

**A CRITICAL OVERVIEW OF THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT\***

**Abstract**

*The establishment of Competition law is long overdue as the idea of Competition law unsuccessfully came up 17 years ago at the National Assembly. However in August 2015, The Federal Competition and Consumer Protection Bill, 2015 gained legislative approval and was passed into law in February 2019 by President Muhammadu Buhari. The Federal Competition and Consumer Protection Act 2018 repealed the Consumer Protection Act, Cap. C25, Laws of the Federation of Nigeria 2004 and sections 118-128 of Investment and Securities Act, Cap.124, LFN 2004. The objectives of the work are to analyze the Federal Competition Consumer Protection Act and to do a critique of the Act. This research work used doctrinal method of legal research and accordingly gathered data from primary and secondary sources of law, namely, legislations and journal articles as well as internet sources respectively. It was found that the establishment of competition law will enhance the economy of the country and build confidence in the heart of the investors; however there are steps to be taken by the Commission in order to enhance the effectiveness of the Act. It is recommended that there is need to amend some of the provisions of the Act in order to enhance the efficiency of the Act.*

**Keywords:** Overview, Federal Competition and Consumer Protection Act, Competition, Consumer Protection, Nigeria

**1. Introduction:**

The Federal Competition and Consumer Protection Act 2018 (FCCPA) which was passed into law by the President of Nigeria is a welcome development, it repealed the Consumer Protection Act, Cap. C25, Laws of the Federation of Nigeria 2004, sections 118-128 of Investment and Securities Act, Cap.124, LFN 2004. It established the Federal Competition Consumer Protection Commission (FCCPC), for the administration of the Act and regulation of economic activities while Competition and Consumer Protection Tribunal (CCPT) was also established by the Act to handle issues and dispute arising from the Act. The Act was established to promote and maintain competitive markets; economic efficiency; secure protection of consumers' interest; prohibit restrictive or unfair business practices and contribute to the sustainable development of the Nigerian economy.<sup>1</sup> The Act applies to all undertaking and commercial activities in Nigeria by individuals, corporate bodies and government agencies, it extends its applicability to conduct outside Nigeria by a Nigerian citizen or a person that resides in Nigeria or a corporate body incorporated or carrying on business in Nigeria.<sup>2</sup> The aim of this study is to do a critical review of the Federal Competition Consumer Protection Act. This research work used doctrinal method of legal research and accordingly gathered data from primary and secondary sources of law, namely, legislations and journal articles as well as internet sources.

**2. Clarification of Terms**

Consumer protection agencies are basically established in order to protect consumers against harmful and exploitative practices of some producers, manufacturers and advertisers alike. The exercise is a tripartite affair involving the consumer himself, the manufacturers/suppliers and the consumer protection agencies that play regulatory role. Consequently the key concepts are discoursed below.

**Competition Law**

The word Competition has been defined as the rivalry between companies selling similar products and services with the goal of achieving revenue, profit and market share growth.<sup>3</sup> Competition makes the companies to dig deep into the actual needs and demands of the customers; it keeps companies on their toes to constantly innovate and make their products better and also provide customers with option to choose from while shopping. A healthy competition leads to investment in more marketing activities by different players, which eventually increases the overall demand for the product in the market.<sup>4</sup> Competition law is seen as a set of rules, disciplines and judicial decision adopted and maintained by a government in relation to agreements between firms that

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<sup>1</sup> FCCPA 2018, s1.

<sup>2</sup>FCCPA 2018, s2

<sup>3</sup>What is Competition in Marketing < <https://study.com/academy/lesson/what-is-competition-in-marketing-definition-types-quiz.html>> accessed on 21 August 2021.

