities, have responsibilities to protect consumers in Nigeria. Although the FCCPA recognises other consumer protection legislation, rules and regulations, they are to be read with such modifications as are necessary to bring them into conformity to the provisions of the FCCPA.

In addition, the FCCPA states that other sector regulators with consumer protection oversight shall be deemed to have a 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.

Such sector regulators include:

- (a) The Central Bank of Nigeria (“CBN”): Pursuant to powers conferred on it by the CBN Act (as amended) and the Banks and Other Financial Institutions Act, 2020, the CBN issued the Consumer Protection Regulations, 2019 to guide the effective regulation of consumer protection practices of financial institutions under the regulatory purview of the CBN.
- (b) Nigerian Communications Commission (“NCC”): The NCC, as the apex regulator of the Nigerian communications industry, is vested with powers to protect and promote the rights and interests of communication services consumers against unfair practices in Nigeria. The NCC issued the General Consumer Code of Practice, 2018, which has detailed provisions on the protection of the rights and interests of communication services consumers.
- (c) Nigerian Electricity Regulatory Commission (“NERC”): The NERC, which was established by the Electric Power Sector Reform Act, 2005, is empowered by the legislation

to, amongst others, ensure: (i) that the prices charged by electricity supply/distribution licensees are fair to those consumers; and (ii) the safety, security, reliability and quality of service in the production and delivery of electricity to consumers. The NERC issued the NERC Customer Service Standards of Performance for Distribution Companies, 2007 and the Customer Complaints Handling: Standards and Procedure, 2006 in order to establish an expected standard of performance, as it relates to consumers, for electricity distribution companies and also to establish a procedure for the handling of customers’ complaints.

- (d) National Agency for Food and Drug Administration and Control (“NAFDAC”):

The NAFDAC Act, 2004 established NAFDAC, an agency under the Nigerian Federal Ministry of Health, which ensures consumer protection by regulating and controlling the manufacture, importation, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, chemicals and packaged water and beverages in Nigeria.

- (e) Standards Organisation of Nigeria (“SON”):

The SON, which was established by the SON Act, 2015, is empowered by the legislation to amongst others, ensure that: (i) locally manufactured products in Nigeria give the required degree of satisfaction to consumers; and (ii) products imported into Nigeria are safe and import conditions are met.

- (f) Nigerian Broadcasting Commission (“NBC”):

The NBC was established by virtue of the NBC Act, 2004, and as part of its regulatory role, it is vested with the responsibility to, amongst others, receive, consider and investigate complaints of consumers in respect of broadcasting services.

- (g) Nigerian Civil Aviation Authority (“NCAA”):

By virtue of the Civil Aviation Act, 2006, the NCAA has regulatory oversight over the aviation industry in Nigeria. As part of its regulatory role, the NCAA created a Consumer Protection Department which ensures that all consumers in the aviation industry obtain the best services in air transportation, and issued the Nigeria Civil Aviation Regulations, 2015, which broadly address consumer protection issues including compensation for denied boarding, delays and cancellation of flights.

Accredited consumer protection groups may also commence actions to protect the interest of consumers.

In addition, the Securities and Exchange Commission and all self-regulatory organisations have regulatory oversight over capital market operators in relation to complaints by their clients.

## 2 Protections in Relation to the Quality and Function of Goods and Services

### 2.1 Please describe any protections regarding the quality and function of goods and services acquired by consumers.

The FCCPA provides that the consumer has a right to services performed in a manner and quality that reasonable persons are generally entitled to expect.

In relation to the quality of goods, the FCCPA states, amongst others, 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 the 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 the goods within a prescribed period for failure to comply with the foregoing.

Please note that other sector consumer regulations have provisions similar to the foregoing.

## 2.2 Please outline the substantive tests for these protections.

The reasonability test is used in determining whether or not the goods or services are of the intended quality. The FCCPA provides that the consumer has the right to receive goods that are “**reasonably suitable**” for the intended purpose whilst the quality of service must be such that a “**reasonable person**” is generally entitled to receive. Further, where the consumer has specifically informed the seller of the particular purpose for which the consumer intends to use the product and the supplier ordinarily offers such goods or acts in a manner that suggests that he has knowledge, the consumer has a right to expect that the goods are **reasonably suitable** for the specific purpose he has indicated. Where there is an allegation of defective goods or service, the onus of proof is on the undertaking that supplied the goods or service.

