

A BILL

FOR

AN ACT TO REPEAL THE CONSUMER PROTECTION ACT, CAP. C25, LAWS OF THE FEDERATION OF NIGERIA, 2004, ESTABLISH THE FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION AND THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL 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 RELATED MATTERS, 2018

Sponsored by Senator Ahmad Lawan

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria-

1 PART I - OBJECTIVES AND SCOPE OF APPLICATION

2 1. The objectives of this Act are to- Objectives

3 (a) promote and maintain competitive markets in the Nigerian
4 economy;

5 (b) promote economic efficiency;

6 (c) protect and promote the interests and welfare of consumers by
7 providing consumers with wider variety of quality products at competitive
8 prices;

9 (d) prohibit restrictive or unfair business practices which prevent,
10 restrict or distort competition or constitute an abuse of a dominant position
11 of market power in Nigeria; and

12 (e) contribute to the sustainable development of the Nigerian
13 economy.

14 2.-(1) Except as may be indicated otherwise, this Act applies to all Scope of application

1 undertakings and all commercial activities within, or having effect within,
2 Nigeria.

3 (2) This Act also applies to and is binding upon-

4 (a) a body corporate or agency of the Government of the Federation or
5 a body corporate or agency of a subdivision of the Federation, if the body
6 corporate or agency engages in commercial activities;

7 (b) a body corporate in which a Government of the Federation or
8 government of a State or a body corporate or agency of Government of the
9 Federation or any State or Local Government has a controlling interest where
10 such a body corporate engages in economic activities; and

11 (c) all commercial activities aimed at making profit and geared
12 towards the satisfaction of demand from the public.

13 (3) This Act shall apply to conduct outside Nigeria by-

14 (a) a citizen of Nigeria or a person ordinary resident in Nigeria;

15 (b) a body corporate incorporated in Nigeria or carrying on business
16 within Nigeria;

17 (c) any person in relation to the supply or acquisition of goods or
18 services by that person into or within Nigeria; or

19 (d) any person in relation to the acquisition of shares or other assets
20 outside Nigeria resulting in the change of control of a business, part of a
21 business or any asset of a business, in Nigeria.

22 PART II - ESTABLISHMENT OF THE FEDERAL COMPETITION AND

23 CONSUMER PROTECTION COMMISSION

Establishment
of the Federal
Competition
and Consumer
Protection
Commission

24 3.-(1) There is established the Federal Competition and Consumer
25 Protection Commission (in this Act referred to as "the Commission").

26 (2) The Commission shall be independent in carrying out its
27 functions, powers, duties and responsibilities conferred upon it under this Act.

28 (3) The Commission-

29 (a) is a body corporate with perpetual succession and a common seal;

30 (b) may sue and be sued in its corporate name; and

1 (c) may acquire, hold and dispose of property, whether movable or
2 immoveable.

3 (4) The headquarters of the Commission shall be in the Federal
4 Capital Territory, Abuja.

5 (5) The Commission may establish other offices for the purpose of
6 its business in any part of Nigeria, as the Commission may determine.

7 4.-(1) There is established for the Commission a Governing Board Composition of
8 charged with the administration of the affairs of the Commission. the Commission

9 (2) The Board consists of 8 Commissioners made up of-

10 (a) a Chairman;

11 (b) a Chief Executive who shall also be the Executive Vice-
12 Chairman;

13 (c) two Executive Commissioners; and

14 (d) four non-executive Commissioners,

15 who shall be appointed by the President of the Federal Republic of Nigeria,
16 subject to the confirmation of the Senate.

17 (3) The Commission shall not be incapacitated from carrying out
18 its powers or functions by virtue of any vacancy or defect in the appointment
19 of the Executive Vice Chairman or any of the Commissioners.

20 (4) The Commission may, as it deems fit, require representatives of
21 sector regulatory agencies to participate in any of its proceedings, and the
22 representatives shall participate in the Commission's proceedings on such
23 terms and conditions as may be specified by the Commission.

24 5.-(1) All Board Members to be appointed after the coming into Tenure of office
25 force of this Act shall be appointed by the President in accordance with this
26 Bill, from the 6 geopolitical zones of Nigeria subject to confirmation by the
27 Senate.

28 (2) The Chairman and all Commissioners, except the Chief
29 Executive and the Executive Commissioners, shall hold office on part-time
30 basis.

	1	(3) Each Commissioner shall serve for a term of four years from the
	2	date of appointment at the expiration of which the President may renew his
	3	term for a further period of four years and no more.
Qualification etc. of the Commission's Board	4	6. -(1) Commissioners shall be persons of recognised standing,
	5	qualification (minimum of a University Degree) and not less than 15 years
	6	experience in one or more of the following fields-
	7	(a) Finance or Accounting;
	8	(b) Law;
	9	(c) Consumer Affairs;
	10	(d) Competition or anti-trust matters;
	11	(e) Engineering or Information Technology;
	12	(f) Economics; and
	13	(g) Public Administration or social science or humanities.
	14	(2) A person shall not be appointed or remain in office as a
	15	Commissioner if-
	16	(a) he is not a Nigerian citizen;
	17	(b) he is not ordinarily resident in Nigeria;
	18	(c) he is incapacitated by any physical illness;
	19	(d) he has been certified to be of unsound mind;
	20	(e) he is an undischarged bankrupt;
	21	(f) he has been convicted in Nigeria or elsewhere of a criminal
	22	offence, being a misdemeanour or felony; or
	23	(g) he has at any time been removed from an office of trust on account
	24	of misconduct.
	25	(3) For failure to comply with the reporting obligations regarding
	26	personal and family assets as required by the Commission's Code of Conduct.
Resignation from the Commission	27	7. A Commissioner may resign his office by giving 3 months written
	28	notice thereof addressed to the President through the Minister.
Removal from office	29	8. -(1) A Commissioner may be suspended, or removed from office by
	30	the President if he-

1 (a) is found to have been unqualified for appointment as a
2 Commissioner pursuant to provisions of this Bill or is in breach of
3 conditions of his appointment;

4 (b) has demonstrated inability to effectively perform the duties of
5 his office;

6 (c) has been absent from 5 (five) consecutive meetings of the Board
7 without the consent of the Chairman except he shows good reason for such
8 absence;

9 (d) is guilty of a serious misconduct in relation to his duties as a
10 Commissioner, and as defined under the Public Service Rules;

11 (e) in the case of a person possessed of professional qualifications,
12 he is disqualified or suspended from practising his profession in any part of
13 the world by an order of a competent authority; or

14 (f) is in a breach of the conflict of Interest Rules set out in the
15 Second Schedule to this Act.

16 (2) The Exercise of the powers of the President under this section
17 shall be subject to the approval of the Senate.

18 **9.-(1)** There is a vacancy in the Board if a Commissioner-

Vacancies

19 (a) dies;

20 (b) is removed from office in accordance with this Act;

21 (c) resigns from office; or

22 (d) upon the completion of his tenure of office.

23 (2) A vacancy in the Board shall be filled by the appointment of
24 another person to the vacant office by the President in accordance with this
25 Act, as soon as is reasonably practicable after the occurrence of such
26 vacancy.

27 (3) In the instance of a vacancy on the Board that are created
28 consequent upon death, removal or resignation of a Commissioner, any
29 person so appointed shall hold office for the unexpired period of the term of
30 office of his predecessor.