<sup>4</sup>Aashish Pahwa, 'Business Competiton: Definition, Types, Importance and Examples' <<https://www.feedough.com/business-competition/>> accessed on 21 August 2021

restrict competition from other firms, including concentration or abuse of market power by private firms. It also helps to minimize unnecessary government regulation and control of the market.<sup>5</sup> Competition law is seen as the most vital instrument to encourage competition in the market place. It has an effect on static efficiency of market outcome. This means that the introduction of competition in the market advances resource allocation, and makes certain that the production of goods and services are done at a minimal cost, thereby fostering the maximization of welfare at a particular point in time. It also improves dynamic efficiency of outcomes in the market. This is seen as competition helps to bolster the entrepreneurial spirit and creativity of market participants. It also pushes producers towards innovation and improvement of their products, creating technical progress over time.<sup>6</sup> In Nigeria, after independence from Colonial Rule, the major sectors of the Nigerian economy – power supply, telecommunications, aviation, petroleum, railway, radio, television, etc were nationalized with monopolistic structures, sole ownership and control residing in the hands of the Government. Unfortunately, these Government monopolies reportedly promoted large scale corruption and inefficiencies which inhibited growth to the detriment of the entire Nigerian economy. The liberalisation and privatisation of some sectors of the Nigerian economy, especially the telecommunications and broadcasting sectors, starting from the 1990s, ushered in some competition from the private sector against previous public monopolies. The legislations which liberalised some aspects of the Nigerian economy also tried to introduce some minimal Antitrust and Consumer Protection Regulations.<sup>7</sup>

### Consumer

There has been series of discussions on the actual definition of the word ‘consumer’. However, a consumer, according to Akomolede and Oladele, is any person who purchases or is supplied goods, or uses or consumes goods and services at the end of a chain of production.<sup>8</sup> Two salient features can be pointed out from this definition, first is that the consumer is a buyer and/or user of a product or service and the second is that the consumer is a member (in fact, at the end) of the production chain. These features underscore the importance of the consumer in both economics and marketing theories, that is, without the consumers there cannot be any basis for production.<sup>9</sup> Chambers English Dictionary<sup>10</sup> simply defines a consumer as one who consumes; as oppose to producer, one who used an article produced. The new Federal Competition and Consumer Protection Act, 2018 unlike the repealed Consumer Protection Act gave an elaborate definition of a consumer by including any person who purchases or offer to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or to whom a service is rendered.<sup>11</sup>

### Consumer Protection

Consumer protection has been defined by different authors, some defined consumer protection as accomplished by setting minimum quality specification and safety standard for both goods and services and establishing mechanisms to redress their grievances while others defined consumer protection as the provision of appropriate and effective mechanisms (in order) to protect the pecuniary, health, safety and security interests of all legal persons against misleading, fraudulent and harmful business practices including manufacturing, trading, packaging, advertising, distributing and selling of products (Goods and services) to ultimate consumer.<sup>12</sup> Furthermore, consumer protection in its elaborate form refers to the liability of not only the manufacturers/producers of goods and services but also retailers, wholesalers, distributors and other suppliers of goods and services to persons who use or consume them.<sup>13</sup> Consumer protection also refers to the act of safeguarding the interests of the consumer in matters relating to the supply of goods and services.<sup>14</sup> In Nigeria, like in other parts of the world, consumer protection is the concept designed to protect consumers from unscrupulous producers and service providers. It denotes the attempt by governments to provide regulatory framework to protect and enforce the rights of people who pay for goods and services. Therefore, the Law of

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<sup>5</sup>Antitrust and Competition Laws and Regulations in Nigeria, <<https://www.proshareng.com/articles/Proshare%20Law/Antitrust-and-Competition-Laws-and-Regulations-in-Nigeria-/2816>> accessed on 21 August 2021.

<sup>6</sup>*Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup>KB Bello, Perspectives on Consumerism and Consumer Protection Act in Nigeria [2012] (4)(2222-2839) *European Journal of Business and Management* 73-75 <<https://www.iiste.org>> accessed on 15 April 2021.

<sup>9</sup> *Ibid.*

<sup>10</sup> DS Schwarz and Tebbit, *Chambers English Dictionary*( W. R. Chambers Ltd. 7th ed. 1990)

<sup>11</sup> FCCPA 2018, s167.

<sup>12</sup>EC Uwadi, 'The Nigerian Federal Competition and Competition Protection Act 2019: Lessons from South Africa' <<https://www.afronomicslaw.org/2019/09/25/the-nigerian-federal-competition-and-competition-protection-act-2019-lessons-from-south-africa/>> accessed on 2 August 2021.