In addition, the FCCPC has the power to order quality tests to be conducted on consumer goods as it deems necessary and seal up any premises on reasonable suspicion that such premises contain, harbour, or are being used to produce or disseminate goods or services that are fake, substandard or inimical to consumers’ welfare, in collaboration with relevant sector regulations.

## 2.3 What types of goods and services are covered by the protections relating to the quality of goods and services?

The provisions of the FCCPA relating to the quality of goods and services include almost all types of products, goods and services. For instance, the definition of goods as provided for in the FCCPA includes ships, aircraft, vehicles, minerals, trees and crops – whether attached to land or not – as well as gas and electricity.

Service is defined broadly to include service of any description, whether industrial, professional or any other service, and the sale of goods, where the goods are sold in conjunction with the rendering of a service.

## 2.4 Are there any exceptions to these protections?

There are no exceptions to the protections available to a consumer in relation to the quality of goods under the FCCPA. However, the FCCPA seems to exempt from liability any undertaking in the regulated industry that has violated any provision of the FCCPA, where such undertaking is able to demonstrate that the violation was ordered or required by a regulatory agency possessing jurisdiction over the regulated industry.

## 2.5 What remedies are available for a breach of the protections in relation to the quality and function of goods and services?

The available remedies include penalties/fines, monetary restitution or compensation (for an aggrieved consumer) and/or term of imprisonment. More specifically, the consumer has a right to return defective goods within three months, and the undertaking is expected to repair or replace such goods or return a portion of the purchase price.

Furthermore, a consumer can file a complaint in accordance with the provisions of the FCCPA. Please refer to the answers to questions 6.1 and 7.1 for further details.

In addition, where a damage is caused wholly or partly by defective goods or the supply of a service, the undertaking that supplied the goods or service is liable for the damage. Such damage may include personal injury and damage to the consumer’s property.

## 2.6 Who has or which agencies have standing to initiate proceedings for a breach?

An aggrieved consumer, an accredited consumer protection group, an industry sector regulator, and the FCCPC can all initiate proceedings for a breach.

## 2.7 Describe at least two examples of public or private enforcement of these protections in the last five years, including the conduct/alleged conduct, result and penalties imposed.

Within the last 12 months, the FCCPC has been investigating companies/businesses operating in Nigeria for anti-consumer violations.

In May 2020, the FCCPC in furtherance of a reasonable suspicion of illegal activities, sealed (pending further inquiry) Med Contour Ltd (a plastic surgery centre) and assisted in bringing a five-count charge against the surgeon based on contravention of sections 33(3)(a) and 113(4)(a) of the FCCPA. Furthermore, there is an ongoing investigation against a multinational tobacco company operating in Nigeria for anti-consumer protection, public health and anti-competition violations.

In March 2018, prior to the enactment of the FCCPA, the CPC (the hitherto consumer protection agency) issued a warning to power companies across Nigeria to desist from the imposition of arbitrary charges on consumers. The warning was as a result of reported cases of arbitrary billing and unlawful disconnection of customers’ electricity without due process, which amounted to acts of sabotage and a gross abuse of consumer rights.

Moreover, on June 17, 2018, the CPC filed an action against MultiChoice Nigeria Limited (“**Company**”), for breaching a consent order that dealt broadly with consumer protection and service responsiveness/quality issues. The consent order provided that no material terms of the subscription agreement between the Company and its consumers would change during an agreed period of supervision by the CPC. However, the Company proceeded to arbitrarily increase its subscription rates. In an action commenced by the CPC, the court granted an interim injunctive relief against the Company; however, the suit was struck out on May 16, 2019. Notwithstanding, the FCCPC on June 13, 2019 issued a final order mandating the Company to observe the rules laid down therein.

## 3 Protections/Prohibitions in Relation to the Safety of Goods and Services

### 3.1 Please describe any protections regarding the safety of goods and services acquired by consumers.

Please refer to the answer to question 2.1.

Additionally, where an undertaking or distributor becomes aware of any unforeseen hazards arising from the use of goods placed in the market, it shall immediately notify the general public of such risk or danger and cause such goods to be withdrawn from the market.