1 (4) The provisions of subsection (3) of this section shall not apply to
2 the filling of vacancies in respect of Executive Commissioners howsoever and
3 whenever created.

Emoluments of
members of the
Commission

4 **10.**-(1) The members of the Governing board shall be paid from the
5 funds of the Commission-

6 (a) such remuneration as may be approved for the Commission in
7 accordance with the recommendations of the National Salaries, Income and
8 Wages Commission; and

9 (b) such allowances as the Commission may determine, having
10 regard to the recommendations of the National Salaries, Income and Wages
11 Commission, to meet any reasonable expenses incurred in connection with the
12 business of the Commission.

13 (2) While making the recommendations for emoluments and other
14 compensations, the National Salaries, Income and Wages Commission shall
15 have regard to the-

16 (a) specialised nature of work to be performed by the Commission;

17 (b) need to ensure the self-sufficiency of the Executive Vice
18 Chairman and the Commissioners;

19 (c) salaries paid in the private sector to individuals with equivalent
20 responsibilities, expertise and skills; and

21 (d) nature of expenses incurred, including national and international
22 travel expenses.

Proceedings of
the Commission

23 **11.**-(1) Subject to the provisions of this Act and section 27 of the
24 Interpretation Act, the Commission may make standing orders regulating its
25 proceedings or those of any of its committees.

26 (2) At any meeting of the Commission, the Chairman shall preside
27 and, in his absence, the Executive Vice-Chairman or, in the absence of the Vice-
28 Chairman, the Commissioners present shall appoint one of them to preside at
29 that meeting.

30 (3) Where the Commission desires to obtain the advice of any person

1 on a particular matter, the Commission may arrange for such a person to
2 consult or attend proceedings with the Commission for such period as it
3 deems necessary, but a person who is in attendance by virtue of this sub-
4 section is not entitled to vote at such proceedings.

5 **12.** The quorum of the Commission shall be the Chairman or the Quorum
6 person presiding at the meeting and four other members of the Commission,
7 and the quorum of any committee of the Commission shall be determined by
8 the Commission.

9 **13.** The validity of any proceeding of the Commission or Validity of
10 committee set up under section 15 of this Act shall not be affected by- proceedings

11 (a) a vacancy in the membership of the Commission or committee;

12 (b) a defect in the appointment of a member of the Commission or
13 committee; or

14 (c) reason that a person not entitled to do so took part in the
15 proceedings of the Commission or committee.

16 **14.** Any member of the Commission or committee who has a Conflicts of
17 personal interest in any contract, arrangement or matter to be considered by interest
18 the Commission or committee shall disclose such interest to the
19 Commission or committee and shall not vote on any question relating to the
20 contract, arrangement or matter.

21 **15.-(1)** The Commission may set up one or more committees to Committees
22 carry out, on behalf of the Commission, such functions as the Commission
23 may determine.

24 (2) A committee set up under subsection (1) of this section shall
25 consist of such number of persons as the Commission may determine.

26 (3) A decision of a committee shall be of no effect until it is
27 confirmed by the Commission.

28 **16.-(1)** The fixing of the seal of the Commission shall be The Seal of the
29 authenticated by the signatures of the Executive Vice Chairman or any Commission

1 person generally or specifically authorised by the Commission to act for that
2 purpose.

3 (2) Any contract or instrument, which if made or executed by a
4 person not being a body corporate would not be required to be under seal, may
5 be made or executed on behalf of the Commission by the Executive Vice
6 Chairman or any person generally or specifically authorised by the
7 Commission to act for that purpose.

8 (3) Any document purporting to be a document duly executed under
9 the seal of the Commission shall be received in evidence and shall, unless the
10 contrary is proved, be presumed to be so executed.

11 PART III - FUNCTIONS AND POWERS OF THE COMMISSION

Functions of
the Commission

12 17. The Commission shall-

13 (a) be responsible for the administration and enforcement of the
14 provisions of this Act and any other enactment with respect to competition
15 and protection of consumers;

16 (b) initiate broad based policies and review economic activities in
17 Nigeria to identify anti-competition and restrictive practices which may
18 adversely affect the economic interest of consumers and rules and regulations
19 made under this Act and any other enactment with regards to competitions and
20 protection of consumers;

21 (c) advise the Federal Government generally on national policies and
22 matters pertaining to all goods and services and on the determination of
23 national norms and standards relating to competition and consumer protection;

24 (d) report annually on market practices and the implications for
25 consumer choice and competition in the consumer market;

26 (e) carry out investigations or inquiries considered necessary or
27 desirable in connection with any matter falling within the purview of this Act;

28 (f) advise the Federal Government on any matter relating to the
29 operation of this Act including making recommendations to the Federal
30 Government for the review of policies, legislation and subsidiary legislation as

1 considered appropriate or as may be requested by the Federal Government
2 or any of its ministries, departments or agencies for the eradication of anti-
3 competition behaviour;

4 (g) eliminate anti-competition agreements, misleading, unfair,
5 deceptive or unconscionable marketing, trading and business practices;

6 (h) resolve disputes or complaints, issue directives and apply
7 sanctions where necessary;

8 (i) give and receive advice from other regulatory authorities or
9 agencies within the relevant industry or sector on consumer protection and
10 competition matters;

11 (j) create public awareness through seminars, workshops, studies
12 and make available information with regard to the exercise of its powers and
13 performance of its functions to the public;

14 (k) authorise, with or without conditions, prohibit or approve
15 mergers of which notice is received;

16 (l) protect and promote consumer interests;

17 (m) seek ways and means of removing or eliminating from the
18 market, hazardous goods and services, and cause offenders to replace such
19 goods or services with safer and more appropriate alternatives;

20 (n) publish, from time to time, list of goods and services whose
21 consumption and sale have been banned, withdrawn, restricted or are not
22 approved by the Federal Government or foreign governments;

23 (o) organise or undertake campaigns and other forms of activities
24 capable of promoting increased private and public consumer awareness;

25 (p) encourage trade, industry and professional associations to
26 develop and enforce in their various fields quality standards designed to
27 safeguard the interest of consumers;

28 (q) cause all imported goods to be registered for traceability
29 whenever the need arises;

30 (r) collaborate with consumer protection groups and associations

1 for consumer protection purposes;

2 (s) ensure that consumers' interests receive due consideration at
3 appropriate fora and provide redresses to obnoxious practices or the
4 unscrupulous exploitation of consumers by companies, firms, trade
5 associations or individuals;

6 (t) ensure the adoption of appropriate measures to guarantee that
7 goods and services are safe for intended or normally safe use;

8 (u) collaborate with international organisations and agencies, firms,
9 organisations, groups or persons for the purposes of exchange of information to
10 locate the source of substandard goods;

11 (v) undertake regular research, study and analysis of consumer
12 product standards and services rendered to the consumer and publish relevant
13 observations, findings and recommendations in journals or other forms of
14 publications for the benefit and general information of consumers;

15 (w) collaborate with government agencies or professional bodies in
16 establishing and using laboratories, testing facilities, common procedures in
17 ensuring or enforcing standards of consumer goods or in assessing the quantum
18 of loss or damage;

19 (x) act generally to reduce the risk and injuries which may occur from
20 consumption of certain consumer items and other services rendered to
21 consumers;

22 (y) ensure that all service providers comply with local and
23 international standards of quality and safe service delivery; and

24 (z) cause an offending company, firm, trade, association or individual
25 to protect, compensate, provide relief and safeguards to injured consumers or
26 communities from adverse effects of technologies that are inherently harmful,
27 injurious, violent or highly hazardous.