<sup>13</sup> *Ibid.*

<sup>14</sup> FN Monye, *Law of Consumer Protection* (Ibadan:Spectrum Books Ltd 2003). 19 .

Consumer protection has a two-fold purpose. On the one hand, it protects the interests, rights and safeties of end user of products and services; and on the other hand, to the extent that it derives from and relates to contractual transactions.<sup>15</sup> The concept of consumer protection is generally used to classify measures that seek to ensure that consumers are fairly treated and that their rights are protected in commercial transactions that involve the supply of goods or services.<sup>16</sup> Consumers need protection because they are generally powerless; most of them are semi illiterate and less sophisticated, while the producers are smart, powerful and employ the services of sophisticated and aggressive trained marketers capable of selling anything to consumers.<sup>17</sup> According to Burdah<sup>18</sup> he asserted that, a hundred year ago, consumer protection was largely unnecessary as most products then were locally produced and there was personal relationship between the seller and the buyer. Any buyer who had complaint was expected to directly go to the producer, furthermore, goods and products were not as complex as today's, so it was easy to tell the standard from sub-standard. However, today in addition to the complexity and lack of sufficient knowledge of handling the products, the consumer is thousands of kilometers away from the manufacturer. The implication of this on the consumer is that he has no direct contact with the producer and this will make it difficult for him to sue the producer.

### **3. Appraisal of the Federal Competition and Consumer Protection Act, 2018**

The Federal Competition and Consumer Protection Act has made novel provisions which is commendable. Some of this provisions will be discussed.

#### **Federal Competition and Consumer Protection Commission**

The Act established the Commission to be independent in carrying out its functions, powers, duties and responsibilities conferred upon it. The Commission is a body corporate with perpetual succession and has its headquarters at the Federal Capital Territory Abuja.<sup>19</sup> The functions of the Commission as stipulated in section 17 of the Act can be summarised as follows:

- i. Administration and enforcement of the provisions of the Act and any other enactment with respect to competition and protection of consumers.
- ii. Review of economic activities in Nigeria to identify anti-corruption, anti-consumer protection and restrictive practices which may adversely affect the economic interest of consumers.
- iii. Authorise, prohibit or approve mergers of which notice is received.
- iv. Protect and promote consumers' interests.
- v. Regulate means of removing hazardous goods and services, including controversial products from the markets and cause offenders to replace same with safer and more appropriate alternatives.
- vi. Ensure that all imported goods are registered for traceability whenever the need arises. Ensure that consumers' interest receive due consideration and provide a redress to obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade associations or individuals.
- vii. Ensure the adoption of appropriate measures to guarantee that goods and services are safe for intended safe use.
- viii. Ensure that all service providers comply with the local and international standards of quality and safe service delivery
- ix. Ensure that a violating company, firm, trade association, or individual compensates, provides relief and safeguards to injured consumers from adverse effects of technologies that are harmful, injurious, or highly hazardous.<sup>20</sup>

The powers of the Commission stated in section 18 of the Act can be summarised to include:

- i. Prevention of the circulation of goods or services which constitutes public hazard.
- ii. Power to cause quality tests to be carried out on consumer goods as it deems necessary.
- iii. Power to seal up any premises on reasonable suspicion that such premises contains or is being used to produce goods or services that are fake or hazardous to the welfare of a consumer.

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<sup>15</sup> *Op. cit.* Uwadi 4.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> FCCPA 2018, s3

<sup>20</sup>E Aniekpeno, 'A General Overview of the Federal Competition and Consumer Protection Act 2018'

<<https://www.manifieldsolicitors.com/2019/04/02/a-general-overview-of-the-federal-competition-and-consumer-protection-act-2018/>> accessed on 3 August 2021

- iv. Power to make regulations relating to the charging and collection of fees, levies, fines and the imposition of administrative penalties.
- v. Power to compel manufacturers, suppliers, importers, wholesalers, retailers and other undertakings where appropriate to certify that all standards are met in the production of goods and services and give public notice of any health hazards associated with such manufactured goods and services.<sup>21</sup>