Furthermore, where the FCCPC has reasonable grounds to believe that any goods may be unsafe, or there is a potential risk to the public from the continued use of or exposure to the goods, and the undertaking that produced, distributed or imported those goods has not taken any steps required by an applicable code contemplated in the FCCPA, the FCCPC, by written notice, may require the undertaking to recall the goods in any terms required.

### 3.2 Please outline the substantive tests for these protections.

Please refer to the answer to question 2.2.

### 3.3 What types of goods and services are covered by the protections relating to the safety of goods and services?

Please refer to the answer to question 2.3.

### 3.4 Are there any exceptions to these protections?

Please refer to the answer to question 2.4.

### 3.5 What remedies are available for a breach of the protections in relation to the safety of goods and services?

Please refer to the answer to question 2.5.

### 3.6 Are there mandatory reporting requirements with respect to the safety of goods or services?

Although the FCCPA does not provide for mandatory reporting requirements, by the provision of the FCCPA, the FCCPC may compel manufacturers, suppliers, dealers, importers, wholesalers, retailers or other undertakings, where appropriate, to certify that their goods and services satisfy all standards and give public notice of any health hazards associated with their goods and services.

### 3.7 Describe any voluntary or mandatory product safety recall regimes.

Please refer to the answer to question 3.1.

In addition, the SON Act provides that the supplier of a defective product may be required by the Honourable Minister of Industry, Trade and Investment (upon the recommendation of the SON) to, among other things, recall the product or notify the public of the nature of the defect in the commodity, the circumstances in which the use of the commodity is dangerous, as well as procedures for the disposal of the commodity.

### 3.8 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

The provisions of the FCCPA are yet to be fully tested by the FCCPC; in the past five years, however, the then consumer protection regulator (CPC pursuant to the CPA) issued notices in respect of recall of unsafe products that originated outside of Nigeria and worldwide recall.

In addition, other sector regulators have directed manufacturers to recall unsafe products and issued warnings to consumers in that regard. For instance, on June 30, 2019, NAFDAC directed Nigerian Bottling Company Limited to recall Eva Premium Table Water 75cl as a precautionary step, pending investigation by the agency following a voluntary report by the company on June 20, 2019 about a change in colour of the product from colourless to light green and the presence of particles in two lots.

## 4 Prohibitions Relating to “Conduct” Against Consumers

### 4.1 Please describe any protections/prohibitions relating to the conduct of persons or businesses (e.g., manufacturers/retailers) which sell or supply goods and services to consumers (“Conduct”). For example, misleading and deceptive conduct, unconscionable conduct, etc.

The FCCPA prohibits business practices/conducts that are misleading, fraudulent, unconscionable or generally anti-competitive. Some of such conducts include the following, amongst others:

- (a) issuing a false or wrong advertisement;
- (b) altering, defacing, covering, removing or obscuring a trade description, or trade mark applied to any goods in a manner calculated to mislead consumers;
- (c) giving false, erroneous, misleading or likely to be misleading in any material respect, fraudulent or deceptive representations concerning any material fact for the purpose of promoting or marketing a product;
- (d) giving representations in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of products which are not based on an adequate and proper test of the goods or services; and
- (e) offering to supply, supplying or entering into an agreement to supply any goods or services on unfair, unreasonable or unjust contract terms.

### 4.2 Please outline the substantive tests for the above-mentioned protections/prohibitions.

A transaction, agreement, term or condition will be deemed to be unfair, unreasonable or unjust if:

- (a) it is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied;
- (b) the terms of the transaction or agreement are so adverse to the consumer as to be inequitable;
- (c) the consumer relied upon a false, misleading or deceptive representation or a statement of opinion provided by or on behalf of the undertaking that supplied the goods or services concerned, to the detriment of the consumer; or
- (d) the fact, nature and effect of a term, condition or notice was not drawn to the attention of the consumer.

### 4.3 Are there any exceptions/exemptions to the protections/prohibitions relating to Conduct?

The FCCPA provides a few exceptions to some of the prohibited conducts under the FCCPA. For instance, a business can be exempted from the general prohibition against “tying and bundling” where it demonstrates that:

- (a) the convenience to the consumer in having those additional/bundled goods or services outweighs the limitation of the consumer's right to choice; or
- (b) the bundling of those goods or services results in an economic benefit for the consumer.

#### 4.4 What remedies are available for a breach of the protections/prohibitions relating to Conduct?

The available remedies include penalties/fines, monetary restitution or compensation (for an aggrieved consumer) and term of imprisonment.