Powers of the
Commission

28 **18.-** (1) The Commission shall have powers to-

29 (a) establish specialised Departments and Units as are considered

1 necessary for the effective and efficient discharge of its functions under this
2 Act;

3 (b) prevent the circulation of goods or services which constitute a
4 public hazard or an imminent public hazard;

5 (c) compel manufacturers, suppliers, dealers, importers,
6 wholesalers, retailers, providers of services and other undertakings to
7 comply with the provisions of this Act;

8 (d) cause quality tests to be conducted on consumer goods as it
9 deems necessary;

10 (e) compel manufacturers, suppliers, dealers, importers,
11 wholesalers, retailers, or other undertaking where appropriate to -

12 (i) certify that all standards are met in their goods and services;
13 and

14 (ii) give public notice of any health hazards associated with their
15 goods or services;

16 (f) seal up any premises on reasonable suspicion that such premises
17 contain, harbor or are being used to produce or disseminate goods or
18 services that are fake, substandard, hazardous or inimical to consumers'
19 welfare in collaboration with relevant sector regulators;

20 (g) undertake studies and publish reports or provide information on
21 matters that affect the interest of consumers and co-operate with or assist
22 any association or body of persons in developing and promoting the
23 observance of standards of conduct for the purpose of ensuring compliance
24 with the provisions of this Act; and

25 (h) make regulations relating to the charging and collection of
26 fees, levies, fines and the imposition of administrative penalties.

27 (2) The Commission shall make general information available to
28 persons engaged in economic activities and for the guidance of consumers
29 with respect to their rights and obligations under this Act.

30 (3) For the purpose of performing its functions under this Act, the

- 1 Commission may-
- 2 (a) prohibit the making or performing of an agreement or
- 3 arrangements to which this Act relates;
- 4 (b) order the termination of any agreement or arrangement pertaining
- 5 to the action envisaged under paragraph (c) of this subsection;
- 6 (c) prohibit the withholding of supplies or any threat relating to;
- 7 (d) declare any business practice as abuse of a dominant position of
- 8 market power and prohibit the same, after carrying out necessary investigation;
- 9 (e) prohibit the attachment of extraneous conditions to any
- 10 transaction as it may deem appropriate;
- 11 (f) prohibit the discrimination or preferences in prices or other
- 12 related matters;
- 13 (g) require the publication of transparent price lists; and
- 14 (h) do such other things as it considers necessary for the effective
- 15 performance of its functions under this Act.
- 16 (4) The Commission shall have power to-
- 17 (a) summon and examine witnesses;
- 18 (b) call for and examine documents;
- 19 (c) administer oaths;
- 20 (d) require that any document submitted to it be verified by affidavit;
- 21 (e) require the furnishing of returns or information as it may require
- 22 within such period as it may specify by notice; and
- 23 (f) adjourn any investigation or inquiry from time to time.

24 PART IV - MANAGEMENT AND STAFFING OF THE COMMISSION

Secretary to
the Commission

- 25 **19.** -(1) The Executive Vice-Chairman shall be-
- 26 (a) the Chief Executive Officer of the Commission
- 27 (b) primarily responsible for the execution of the policies and
- 28 decisions of the Board and for the day-to-day management and supervision of
- 29 the activities of the Commission.
- 30 (c) a person possessing sound knowledge of and ability in the

1 organisation and management of competition and or consumer protection
2 matters and shall hold office for a term of four years and may be renewed for
3 another term and no more.

4 (2) The Executive Commissioners shall be persons possessing
5 sound knowledge of and ability in the organisation and management of
6 regulatory matters with respect to competition and or consumer protection
7 matters and shall hold office for a term of four years and may be renewed for
8 another term and no more.

9 (3) The Commission shall appoint a secretary (in this Act referred
10 to as "the Secretary") who shall be a legal practitioner with at least 10 years
11 post-call experience.

12 (4) The Secretary shall be responsible for keeping the corporate
13 records of the Commission and discharging such other duties as the
14 Executive Vice Chairman or the Commission may assign.

15 **20.**-(1) The Commission may appoint such other staff as it may
16 deem necessary to assist the Commission in the performance of its functions
17 under this Act.

Other staff of
the Commission

18 (2) Notwithstanding anything contained in any other law in force
19 in Nigeria, a legal practitioner employed in or by the Commission in any
20 capacity, may represent the Commission, as counsel, who appears, draws
21 papers, pleadings or documents, or performs any act in connection with
22 proceedings pending or prospective before a court, or a quasi-judicial body,
23 or any other body, board, committee, commission or officer constituted or
24 appointed by law or having authority to take evidence in or settle or
25 determine controversies in the exercise of the judicial power of the
26 Federation or any subdivision thereof.

27 (3) The terms and conditions of service, including remuneration,
28 allowances and other benefits of the employees of the Commission, shall be
29 as determined by the Commission.

30 (4) The Commission shall pay to persons employed by it such

1 remuneration, including allowances, as the Commission may determine, after
2 consultation with the National Salaries and Wages Commission in line with the
3 guiding principles contained in section 9 (2) of this Act.

Staff Regulations

4 **21.**-(1) The Commission may, subject to the provisions of this Act,
5 make staff regulations relating generally to the conditions of service of the
6 employees of the Commission and such regulations may provide for-

7 (a) the appointment, promotion and disciplinary control, including
8 dismissal of employees of the Commission; and

9 (b) appeals by employees of the Commission against dismissal or
10 other disciplinary measures and until such regulations are made, any
11 instrument relating to the conditions of service of officers in the Public Service
12 of the Federation shall be applicable.

13 (2) Staff regulations made under subsection (1) shall have effect
14 upon publication in the Federal Government Gazette or such other medium as
15 the Commission may determine as will enable the regulations to be brought to
16 the notice of all affected persons.

Pension and
gratuity. Act
No. 4, 2014

17 **22.** Service in the Commission shall be approved service for the
18 purposes of pensions and accordingly, the officers, staff or employees of the
19 Commission are entitled to pensions and other retirement benefits in
20 accordance with the provisions of the Pension Reform Act.

21 PART V - FINANCIAL PROVISIONS

Fund of the
Commission

22 **23.**-(1) The Commission shall establish and maintain a fund (in this
23 Act referred to as "the Fund").

24 (2) There shall be paid and credited into the Fund-

25 (a) the initial take-off grant made available to the Commission by the
26 Federal Government;

27 (b) such sums of money as may be appropriated to the Commission in
28 annual budgetary allocation;

29 (c) such money as may be granted to the Commission by the
30 Government of the Federation;

1 (d) all fees, levies, and charges statutorily chargeable by the
2 Commission for approvals, testing, licences, certification or
3 any service provided by the Commission in the exercise of its functions
4 under this Act;

5 (e) all sums of money accruing to the Commission by way of
6 grants-in-aid, gifts, testamentary dispositions, endowments and
7 contributions from any other source provided that the condition for such
8 grants are not inconsistent with the functions, duties and responsibilities of
9 the Commission under this Act;

10 (f) fees charged for the investigation into and resolution of all
11 disputes brought before the Commission either due from the regulated
12 industry, regulators, individuals, corporate bodies or the government;

13 (g) any other fund that may be created from time to time by an Act
14 of the National Assembly.