### **Establishment of the Competition and Consumer Protection Tribunal**

The Tribunal is established as a court that that will adjudicate over conducts prohibited under the Act and exercise the jurisdiction, powers and authority conferred on it. It also hear appeals from the decision of the Federal Competition and Consumer Commission, decisions from regulatory authorities and make orders or rulings as may be required by the Act.<sup>22</sup> For the Tribunal to have jurisdiction to review or hear appeal from any regulatory authority, such matter must first be determined by the Federal Competition and Consumer Protection Commission.<sup>23</sup> The decision of the Tribunal is enforced after the order, ruling, award or judgment have been registered by the Federal High Court<sup>24</sup> and where a party is not satisfied with the judgment of the Tribunal, he has right to appeal to the Court of Appeal.<sup>25</sup> By virtue of section 47 of the FCCP Act which provides for the jurisdiction of the tribunal, it appears that the Act conferred the tribunal with concurrent jurisdiction with the Federal High Court and this runs contrary with the provisions of the Nigerian Constitution<sup>26</sup> which confers on the Federal High Court an exclusive jurisdiction in respect of civil matters arising from any Federal enactment relating *inter alia* to commercial and industrial monopolies, standards of goods and commodities and industrial standards. It looked as though the Competition and Consumer Protection Tribunal is taken more than it can chew, however by virtue of registering its judgment, award, ruling at the Federal High Court in order to enforce same, as though the judgment emanated from the Federal High Court. This means that the Act recognized the jurisdiction of the Federal High Court. The Chairman and members of the Tribunal are appointed by the Nigerian President, subject to the confirmation by the Senate. Both the Chairman and members of the Tribunal shall serve a single term of 5 years or upon attainment of 70 years of age.<sup>27</sup> A member of the Tribunal can either resign from office in accordance with the provisions of the Act and can be removed from office by the President on account of gross misconduct, incapacity as a result of ill health or for failure to satisfy the requirements of section 42 of the Act.<sup>28</sup> An action shall be commenced against any of the members of the Tribunal after the expiration of 30 days after a written notice of intention to commence a suit have been served on the Tribunal for any alleged neglect done in pursuance or execution of the provisions of the Act or any other enactment or any public duty.<sup>29</sup> The FCCP Act holds out the Tribunal as a court of law and if this assertion is correct, it means that the tenure of the members of the Tribunal should be elongated and judicial immunity granted unto them.

### **Prohibition of Agreements in Restraint of Competition**

The Act prohibits any agreement among undertakings or association of undertakings that prevent or restrict competition in any market. Such prohibited acts include; directly or indirectly fixing of purchase or selling price of the goods, dividing the markets by allocating customers, suppliers or specific types of goods; engaging in conclusive tendering and making the conclusion of an agreement subject to acceptance by the other parties of supplementary obligations which is not subject of such agreement etc.<sup>30</sup> Some of the exceptions to prohibition of agreement as provided in Section 68 of the Act are centered on collective bargaining, professional association activities, partners etc, which are done in furtherance of the protection of the employees, members of the association, partners etc.

### **Dominant Position**

An undertaking is considered to be in a dominant position where he acts without taking account of the reaction of its customers, consumers or competitors; where he enjoys a position of economic strength enabling it to prevent effective competition being maintained on the relevant market and having the power to behave to an appreciable extent independently of its competitors, customers or consumers.<sup>31</sup> The Act prohibits abuse of

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<sup>21</sup> *Ibid.*

<sup>22</sup> FCCPA 2018, s39(2)(3); 47(1)(a-d).

<sup>23</sup> FCCPA 2018, s47(2).

<sup>24</sup> FCCPA 2018, s54

<sup>25</sup> FCCPA 2018, s55(1)

<sup>26</sup> Constitution 1999, s251(f)

<sup>27</sup> FCCPA 2018, s41

<sup>28</sup> FCCPA 2018, s43

<sup>29</sup> FCCPA 2018, s156 (2-4).

<sup>30</sup> FCCPA 2018, s59.

<sup>31</sup> FCCPA 2018, s70

dominant position as stated in section 72 of the Act and the consequences of such abuse and its punishment are provided in sections 73-75 of the Act.