Please refer to the answers to questions 3.1 and 3.7 for more information.

Specifically, the provisions of the FCCPA (see section 52) empowers the CCPT to make an order directing any undertaking to sell any portion or all of its shares, interest or assets if the prohibited practice or conduct cannot adequately be remedied under any other provision of the Act, or is substantially a repeat by that undertaking of conduct previously found by the CCPT to be a prohibited practice.

#### 4.5 List at least two examples of public or private enforcement of the protections relating to Conduct in the last five years, including the breach/alleged breach, result and penalties imposed.

In 2020, the FCCPC launched an investigation against companies following allegations of discriminatory practices and conducts. The investigation has thus far resulted in the temporary shutdown of an outlet.

In September 2018, the CPC and NCC launched a joint regulatory investigation into the Nigerian telecommunication sector to ensure the rights of consumers in the telecommunication industry were adequately protected. This was due to the incessant and persistent complaints by consumers of practices such as call masking, unsolicited subscriptions, etc. By December 2018, plans were made to, amongst others, sanction telecommunication operators involved in the forceful subscription to value-added service and illegal airtime deduction of up to NGN36 billion. However, the extent of FCCPC and NCC's enforcement is yet to be made public.

## 5 Other Protections/Prohibitions

#### 5.1 Does consumer law in your jurisdiction have any other prohibitions/protections not covered by the questions above? If so, please describe these prohibitions/protections.

In addition to the conducts in answer to question 4.1, the FCCPA also imposes an obligation on manufacturers to ensure that the notice on any product must be in accordance with the prescribed form or in plain language, where no form is prescribed for that notice. Furthermore, an undertaking is obliged to adequately display the prices of goods and services on sale.

#### 5.2 Please outline the substantive tests for the above-mentioned protections/prohibitions.

A notice, document or visual representation is deemed to be in plain language if it is reasonable to conclude that an ordinary

consumer of the class of persons for whom the notice or representation is intended, with average literacy skills and minimal experience as a consumer, can understand the content. The FCCPC is empowered to publish guidelines on methods for assessing whether a notice complies with the provisions of the FCCPA.

Prices are deemed to be adequately displayed if written price indication, expressed in Nigerian Naira, written, printed or stamped, is annexed or affixed to the goods or services or to any shelf or item used in connection with the goods or service.

#### 5.3 Are there any exceptions/exemptions?

There are no exemptions.

#### 5.4 What remedies are available for a breach of these protections?

Please refer to the answer to question 4.4.

#### 5.5 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

There are no available public records in respect of this.

## 6 Investigation of Potential Breaches

#### 6.1 What powers does/do the consumer authority/authorities in your jurisdiction have to investigate potential breaches of consumer law? Describe the key steps in a typical investigation.

The FCCPC is conferred with investigative powers to carry out investigations or inquiries it considers necessary or desirable in connection with any matter falling within the purview of the FCCPA (see section 17(e)). Additionally, the FCCPA specifically empowers the FCCPC to: (i) summon and examine witnesses; and (ii) call for and examine documents, etc. (see section 18(4)).

The key steps in a typical investigation, as set out in sections 148–150 of the FCCPA, are as follows:

- (a) a complaint is initiated or received by the FCCPC;
- (b) upon receipt of the complaint, the FCCPC may: (i) issue a notice of non-referral (for frivolous complaints or complaints which do not entitle such consumer to any remedy in the FCCPA); (ii) refer the complaint to the applicable industry sector regulator for investigation or resolution of the complaint; or (iii) direct an inspector to investigate the complaint;
- (c) where an inspector is directed to investigate the complaint, upon completion, the inspector will submit a report to the FCCPC;
- (d) the FCCPC will determine whether to: (i) issue a notice of non-referral to the complainant; (ii) make an order; or (iii) issue a compliance notice to the erring undertaking; and
- (e) where the FCCPC decides to make an order and the erring undertaking agrees to the terms of the order, such consent order will be made by the FCCPC and it can be registered with a competent court.

### 6.2 How is an investigation triggered (e.g., *ex officio*, whistleblower or complaint)?

Investigation can be triggered based on a complaint filed by an aggrieved consumer, an accredited consumer protection group, and an industry sector regulator. The FCCPC can also commence an investigation on its own motion.