15 (3) The Fund shall be managed in accordance with the rules made
16 by the Commission and without prejudice to the generality of the power to
17 make rules under this Act, the rules shall in particular contain provisions-

18 (a) specifying the manner in which the assets or the Fund of the
19 Commission are to be held;

20 (b) regulating the making of payments into and out of the Fund; and

21 (c) requiring the keeping of proper accounts and records for the
22 Fund in such form as may be specified in the rules.

23 **24.**-(1) The Commission shall apply the proceeds of the Fund to-

Expenditures of
the Commission

24 (a) the cost of administration of the Commission; and

25 (b) the payment of salaries, fees, remuneration, allowances,
26 pensions and gratuities payable to the members and the employees of the
27 Commission, as the case may be;

28 (c) the payment for all consultancies, contracts, including
29 mobilisation, fluctuations, variations, legal fees and cost on contract
30 administration as may be permissible under applicable laws;

1 (e) the payment for all purchases; and
2 (f) undertake such other activities as are connected with all or any of
3 the functions of the Commission under this Act.

4 (2) Any excess of the Commission's revenue for any year over the
5 approved expenditure for that year shall be remitted to the Consolidated
6 Revenue Fund of the Federation.

Annual estimates,
reports and
expenditure

7 **25.**-(1) The Commission shall not later than 30th September in each
8 financial year prepare and present to the National Assembly through the
9 President for approval, a statement of estimated income and expenditure for
10 the following financial year.

11 (2) Notwithstanding the provisions of subsection (1), the
12 Commission may also, in any financial year, submit supplementary or adjusted
13 statements of estimated income and expenditure to the National Assembly
14 through the President for approval.

15 (3) The Commission shall cause to be kept proper accounts of the
16 Commission in respect of each year and proper records in relation to the
17 account.

18 (4) The Commission shall cause the accounts to be audited not later
19 than six months after the end of each financial year by auditors appointed from
20 the list and in accordance with the guidelines supplied by the Auditor - General
21 for the Federation.

22 (5) The Commission shall prepare and submit to the President
23 through the Minister, and to the National Assembly not later than 30th June in
24 each year, a report in such form as the Minister may direct on the activities of
25 the Commission during the immediately preceding year, and shall include in
26 the report a copy of the audited accounts of the Commission for that year and
27 the auditors' report on the account.

28 (6) The provision of any enactment relating to taxation of companies
29 or trust funds shall not apply to the Commission.

Issuance of
warrant

1 **28.**-(1) Where a Judge is satisfied on the information on oath that
2 there is reasonable ground for believing that any undertaking has engaged or is
3 engaging or likely to engage in conduct constituting or likely to constitute the
4 contravention of this Act, the Judge may issue a warrant permitting an
5 authorised officer to exercise the powers conferred by section 27 (1) of this Act
6 in relation to any premises specified in the warrant.

7 (2) An authorised officer who applied for a warrant shall, having
8 made reasonable inquiries, disclose to the court-

9 (a) the details of every previous application for a warrant to search the
10 place that the officer knows has been made within the preceding 12 months;
11 and

12 (b) the result of the application.

13 (3) A warrant issued under subsection (1) shall specify a time-limit
14 beyond which articles or documents removed shall not be detained.

15 (4) The occupier or person in charge of any premises entered pursuant
16 to this section shall provide the authorised officer with all reasonable facilities
17 and assistance for the effective discharge of the officer's duty under this
18 section.

19 (5) A person who obstructs or impedes an authorised officer in the
20 performance of his duties under this section commits an offence in accordance
21 with the relevant laws and liable on conviction to imprisonment for a term not
22 exceeding two years or to a fine not exceeding N5,000,000 or to both fine and
23 imprisonment.

Powers
conferred by
warrant

24 **29.**-(1) A warrant issued under section 28 (1) of this Act shall
25 authorise the person named in the warrant to request any police officer or
26 public official to provide assistance to the person named in the warrant in the
27 execution of the warrant.

28 (2) The assistance to be provided under subsection (1) shall be at the
29 written request of the person named in the warrant.

30 (3) The warrant shall confer powers-

1 (a) to enter and search the place or premises specified in the
2 warrant on one occasion within 30 days of the date of issue of the warrant at a
3 time that is reasonable in the circumstances;

4 (b) to use such assistance as is reasonable in the circumstances;

5 (c) to use such force for gaining entry and for breaking open any
6 article or thing as is reasonable in the circumstances;

7 (d) to search for and remove documents or any article or thing that
8 the person executing the warrant believes on reasonable grounds may be
9 relevant;

10 (e) where necessary, to make copies of documents or extracts from
11 documents, that the person executing the warrant believes on reasonable
12 grounds may be relevant; and

13 (f) where necessary, to require a person to reproduce or assist any
14 person executing the warrant to reproduce, in usable form, information
15 recorded or stored in a document or retrieval system.

16 (4) A police officer or public officer assisting the person executing
17 the warrant also has the powers stated in subsection (3) (c), (d) and (e) of this
18 section.

19 (5) A warrant shall be executed in accordance with such conditions
20 as may be specified in the warrant when it is issued.

21 **30.-(1)** A person executing a warrant shall-

22 (a) be in possession of the warrant at the time of its execution;

23 (b) produce it on initial entry and, if requested, at any subsequent
24 time; and

25 (c) produce a valid identification to the owner or occupier or person
26 in charge of the place if that person is present.

27 (2) A person executing a warrant shall, on entry into any premises
28 pursuant to a warrant, produce a valid identification document and the
29 authority to enter.

30 (3) A person executing a warrant shall, before leaving the

Duties of a
person executing
a warrant

1 premises, leave in a conspicuous place at the premises searched -

2 (a) in the case of a search carried out at a time when the owner or
3 occupier was not present, a written notice stating-

4 (i) the date and time when the warrant was executed, and

5 (ii) the name of the person who executed the warrant and the names of
6 the person or persons who rendered assistance in the course of executing the
7 warrant; and

8 (b) upon the completion of the search authorised by a warrant, where a
9 document or article or thing was removed from the place being searched, leave
10 a schedule containing a list of articles, documents, extracts or things removed
11 from the premises during the search.

12 (4) Where it is not practicable to prepare a schedule before completing
13 the search, or if the owner or occupier of the place being searched consents, the
14 person executing the warrant-

15 (a) may, instead of leaving a schedule, leave a notice stating that
16 documents, articles or things have been removed during the search and that,
17 within seven days of the search, a schedule will be delivered, left, or sent
18 stating the documents, articles or things that have been removed; and

19 (b) shall, within seven days of the search-

20 (i) deliver a schedule to the owner or occupier,

21 (ii) leave a schedule in a prominent position at the place searched, or

22 (iii) send a schedule by registered mail to the owner or occupier of the
23 place searched.

24 (5) Every schedule prepared under subsection (3) or (4) shall state-

25 (a) the documents, articles and things that were removed;

26 (b) the location from which they were removed; and

27 (c) the location where they are being held.

28 (6) The Commission, or any person authorised by the Commission for
29 that purpose, may inspect and make copies of any document or extract from
30 such document, obtained pursuant to a warrant.