### **Monopoly**

The Commission has the power to investigate a monopoly situation where it suspects that the supply of goods or services or importation or exportation of any goods or services effects competition in any of the markets in Nigeria.<sup>32</sup> Where monopoly is found to exist, the Commission shall consider the actions to be taken to remedy or prevent any adverse effects resulting from a monopoly situation and make necessary recommendations to the tribunal,<sup>33</sup> which will make an order stipulated in section 86(3) of the Act as follows:

- i. Declaration of the agreement is unlawful
- ii. To require any party to the agreement to terminate the agreement within a specific time
- iii. To require publication of prices of goods or services by the supplier
- iv. To prohibit or restrict acquisition by any undertaking of the whole or part of another undertaking. etc

### **Mergers**

Before the FCCP Act was enacted, the issue of mergers and acquisitions were regulated by the Securities and Exchange Commission (SEC) and was provided for in the Investment and Securities Act 2007 (ISA 2007)<sup>34</sup> and the Securities and Exchange Commission Rules and Regulation 2013. By virtue of the FCCP Act, merger occurs where 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 or where there is a purchase or lease of shares of another undertaking or there is an amalgamation or combination with the other undertaking or where there is a joint venture.<sup>35</sup> Mergers were categorized into small and large mergers under the FCCP Act unlike the ISA 2007 that divided mergers into small, intermediate and large mergers. Section 93 to 103 of the FCCP Act provides for procedure for mergers.

## **4. Criticisms of the Federal Competition and Consumer Protection Act**

It is important to state that the establishment of the Act is a welcomed development and must be applauded. However this Act was modeled after the South African Competition law. There are issues that must be resolved if the Act will be effective and the purpose of its enactment actualized.

### **Political Influence**

Part XI of the Act made provision for price regulation and it vested on the President of the Federal Republic of Nigeria the power to declare prices of goods and services in the Federal Gazette. Such power, ordinarily ought to reside with the FCCPC and not the President, if it will be ensured that the Commission is freed from any political influence. This provision is also inconsistent with the provisions of the Price Control Act<sup>36</sup> which gives the Price Control Board to fix prices of commodities. Research has shown that government is not willing or uses delay mechanism to frustrate decisions of economic importance where such decision will jeopardise their political interest. There is need to insulate Nigeria Competition regime from undue political interference in its enforcement as this may pose a challenge in the enforcement of the Act. The Global best practices in competition regulation is that the competition authority is established as an independent, non-ministerial department, subject only to the law of the land, like the South African Competition Commission and the UK's Competition and Markets Authority. There is need to insulate the Commission from external influence of political actors, as well as powerful multinational firms, that may threaten the independence of the FCCPC via regulatory capture as is often the case of new competition authorities in developing countries.<sup>37</sup>

### **Statutory Powers of some Regulatory Agencies:**

some provisions of the FCCPA clash with the statutory powers of some regulatory agencies like the Standards Organisation of Nigeria in Sections 17(m) (u) (w) (y) and 18(1)(d) and (e)(i); the National Agency for Food and Drug Administration and Control in Section 18 (1)(b)(d) and (e); Nigerian Customs Service in Section 17(q). These other agencies whose mandate also includes consumer protection may consider the FCCPA to be encroaching into their statutory provinces, where they have developed considerable expertise. This raises

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<sup>32</sup>FCCPA 2018, s76; 77.

<sup>33</sup> FCCPA 2018, s84.

<sup>34</sup> SEC 2007, s(98-122).

<sup>35</sup> FCCPA 2018, s92.

<sup>36</sup> Price Control Act, Cap P. 28 LFN 2004. s5

<sup>37</sup>EC Uwadi, 'The Nigerian Federal Competition and Competition Protection Act 2019: Lessons from South Africa' <<https://www.afronomicslaw.org/2019/09/25/the-nigerian-federal-competition-and-competition-protection-act-019-lessons-from-south-africa/>> accessed 16 June 2021.

questions as to whether these agencies will respond favourably to any approaches to be made by the FCCPC to them pursuant to the provisions of Section 105(4) Act.<sup>38</sup>