### 6.3 Describe any complaints procedure for (i) consumers, and (ii) businesses.

Please refer to the answers to questions 6.1 and 6.2.

Furthermore, an aggrieved consumer may elect to have direct recourse to lodge a complaint to the undertaking he/she has a grievance against for a resolution of such complaint.

As an alternative to initiating a complaint with the FCCPC or the undertaking, an aggrieved consumer may elect to lodge his/her complaint with an industry/sector regulator who exercises regulatory control over such undertaking. Such complaint(s) will be resolved in accordance with the rules and regulations applicable in that industry.

### 6.4 What is the timeline for a typical investigation?

The FCCPA does not stipulate a specified timeline for an investigation but provides that an investigation by an inspector (a key step in the investigation process) should be carried out “*as quickly as practically possible*”. The FCCPC states that it is committed to providing speedy redress to valid complaints and puts its redress time between one (1) to forty-five (45) days. Nonetheless, this is determined on a case-by-case basis and could exceed the given timeframe.

### 6.5 Are there criminal penalties for non-compliance with a consumer law investigation? If so, provide examples where such penalties have been imposed.

There are prescribed criminal offences in the FCCPA and criminal penalties which range from a fine and term of imprisonment, in the case of an individual, to fines, in the case of a corporate body. The prescribed criminal offences include: (i) failure to comply with a compliance notice issued by the FCCPC with regard to an investigation process; (ii) failure to appear as a witness to give evidence or produce a requested document or information; and (iii) obstruction of an employee of the FCCPC.

### 6.6 Can investigations be resolved by way of commitments or undertakings?

The FCCPA provides for resolution of complaint and investigation in the form of a consent order (with the erring undertaking). The consent order can be registered with a competent court.

## 7 Enforcement

### 7.1 How does/do the consumer authority/authorities seek to enforce consumer law (for example, by administrative decision or by commencing proceedings in court)?

The Nigerian consumer laws, including the FCCPA, provide for various methods by which the relevant regulatory authority

can enforce consumer laws. With respect to the FCCPC, it can enforce the provisions of the FCCPA as set out below:

- (a) by making an order against an erring undertaking, which includes consent orders, compensation for injury suffered and award of damages in favour of the complaining consumer;
- (b) by issuing a compliance notice which will state the details and nature of the non-compliance, steps to be taken to rectify the non-compliance and the penalty that will be imposed if the necessary steps are not taken;
- (c) by obtaining a satisfactory written assurance from an undertaking that has persisted in a course of conduct which is detrimental to consumers; and
- (d) where the FCCPC is unable to obtain the written assurance, or the undertaking has failed to comply with its written assurance or breach of compliance notice, the FCCPC may: (i) institute an action against the undertaking in a competent court; or (ii) order temporary closure of any premises or facilities where the contravention takes place.

### 7.2 Is/are the consumer protection authority/authorities bound by a time limit to commence proceedings on breaches?

The FCCPA does not stipulate a time limit to commence action/compliance, and as such, the prescribed period in a relevant limitation law will apply. Generally, the limitation laws in Nigeria provide for six years’ limitation period for tortious and contractual actions.

### 7.3 Describe the enforcement powers/tools available to these bodies (civil, administrative, criminal).

With respect to the FCCPC, in addition to the answer to question 7.1, the FCCPC in enforcing the provisions of the FCCPA may:

- (a) shut down or close the premises of a defaulting undertaking until such undertaking complies with a compliance notice;
- (b) commence and prosecute a suit against a defaulting undertaking in a competent court; and
- (c) impose an appropriate administrative penalty on a defaulting undertaking.

Where its Orders or Summons are disobeyed, the FCCPC can make referral to the Office of the Attorney General for prosecution.

### 7.4 Where regulators/enforcement bodies have a choice of enforcement tools/powers, what considerations do they take into account in determining which tools/powers to use?

Generally, by virtue of section 51(3) of the FCCPA, the CCPT may impose administrative penalties for prohibited conduct, and when determining an appropriate penalty, the CCPT shall consider:

- (a) the nature, duration, gravity and extent of the contravention;
- (b) any loss or damage suffered as a result of the contravention;
- (c) the behaviour of the defaulting party;
- (d) the market circumstances in which the contravention took place and the level of profit derived from the contravention;
- (e) the degree to which the defaulting party has cooperated with the FCCPC and CCPT; or
- (f) whether the defaulting party has previously been found to be in contravention of any of the provisions of the FCCPA.