- 1 **31.** The occupier or person in charge of the place that an authorised
2 officer, under a warrant, enters for the purpose of a search shall provide that
3 authorised officer with all reasonable facilities and cooperation in executing
4 the warrant. Duties of
occupiers
- 5 **32.**-(1) Where the Commission considers it necessary, desirable or
6 expedient for the purpose of carrying out its functions under this Act, the
7 Commission may, by notice in writing served on any person, require that
8 person to- Request for
information of
documents
- 9 (a) furnish to the Commission, in writing signed by that person or,
10 in the case of an undertaking, by a director or competent officer or agent of
11 the undertaking, within the time and in the manner specified in the notice,
12 any information or class of information as may be specified in the notice;
- 13 (b) produce to the Commission or a person specified in the notice,
14 acting on its behalf in accordance with the notice, any document or class of
15 documents specified in the notice; or
- 16 (c) appear before the Commission at a time and place specified in
17 the notice to give evidence, either orally or in writing and produce any
18 document or class of documents specified in the notice.
- 19 (2) The Commission shall obtain such information as it considers
20 necessary to assist it in its investigations or inquiries and where it considers
21 appropriate, shall examine and obtain verification of documents submitted
22 to it.
- 23 **33.**-(1) A summons to attend and give evidence or to produce
24 documents before the Commission issued under the hand of the Secretary or
25 any member of the Commission shall be served on the person concerned. Summons to
attend and give
evidence or to
produce
documents
- 26 (2) Hearings of the Commission shall take place in public, but the
27 Commission may, whenever the circumstances warrant, particularly in
28 order to preserve the business secrets of the undertaking concerned, conduct
29 hearing in camera.
- 30 (3) A person who, without sufficient cause, fails or refuses to-

1 (a) appear before the Commission in compliance with a summons, or
2 (b) produce a document which the person is required by such
3 summons to produce,
4 commits an offence and is liable on conviction to imprisonment for a term not
5 exceeding three years or a fine not exceeding N20,000,000.00 or both the fine
6 and imprisonment.

7 (4) A person who wilfully obstructs or interrupts the proceedings of
8 the Commission commits an offence and is liable on conviction to
9 imprisonment for a term not exceeding three years or a fine not exceeding
10 N20,000,000.00 or both the fine and imprisonment.

Procedures for
handling of
evidence by the
Commission

11 **34.-(1)** For the purpose of carrying out its functions and powers under
12 this Act, the Commission may receive in evidence any statement, document,
13 information or matter that may, in its opinion, assist it in dealing effectively
14 with the matter before it, whether or not such evidence is otherwise admissible
15 in a court of law.

16 (2) The Commission may take evidence on oath and for that purpose a
17 member of the Commission, any employee or agent of the Commission duly
18 authorised for that purpose may administer an oath.

19 (3) The Commission may require the evidence to be furnished to be
20 given on oath and for that purpose a member of the Commission or any officer
21 of the Commission duly authorised for that purpose may administer an oath.

22 (4) The Commission may permit a person appearing as a witness
23 before it to give evidence by tendering a written statement and, where the
24 Commission deems fit, verify a written statement by oath.

25 (5) Where a person has appeared as a witness before the Commission
26 pursuant to a notice issued in that behalf or has given evidence before the
27 Commission, whether pursuant to a notice or not, the Commission may, if it
28 deems fit, order any sum to be paid to that witness on account of his travelling
29 expenses.

30 (6) The Commission shall ensure that business secrets of all parties

1 concerned in investigation conducted by it are adequately protected during
2 all stages of an investigation or inquiry.

3 (7) The Commission may hear orally any person who, in its
4 opinion, will be affected by an investigation or inquiry being carried out by
5 it.

6 **35.**-(1) Subject to the provisions of subsection (2), the Commission
7 may by order prohibit the publication or communication of any information,
8 document or evidence which is furnished, given or tendered to, or obtained
9 by the Commission in connection with its operations.

Prohibition of
disclosure of
information,
documents

10 (2) An order made by the Commission under subsection (1) may be
11 expressed to have effect for such period as is specified in the order, which
12 shall not be less than two years, but the order shall not have effect where that
13 order was made in connection with an investigation or inquiry conducted by
14 the Commission, after the conclusion of that investigation or inquiry.

15 (3) A person who, contrary to an order made by the Commission
16 under subsection (1), publishes or communicates any information,
17 document or evidence commits an offence and is liable on conviction to a
18 fine not exceeding N1,000,000.00 in the case of an individual and
19 N50,000,000.00 in the case of a body corporate.

20 **36.** A person who destroys any record which may be required by
21 the Commission for the performance of any of its functions under this Act,
22 with intent to mislead the Commission or to prevent or impede any
23 investigation or inquiry under this Act, commits an offence and is liable on
24 conviction to a term of imprisonment for three years or a fine not exceeding
25 N50,000,000.00 or both the fine and imprisonment.

Destruction of
records

26 **37.**-(1) Where the Commission, at any stage of an investigation or
27 inquiry under this Act, is of the opinion that the matter being investigated or
28 subject to inquiry does not justify further investigation or inquiry, the
29 Commission may discontinue the investigation or inquiry.

Discontinuance
of inquiry or
investigation

30 (2) Where the Commission discontinues an investigation or

1 inquiry, it shall, within 14 days thereafter, give written notice to the parties
2 concerned in the investigation or inquiry, stating the reasons for discontinuing
3 the investigation or inquiry.

Appeals

4 **38.**-(1) Subject to regulations made by the Commission, appeals from
5 any decision of the Commission shall lie to the Tribunal established under
6 section 39 of this Act.

7 (2) The Commission shall adopt regulations specifying all relevant
8 procedures and requirements in relation to appeals under subsection (1) of this
9 section.

10 PART VII - THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL

Establishment
of the Competition
and Consumer
Protection
Tribunal

11 **39.**-(1) There is established under this Act, the Competition and
12 Consumer Protection Tribunal (in this Act referred to as "the Tribunal").

13 (2) The Tribunal shall adjudicate over conducts prohibited under this
14 Act and exercise the jurisdiction, powers and authority conferred on it under
15 this Act or any other enactment.

16 (3) The Tribunal shall keep records of its proceedings and have
17 jurisdiction throughout the Federation..

Composition
of the Tribunal

18 **40.**-(1) The Tribunal shall consist of-

19 (a) a chairman, who shall be a legal practitioner with not less than 10
20 years post call and cognate experience in the field of competition, consumer
21 protection or commercial and industrial law; and

22 (b) six other members, with at least 10 years professional experience
23 in any one or more of the following educational fields-

24 (i) competition and consumer protection law;

25 (ii) commerce and industry;

26 (iii) public affairs;

27 (iv) economics;

28 (v) finance; or

29 (vi) business administration or management.