### **Procedures for appeal to Competition and Consumer Protection Tribunal (CCPT)**

The Act gave the Commission the power to adopt regulations specifying relevant procedures for appeal to CCPT<sup>39</sup>. This provision seems to subject the right of appeal on the decision of the FCCPC to the regulations made by the same FCCPC, who will certainly be a respondent at the CCPT. The regulations for appeals procedures to the CCPT ought not to be the responsibility of FCCPC whose decision is being appealed against, as it may intentionally adopt complex appeal procedures while drafting of the regulations, which may systematically foreclose aggrieved parties from having recourse to appeal, thereby technically rendering its decision on some matters final, which I believe contravenes the purpose of the FCCPA.<sup>40</sup> For instance High Court Rules, Court Appeal Rules etc are made by the appellate court and not the trial court.

### **Tenure of the members of the Tribunal**

The Act provides that a member of the Tribunal shall hold office for the term of five years or upon the attainment of 70 years of age.<sup>41</sup> The Act provision for a single tenured appointment of members of the tribunal runs against the spirit of the draft man which holds out the tribunal as a Court. Experience has shown that the older a judge is in a position, the more experienced he becomes. The tribunal is a special Court which requires experts in competition and consumer protection law, commerce and industry, public affairs, economics etc, and should be given more years.

### **The CCPT as a Court of Law**

Section 47 of the Act portrays the CCPT as a court of law and this runs contrary with the provision of the 1999 Constitution(as amended)<sup>42</sup> which sets out the Superior Courts of Record in Nigeria and only gives the National/State Assembly power to create inferior courts. Although the FCCPA does not specifically call the Competition Tribunal a superior court of record, all indications from its provisions seem to submit that this is the case. For Instance, section 55 provides that appeals from the Tribunal should go directly to the Court of Appeal and based on this provision, one will imagine whether the National Assembly can in fact create such a court in the absence of an amendment to Section 6 of the 1999 Constitution.<sup>43</sup>

### **Court of Appeal as the Appellant Court**

The Act subjects the CCPT decision to an appeal to the Court of Appeal which is a regular Court and did not mention whether the Appeal Court is the final court or whether an aggrieved party can further appeal to the Supreme Court.<sup>44</sup>

### **Supremacy of the Act**

Section 104 of the FCCP Act provides "Notwithstanding the provisions of any other law but subject to the provisions of the Constitution of the Federal Republic of Nigeria, in all matters relating to competition and consumer protection, the provisions of the Act shall override the provisions of any other law". The above provision is the supremacy clause which makes every other law in relation to competition law, with the exception of the 1999 constitution, subject to the FCCP Act. The above provision seem to run contrary with the Sections 105 of FCCP Act which recognizes regulatory agencies as having concurrent jurisdiction with the Commission in matters that affect competition and consumer protection this seems to bring confusion in the eye of the readers.

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<sup>38</sup>EC Uwadi, 'A Critique of the Nigerian Federal Competition and Consumer Protection Act 2019'

<[https://awards.concurrences.com/IMG/pdf/6\\_a\\_critique\\_of\\_the\\_nigerian\\_federal\\_competition\\_and\\_consumer\\_protection\\_act\\_fccpa\\_2019.pdf?56899/14f2cc8aff6b5df460d0e9b4ad2e3d2ae0027829/](https://awards.concurrences.com/IMG/pdf/6_a_critique_of_the_nigerian_federal_competition_and_consumer_protection_act_fccpa_2019.pdf?56899/14f2cc8aff6b5df460d0e9b4ad2e3d2ae0027829/)> accessed 7 July 2021

<sup>39</sup>FCCPA 2018, s38.

<sup>40</sup>*Ibid.*

<sup>41</sup> FCCPA 2018, s41.

<sup>42</sup> Constitution 1999, s6.

<sup>43</sup> OP Obioma, AR Dike, Analyzing the Prospects and Challenges in Implementing the Legal Framework for Competition Regulation in Nigeria World Academy of Science [2021] (15)(4) *Engineering and Technology International Journal of Law and Political Sciences* 21

<[file:///C:/Users/Blessing/Desktop/New%20folder%20\(2\)/MY%20THESIS%20/CORRECTED%20THESIS/analyzing-the-prospects-and-challenges-in-implementing-the-legal-framework-for-competition-regulation-in-nigeria.pdf](file:///C:/Users/Blessing/Desktop/New%20folder%20(2)/MY%20THESIS%20/CORRECTED%20THESIS/analyzing-the-prospects-and-challenges-in-implementing-the-legal-framework-for-competition-regulation-in-nigeria.pdf)> accessed on 23 August 2021

<sup>44</sup> FCCPA 2018, s55.