The FCCPC will likely take into consideration factors similar to the foregoing.



**7.5 Describe the relevant rules and procedures that must be followed by such bodies (e.g., administrative, judicial).**

The FCCPC is required to comply with the provisions of the FCCPA and its regulations, rules and guidelines in exercising its powers and functions. Furthermore, other industry sector regulators must adhere to the laws establishing them and other applicable regulations, rules, and guidelines.

**7.6 Is there a right to a stand-alone action and follow on right of action within consumer law? Who has standing to bring these actions?**

The FCCPA provides for a right to a stand-alone action and follow on right of action, as an aggrieved consumer can initiate a complaint with the FCCPC and has the right to directly institute an action in a competent court to seek redress.

Additionally, where a complaint was first initiated with the FCCPC, upon the conclusion of an investigation by the FCCPC where it is proved that the consumer's rights have been violated or any wrongdoing has been committed, the consumer has a right to institute a civil action for compensation or restitution in a competent court.

**7.7 Is there a statute of limitations for bringing stand-alone or follow on actions?**

Please refer to the answer to question 7.2.

**7.8 Describe any international or regional cooperative mechanisms (e.g., MOUs) in which your jurisdiction is involved in the enforcement of consumer protection.**

In October 2020, the FCCPC signed an updated tripartite Memorandum of Understanding (“**MOU**”) with the Nigerian Economic and Financial Crimes Commission, and the United States Federal Trade Commission (“**USFTC**”) for the purpose of strengthening cooperation and collaboration in addressing mutual cross-border consumer protection/fraud concerns and problems. The updated MOU seeks to reaffirm the parties' intention to work together and establish a Joint Implementation Committee to develop joint training programmes and provide assistance on specific investigations.

Moreover, the FCCPC participated in the African Consumer Protection Dialogue Conference (“**Conference**”) which is a joint initiative of African Competition and Consumer Protection regulators and the USFTC. The Conference provides a platform to promote consumer protection and cross-border cooperation as well as to discuss ongoing work on consumer complaint sharing, business education and consumer protection.

Once more, the FCCPC participates in the activities of and has served on technical committees to review relevant guidelines of the United Nations Conference on Trade and Development which is the focal point in the United Nations for competition law and policy, and consumer protection issues.

## 8 Appeals

**8.1 Describe any appeal processes.**

Any party aggrieved with the decision of the FCCPC should file an application with the CCPT. Following the decision of the CCPT, if such party is still aggrieved it may within 30 days of the judgment/order/decision of the CCPT appeal to the Court of Appeal (see sections 49–55 of the FCCPA).

**8.2 Can consumers or retailers/manufacturers appeal decisions made by the consumer authority/authorities or by a court?**

Please refer to the answer to question 8.1.

**8.3 Does an appeal suspend the effect of any penalty/the requirement to pay any fine (if applicable)?**

Although the FCCPA is silent on this, generally under Nigerian law an appeal does not operate as an automatic stay of execution of a judgment. In order to suspend the effect of any penalty or requirement, an order of the court directing a stay of execution of the judgment appealed against, pending the determination of the appeal, must be obtained.

## 9 Current Trends and Anticipated Reforms

**9.1 What are the recent enforcement trends in your jurisdiction?**

As an immediate aftermath of the COVID-19 pandemic in the first quarter of 2020, some suppliers and retailers took undue advantage of the pandemic and engaged in unacceptable trade practices, including price gouging of basic safety and protective apparel and personal hygiene products. The FCCPC, in prompt response, issued warnings and compliance notices to retailers, suppliers and online platforms as detailed in the FCCPC's Release of February 28, 2020 and March 23, 2020. The FCCPC also issued the Business Guidance which reiterates certain consumer rights, and generally aims at ensuring compliance with consumer protection laws.

Moreover, the FCCPC recently opened investigation and temporarily sealed businesses (pending detailed inquiry) on reasonable suspicion of illegal activities. Likewise, the FCCPC had assisted in the prosecution of: (i) some retail pharmaceutical outlets which refused to comply with its warnings and notices; and (ii) business owners allegedly involved in illegal activities.