30 (2) The Chairman and other members of the Tribunal shall be

1	appointed by the President subject to confirmation by the Senate.	
2	41. A member of the Tribunal shall hold office for a term of five	Tenure of office
3	years and no more from the date of assumption of office or upon the	
4	attainment of 70 years of age.	
5	42. A person is not qualified to serve on the Tribunal if the person	
6	is-	Disqualification from membership of the Tribunal
7	(a) an un-discharged bankrupt;	
8	(b) under any order of a competent court, declared mentally unfit;	
9	(c) a convicted felon under the laws of Nigeria;	
10	(d) found guilty of serious misconduct incapacitating the person	
11	from carrying out the functions of the office; or	
12	(e) found to have been engaging in any activity that may undermine	
13	the integrity of the Tribunal.	
14	43.-(1) A member of the Tribunal may, by a written notice,	Resignation and removal
15	addressed to the Minister, resign from office, provided that the member	
16	shall, unless permitted by the Minister to relinquish office sooner, continue	
17	to hold office until the expiry of three months from the date of receipt of the	
18	notice conveying the resignation or until a person duly appointed as a	
19	successor assumes office or until the expiry of the term of office, whichever	
20	is earlier.	
21	(2) A member of the Tribunal may be removed from office by the	
22	President-	
23	(a) on grounds of gross misconduct, after due inquiry has been	
24	made and the member concerned informed of the reasons for the removal	
25	and given an opportunity of being heard in respect of the reasons;	
26	(b) on grounds of incapacity on account of ill health; or	
27	(c) for failure to satisfy the requirements of section 42 of this Act.	
28	(3) Any exercise of the powers of the President under this section	
29	shall be based on the recommendation of the National Judicial Council.	

Filling of vacancies	1	44. Where for reason other than temporary absence, any vacancy
	2	occurs in the Tribunal, a successor shall be appointed in accordance with the
	3	provisions of section 40 (2) of this Act to fill the vacancy.
Registrar of the Tribunal	4	45. The Tribunal shall appoint a Registrar who shall be a person
	5	qualified to serve as the Registrar of a High Court, and shall-
	6	(a) subject to the general control of the Commission, be responsible
	7	for keeping records of the proceedings of the Tribunal;
	8	(b) be the head of the Registry and responsible for-
	9	(i) the day-to-day administration of the Tribunal; and
	10	(ii) the direction and control of all other employees of the Tribunal.
Other staff of the Tribunal	11	46.-(1) The Tribunal shall appoint such other employees as it deems
	12	necessary for the efficient performance of the functions of the Tribunal and the
	13	remuneration of persons so employed shall be determined by the National
	14	Salaries, Incomes and Wages Commission.
	15	(2) Employment in the Tribunal shall be subject to the provisions of
	16	the Pension Reform Act and officers and employees of the Tribunal are entitled
	17	to pensions and other retirement benefits as are prescribed under the Pension
	18	Reform Act.
Jurisdiction of the Tribunal	19	47.-(1) The Tribunal shall have power to-
	20	(a) hear appeals from or review any decision of the Commission taken
	21	in the course of the implementation of any of the provisions of this Act as may
	22	be referred to it;
	23	(b) hear appeals from or review any decision from the exercise of the
	24	powers of any sector of specific regulatory authority in a regulated industry in
	25	respect of competition and consumer protection matters;
	26	(c) issue such orders as may be required of it under this Act; and
	27	(d) make any ruling or such other orders as may be necessary or
	28	incidental to the performance of its functions under this Act.
	29	(2) Notwithstanding the provisions of subsection (1) (b), all appeals
	30	or request for review of the exercise of the power of any sector of specific

1 authority shall first be heard and determined by the Commission before such
2 appeals can lie before or be determined by the Tribunal.

3 48.-(1) The Chairman of the Tribunal shall be responsible for the
4 management and assignment of cases before the Tribunal to the other
5 members of the Tribunal.

Management
of the work of
the Tribunal

6 (2) For the purpose of subsection (1), members of the Tribunal
7 shall be constituted into Panels of at least three members.

8 (3) Further to the provision of subsection (2), the Chairman shall
9 ensure that at least one member of each Panel has requisite legal training,
10 experience and good knowledge of competition and consumer protection
11 matters.

12 (4) The Chairman shall designate a member to preside over
13 proceedings of a Panel at any sitting.

14 (5) Where, as a result of withdrawal from a hearing for the reason
15 stated in section 49 (2) of this Act or for any other reason, a member of a
16 Panel is unable to complete the proceedings in a matter assigned to that
17 Panel, the Chairman shall-

18 (a) direct that the hearing of that matter proceed before the
19 remaining members of the Panel, subject to the requirements of subsection
20 (4), or

21 (b) terminate the proceedings before that Panel and constitute
22 another Panel, which may include any member of the original Panel and
23 direct that panel to conduct a new hearing.

24 (6) The decision of a Panel on a matter referred to it shall be in
25 writing and include reasons for that decision.

26 (7) The Tribunal may extend or reduce a period prescribed for the
27 taking or doing of any action required to be done under this Part.

28 (8) A decision of a Panel contemplated in subsection (6) or of a
29 majority of the members of a Panel shall be the decision of the Tribunal.

Disclosure of
interest by
members of a
panel

1 **49.**-(1) A member of the Tribunal is not entitled to sit on a Panel if,
2 during the hearing, it appears to the Tribunal that the matter concerns a
3 financial or other interest of that member.

4 (2) A member affected by the provision of subsection (1) shall-

5 (a) immediately and fully disclose the fact and nature of the interest
6 to the Chairman and to the presiding member at that hearing; and

7 (b) withdraw from any further involvement in that hearing.

Procedural rules
of the Tribunal

8 **50.**-(1) The Tribunal may make rules regulating its procedures.

9 (2) The Tribunal shall, for the purpose of discharging its duty under
10 this Act, have power to-

11 (a) summon and enforce the attendance of any person, including the
12 power to examine a person under oath;

13 (b) require the discovery and production of documents;

14 (c) call for and examine witnesses under oath;

15 (d) receive evidence on affidavits; and

16 (e) do anything which, in the opinion of the Tribunal, is deemed
17 necessary to issue a final and reasoned decision on the merit of the matter
18 before it.

Powers of the
Tribunal to
impose penalties

19 **51.**-(1) The Tribunal may impose administrative penalties only for-

20 (a) a prohibited practice under this Act; or

21 (b) the contravention of, or failure to comply with, an interim order of
22 the Tribunal.

23 (2) An administrative penalty imposed under subsection (1) shall not
24 exceed 10% of the undertaking's annual turnover in Nigeria and its exports
25 from Nigeria during the preceding financial year.

26 (3) When determining an appropriate penalty under subsection (1),
27 the Tribunal shall consider -

28 (a) the nature, duration, gravity and extent of the contravention;

29 (b) any loss or damage suffered as a result of the contravention;

30 (c) the behaviour of the defaulting party;

1 (d) the market circumstances in which the contravention took
2 place;

3 (e) the level of profit derived from the contravention;

4 (f) the degree to which the defaulting party has co-operated with
5 the Commission and the Tribunal; or

6 (g) whether the defaulting party has previously been found to be in
7 contravention of any of the provisions of this Act.

8 **52.**-(1) The Tribunal may make an order directing any undertaking
9 to sell any portion or all of its shares, interest or assets if the practice
10 prohibited under this Act-

Powers of the
Tribunal to
order sale of
assets

11 (a) cannot adequately be remedied under any other provision of
12 this Act; or

13 (b) is substantially a repeat by that undertaking of conduct
14 previously found by the Tribunal to be a prohibited practice.

15 (2) An order made under subsection (1) may provide for time-
16 frame for compliance and any other term that the Tribunal considers
17 appropriate, having regard to the commercial interests of the parties
18 concerned.

19 **53.** The Tribunal shall provide the parties to the proceedings
20 before it and other members of the public reasonable access to the record of
21 its proceedings, subject to any requirement to protect confidential
22 information as required under the provisions of this Act and regulations
23 made under this Act or any other enactment.