### **Judicial Immunity of the Tribunal**

Section 156(2) of the Act which appears to accommodate suits being brought against members of the CCPT for any act done in pursuance or default in the execution of the provisions of the FCCPA, provided the normal 3 month notice under the Public Officers Protection Act is given.<sup>45</sup> This appears to run against the understanding that the CCPT is a court of law. If the CCPT is a court of law, then its members ought to enjoy full judicial immunity from litigation connected with the performance of their functions. By retaining that provision in the manner it appears in the Act, the FCCPA has made away with the longstanding principle of judicial immunity which protects judicial officers and employees from any liability resulting from the performance of their statutory judicial functions.

### **Interpretation of the Word 'Court'**

Section 167(1) of the Act gave the interpretation of the word **Court** to mean **Court of Appeal** without more and there are several instances where the word 'Court' was mentioned which when given a proper interpretation will not mean Court of Appeal.

### **Definition of the Word 'Consumer'**

The Act defined consumer to include any person who purchases or offers to purchase goods 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 to whom a service is rendered. Although the Act took a step further in defining a consumer, however its definition is restrictive in nature, the Act did not envisage a situation where a manufacturer purchases defective raw materials, does it mean that the manufacture will have no remedy under the FCCPA?

### **Timeframe for Adjudication of Matters**

The regular Courts having suffered delay in adjudication of matters in court, the Act did not in any way state a time frame within which a matter will be heard in both for FCCPC and FCCPT, thereby making this special court to face the same challenge of delay which the regular courts have been facing.

### **Typographical Errors**

There are some typographical errors, conflicting provisions, and wrong placement of some sections of the act. This could have been an oversight or clerical error. Whatever the case may be, it is expected that a legislation which took 17 years, and passed through several review processes by the stakeholders, lawmakers and president before the latter appended his signature should be error proof.<sup>46</sup> These errors are highlighted below:

- a. Section 167(1) (b) in the interpretation section defines “Act” as Federal Competition and Consumer Protection Act 2017, while Section 168 provides that “This Act may be cited as the Federal Competition and Consumer Protection Act 2018”.<sup>47</sup>
- b. Part XII under the arrangement of sections reads “Price Mergers” instead of “Mergers”. This may have been a result of copy and paste, as the preceding Part XI is “Price Regulation”. Although this error does not reflect in the body of the FCCPA in section 92, it is important for it to be corrected.<sup>48</sup>
- c. The marginal note of section 9 talks about emoluments of the members of FCCPC, however, the said section only talks about vacancy in the board of FCCPC. Emolument is nevertheless found in Section 20(4). The same occurred in section 19(1) which talks about the Executive Vice-Chairman of FCCPC while the marginal note refers to the Secretary of the FCCPC which is found in Section 19(3).<sup>49</sup>
- d. Section 48(5)(a) made reference to subsection (4), however, having reviewed the Act and compared it to that of SA from which Nigeria adopted most of its FCCPA provisions, it is my humble view that the reference to subsection (4) is erroneous and ought to be subsection (3).<sup>50</sup>

## **5. Conclusion**

The enactment of the Competition Law is a welcome development which will enhance the economy of the Country. However FCCPC needs to take some necessary steps like appointment of expert to hand both the Commission and the Tribunal; curtailing of every form of political interference; harmonizing the statutory powers of regulatory agencies with that of FCCPC; providing judicial immunity to the members of Tribunals to enable them carry out their functions without fear; providing longer tenure for the members of tribunals; providing time frame within which matters will be heard in the FCCPC and the Tribunal and in conclusion, there is need to amend some of the provisions of the Act in order to enhance the efficiency of the Act.

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<sup>45</sup> EC Uwadi, *Op Cit*, 12

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *bid.*

<sup>50</sup> *Ibid*