In addition, the FCCPC has indicated interest in enforcing consumer protection related orders from other regulators. An example is the NERC order to cap the amount that certain categories of unmetered electricity consumers in Nigeria would pay for their monthly electricity consumption. The FCCPC has in this regard indicated that it will launch a billing capping order enforcement; however, enforcement actions are yet to commence.

Another recent enforcement trend is the FCCPC inauguration of the Task Force on Sustainable Consumption charged with developing an enforceable framework from the self-regulatory and public regulation perspectives. However, the Task Force is yet to issue the enforcement framework.

Information on the website of the FCCPC indicates that it has successfully protected consumers who have lodged complaints against banks, electricity service providers as well as telecommunication providers.

#### 9.2 Are there any proposed reforms to consumer law or policy within the next 12 months?

As the introduction of the FCCPA is still a major reform recently implemented in consumer law and policy in Nigeria, it is less likely

that there will be major reforms within the next 12 months, beyond addressing any gap that exists in the current regulatory regime, particularly with respect to enforcement actions by FCCPC. However, we expect that the FCCPC will issue several guidance notes and regulations to fill some of the gaps in the FCCPA and provide more clarity on the provisions of the FCCPA, whilst also addressing consumer protection challenges arising from unprecedented events like the COVID-19 pandemic.

#### Acknowledgments

The authors would like to thank Esther Adeniji, Tosin Oyebanjo, Thelma Okorie and Tobi Ojuri for their contributions to this chapter.



**Azeezah Muse-Sadiq** is a partner in the Corporate, Securities & Finance (“CSF”) group of the firm, and one of the firm’s partners leading the Capital Markets, Mergers & Acquisitions and Competition and Consumer Protection practice areas. Azeezah advises companies in the Fast Moving Consumer Goods sector, Banks, Pharmaceutical companies, Agriculture and other consumer-facing companies. She acts as a resource person in capacity development trainings and has delivered presentations on diverse subjects within her core practice areas. She is also a member of the Nigerian Bar Association.

**Banwo & Ighodalo**  
48, Awolowo Road  
South West Ikoyi  
Lagos  
Nigeria

Tel: +234 906 000 3561 2 / 805 087 5883 /  
809 271 4452 / 902 052 4921  
Email: [asadiq@banwo-ighodalo.com](mailto:asadiq@banwo-ighodalo.com)  
URL: [www.banwo-ighodalo.com](http://www.banwo-ighodalo.com)



**Mavis Abada** is an associate in the Corporate, Securities & Finance (“CSF”) group of the firm and a pioneer member of the firm’s Competition and Consumer Protection Practice Group, a sub-practice group in the firm’s CSF group. She has experience in Mergers & Acquisitions and Banking & Finance, and co-taught Corporate Law Practice at the Nigerian Law School in the 2017/2018 academic session as an adjunct lecturer. She is qualified to practise in Nigeria and the State of New York.

**Banwo & Ighodalo**  
48, Awolowo Road  
South West Ikoyi  
Lagos  
Nigeria

Tel: +234 906 000 3561 2 / 805 087 5883 /  
809 271 4452 / 902 052 4921  
Email: [mabada@banwo-ighodalo.com](mailto:mabada@banwo-ighodalo.com)  
URL: [www.banwo-ighodalo.com](http://www.banwo-ighodalo.com)

Banwo & Ighodalo (“B&I”) is a foremost Nigerian legal services and business solution provider, delivering high-quality services. The firm was established on February 1, 1991 and is renowned for providing innovative, competent, cost-effective and well-timed solutions.

B&I is structured as a partnership and is a fairly large Nigerian firm, presently comprising about 80 solicitors. We undertake work for public and private companies, governments, Nigerian and foreign investors, financial institutions, foreign law firms and international consultancy firms. Our lawyers are often called upon to serve as resource persons at local and international seminars/workshops and as public and private sector office holders and advisers. We are consistently ranked tier one in *The Legal 500* and are ranked in the top three in Nigeria, in areas of Capital Markets, Securities, Mergers & Acquisitions, Corporate Finance & Restructuring, Project Finance, Foreign

Investment & Divestment, Shipping, Aviation & International Trade, Energy & Natural Resources and Intellectual Property. We also have a tested and dependable track record in Commercial Litigation.

[www.banwo-ighodalo.com](http://www.banwo-ighodalo.com)



# ICLG.com

Current titles in the ICLG series