Access to records
of the Tribunal

24 **54.** An order, ruling, award or judgment of the Tribunal shall be-

25 (a) binding on the parties before the Tribunal; and

26 (b) registered with the Federal High Court for the purpose of
27 enforcement only.

Resignation and
enforcement of
the decisions of
the Tribunal

28 **55.**-(1) Any party to a proceeding who is not satisfied with a ruling,
29 award or judgment of the Tribunal may appeal to the Court of Appeal upon
30 giving notice in writing to the Secretary to the Tribunal within 30 days after

Judicial review
by the Court of
Appeal

1 the date on which the ruling, award or judgment was given.

2 (2) A notice of appeal filed pursuant to subsection (1) shall set out all
3 the grounds on which the review is sought.

4 (3) Upon the receipt of a notice of appeal under subsections (1) and
5 (2), the Secretary to the Tribunal shall cause the notice to be given to the Chief
6 Registrar of the Court of Appeal along with the record of proceedings and
7 exhibits tendered at the hearing before the Tribunal.

Right to legal
representation

8 **56.**-(1) Any party to a proceeding before the Tribunal may either
9 appear in person or authorise one or more legal practitioners or any of its
10 officers to represent the party before the Tribunal.

11 (2) Where a party or its representative is unable for good cause to
12 attend a hearing before the Tribunal, the Tribunal may adjourn the hearing for
13 such reasonable time as it deems fit, or admit the matter to be made by some
14 other person or by way of a written address.

Payment of
allowances and
emoluments of
members of
the Tribunal

15 **57.** The Chairman and other members of the Tribunal shall be paid
16 such allowances, emoluments and benefits as the Federal Government may
17 approve.

Funding of the
Tribunal

18 **58.**-(1) The Tribunal shall establish and maintain a fund, which shall
19 be applied towards the performance of its functions under this Act.

20 (2) There shall be paid and credited into to the Fund established under
21 subsection (1) -

22 (a) annual subventions and budgetary allocations from the Federal
23 Government with respect to recurrent and capital expenditures; and

24 (b) fees collected for services rendered by the Tribunal under this Act,
25 and such other sums of money as may be provided by the Federal Government
26 for the Tribunal.

27 (3) The Tribunal shall, at the end of each financial year, submit its
28 budget for the following year to the Minister.

29 (4) The Minister shall ensure that adequate budgetary provision is
30 made for the payment of emoluments and allowances of members and staff of

1 the Tribunal including all other expenditures of the Tribunal for the efficient
2 discharge of the duties and responsibilities of the Tribunal under this Act.

3 PART VIII - RESTRICTIVE AGREEMENTS

4 **59.**-(1) Any agreement among undertakings or a decision of an
5 association of undertakings that has the purpose of actual or likely effect of
6 preventing, restricting or distorting competition in any market is unlawful
7 and, subject to section 61 of this Act, void and of no legal effect.

Prohibition of
agreements in
restraint of
competition

8 (2) The prohibited acts under subsection (1) include, in particular-

9 (a) directly or indirectly fixing a purchase or selling price of goods
10 or services, subject to section 107 of this Act;

11 (b) dividing markets by allocating customers, suppliers, territories
12 or specific types of goods or services;

13 (c) limiting or controlling production or distribution of any goods
14 or services, markets, technical development or investment, subject to
15 section 108 of this Act;

16 (d) engaging in collusive tendering, subject to section 109 of this
17 Act; or

18 (e) making the conclusion of an agreement subject to acceptance
19 by the other parties of supplementary obligations which, by their nature or
20 according to commercial usage, have no connection with the subject of such
21 agreement.

22 **60.** The provision of section 59 of this Act shall not apply to an
23 agreement among undertakings, or a decision of an association of
24 undertakings, or a category of agreements or decisions of associations of
25 undertakings, the entry into which is authorised by the Commission,
26 provided that the Commission is satisfied that the agreement or decision-

Agreements
authorized by the
Commission

27 (a) contributes to the improvement of production or distribution of
28 goods, services or the promotion of technical or economic progress, while
29 allowing consumers a fair share of the resulting benefit;

30 (b) imposes on the undertakings concerned only such restrictions

1 as are indispensable to the attainment of the objectives referred to in paragraph
2 (a) of this section; and

3 (c) does not afford the undertakings concerned the possibility of
4 eliminating competition in respect of a substantial part of the goods or services
5 concerned.

Prohibition of
agreements
containing
exclusionary
provisions

6 **61.** An undertaking or association of undertakings shall not request
7 another undertaking or association of undertakings to refuse to sell or purchase
8 any goods or services with the intention of harming certain undertakings.

Agreements
by suppliers

9 **62.-(1)** No two or more undertakings shall enter into any agreement
10 whereby they undertake to-

11 (a) withhold supplies of goods or services from dealers (whether
12 parties to the agreement or not) who resell or have resold any goods or services
13 in breach of any condition as to the price at which those goods or services may
14 be resold; or

15 (b) refuse to supply goods or services to the dealers referred to in
16 paragraph (a) except on terms and conditions that are less favourable than those
17 applicable to other dealers carrying on business in similar circumstances.

18 (2) No two or more undertakings shall enter into, or carry out, any
19 agreement authorising the recovery of penalties, however described, by or on
20 behalf of the parties to the agreement from dealers who resell or have resold
21 goods or services in breach of any condition described in paragraph (a).

Prohibition of
minimum resale
price maintenance

22 **63.-(1)** Any term or condition of an agreement for the sale of any
23 goods or services is void to the extent that it purports to establish minimum
24 prices to be charged on the resale of the goods or services in Nigeria.

25 (2) Subject to the provisions of subsections (3) and (4), no
26 undertaking or its agent shall-

27 (a) include in an agreement for the sale of goods or services, a term or
28 condition which is void under this Act; or

29 (b) notify dealers or otherwise publish on or in relation to any goods
30 or services, price stated or calculated to be understood as the minimum price

1 which may be charged on the resale of the goods or services in Nigeria.

2 (3) The provisions of subsection (2) (a) do not affect the
3 enforceability of an agreement except in respect of the term or condition
4 which is void under this Act.

5 (4) Nothing in this section shall be construed as precluding an
6 undertaking or association, or person acting on the undertaking's behalf,
7 from notifying the dealers or otherwise publishing prices recommended as
8 appropriate for the resale of goods or services supplied or to be supplied by
9 that undertaking.

10 **64.**-(1) The provisions of section 63 of this Act shall apply to
11 patented goods, including goods made by a patented process.

Patented
products

12 (2) Notice of any term or condition which is void under section 63
13 of this Act, or which would be so void if included in an agreement relating to
14 the sale of patented goods, is of no effect for the purpose of limiting the right
15 of a dealer to dispose of those goods without infringement of the patent.

16 (3) Nothing contained in this Act or this section shall affect the
17 validity, as between the parties to an agreement and their successors, of any
18 term or condition of-

19 (a) a licence granted by the proprietor of a patent or a licensee
20 under any such licence; or

21 (b) any assignment of a patent so far as it regulates the price at
22 which goods produced or processed by the licensee or assignee may be sold
23 by him.

24 **65.**-(1) No undertaking shall withhold supplies of any goods or
25 services from a dealer seeking to obtain them for resale on the ground that
26 the dealer-

Maintenance of
minimum resale
prices

27 (a) has sold goods or services obtained either directly or indirectly
28 from that undertaking at a price below the resale price or has supplied them
29 either directly or indirectly to a third party who had done so; or

30 (b) is likely, if the goods or services are supplied to that dealer, to

1 sell them at a price below the resale price, or supply them either directly or
2 indirectly to a third party who would be likely to do so.

3 (2) In this section, "the resale price", in relation to a sale of any
4 description, means the price-

5 (a) notified to the dealer or otherwise published by or on behalf of a
6 supplier of the goods or services in question, whether lawfully or not, as the
7 price or minimum price which is to be charged on or is recommended as
8 appropriate for a sale of that description; or

9 (b) prescribed or purporting to be prescribed for that purpose by an
10 agreement between the dealer and any supplier.

11 (3) Where, under this section, it would be unlawful for an undertaking
12 to withhold supplies of goods or services, it is also unlawful for the undertaking
13 to cause or procure any other undertaking to do so.

Withholding of
products from
a dealer by a
supplier

14 **66.**-(1) For the purposes of this Part, an undertaking shall be treated as
15 withholding goods or services from a dealer if -

16 (a) the undertaking refuses to supply those goods or services to the
17 order of the dealer;

18 (b) the undertaking refuses to supply those goods or services to the
19 dealer except at prices or on terms or conditions as to credit, discount or other
20 matters which are significantly less favourable than those at or on which the
21 undertaking normally supplies those goods or services to other dealers carrying
22 on business in similar circumstances; or

23 (c) although the undertaking enters into an agreement to supply goods
24 or services to the dealer, the undertaking treats the dealer in a manner
25 significantly less favourable than that in which it normally treats other dealers
26 in respect of times or methods of delivery or other matters arising in the
27 execution of the agreement.

28 (2) An undertaking shall not be treated as withholding goods or
29 services on any ground mentioned in this Part if, in addition to that ground, the
30 undertaking has other grounds which, standing alone, would have led the

1 undertaking to withhold those goods or services.

2 (3) Subject to subsection (5), where in the proceedings brought
3 against an undertaking in respect of a contravention of the provisions of
4 subsection (1), the matters specified in subsection (4) are proved, it shall be
5 presumed, unless the contrary is proved, that the goods or services
6 concerned were withheld on the ground that the dealer had acted or was
7 likely to act as described in subsection (1).

8 (4) The matters referred to in subsection (3) are-

9 (a) supplies of goods or services were withheld from a dealer;

10 (b) during a period ending immediately before the supplies were so
11 withheld, the undertaking was doing business with the dealer or was
12 supplying goods or services of the same description to other dealers carrying
13 on business in similar circumstances; and

14 (c) the dealer, to the undertaking's knowledge, had within the
15 preceding six months, acted as described in subsection (1) of this Act or had
16 indicated its intention to act in relation to the goods or services in
17 question.

18 (5) The provisions of subsections (3) and (4) shall not apply where
19 the proof that goods or services were withheld consists only of evidence of
20 requirements imposed by the undertaking in respect of the time at which or
21 the form in which payment was to be made for goods or services supplied or
22 to be supplied.

23 **67.**-(1) Where the Commission determines that an agreement or
24 decision contravenes the provisions of this Act, it shall serve an order on the
25 parties concerned stating the reasons for its decision and requiring the
26 parties to cease their anti-competition practices.

27 (2) Any person who has suffered a loss as a result of any restrictive
28 agreement or decision may make a complaint to the Commission and the
29 Commission may, if it is satisfied that the circumstances of the case so
30 warrant, exercise any of the powers granted to it under this Act as it deems

Complaints to
and issuance of
notice by the
Commission of
restrictive
agreements

Exceptions

1 fit, including making interim orders mandating the cessation of the restrictive
2 agreement pending the conclusion of investigation.

3 (3) Any person who may have suffered loss as a result of this
4 agreements or not satisfied with the decision of the Commission may apply to
5 the Tribunal for review.

6 **68.**-(1) Nothing in this Act prohibits-

7 (a) combinations or activities of employees for the reasonable
8 protection of employees;

9 (b) arrangements for collective bargaining on behalf of employers
10 and employees for the purpose of fixing minimum terms and conditions of
11 employment;

12 (c) activities of professional associations designed to develop or
13 enforce standards of professional qualifications;

14 (d) a contract or an arrangement among partners, none of whom is a
15 body corporate, in so far as it contains provisions in relation to the terms of the
16 partnership or the conduct of the partnership business or in relation to
17 competition between the partnership and a party to the contract, arrangement
18 or understanding while that party is, or after that party ceases to be a partner;

19 (e) a contract of service or a contract for the provision of services in so
20 far as it contains provisions by which a person, not being a body corporate,
21 agrees to accept restrictions as to the work, whether as an employee or
22 otherwise, in which that person may engage during or after the termination of
23 the contract and this period shall not be more than two years;

24 (f) a contract for the sale of a business or shares in the capital of a body
25 corporate carrying on business in so far as it contains a provision that is solely
26 for the protection of the purchases in respect of the goodwill of the body
27 corporate; or

28 (g) any act done to give effect to a provision of a contract or an
29 arrangement referred to in paragraphs (a) to (f) of this subsection.

30 (2) With respect to professional services subject to the regulation of

1 professional bodies, the Commission may issue guidelines for the
2 application of certain provisions of this Act to the supply of services or
3 conduct of business by members of such professional associations.

4 (3) For the purposes of subsection (2), the Commission shall, from
5 time to time, publish a list of professional bodies to whom the subsection
6 applies.

7 (4) Any privilege or exemption granted by the Commission under
8 subsection (1) shall be consistent with the provisions of this Act.

9 (5) The Commission shall, as it considers appropriate, develop and
10 publish procedural rules to be applied to group inquiries.

11 **69.**-(1) An undertaking that makes or enters into an agreement or
12 decision declared unlawful under this Part commits an offence and is liable
13 on conviction where the undertaking is-

Offences and
penalties under
this Part

14 (a) a natural person, to imprisonment not exceeding a term of five
15 years, or to a fine not exceeding N5,000,000.00 or both the fine and
16 imprisonment; and

17 (b) a body corporate, to a fine not exceeding 10% of its turnover in
18 the preceding business year.

19 (2) Where the offence is committed by a body corporate, each
20 director of the body corporate shall be liable to be proceeded against and on
21 conviction dealt with as specified in subsection (1) (a).

22 (3) An undertaking that fails to obey an order served by the
23 Commission under subsection (1) of section 67 (1) of this Act commits an
24 offence and where the undertaking is-

25 (a) a natural person, it is liable on conviction to imprisonment for a
26 term not exceeding three years, or to payment of a fine not exceeding
27 N50,000,000.00 or both the fine and imprisonment; or

28 (b) a body corporate, it is liable on conviction to a fine not
29 exceeding 10% of its turnover in the preceding business year.

30 (4) Where the offence is committed by a body corporate, each

1 director of the body corporate shall be liable to be proceeded against and on
2 conviction dealt with as specified in subsection (1) (a).

Dominant
position and
abuse of dominant
position in the
relevant market

3 PART IX - ABUSE OF A DOMINANT POSITION

4 **70.**-(1) For the purpose of this Act, an undertaking is considered to be
5 in a dominant position if it is able to act without taking account of the reaction
6 of its customers, consumers or competitors.

7 (2) A dominant position in a relevant market exists where an
8 undertaking enjoys a position of economic strength enabling it to prevent
9 effective competition being maintained on the relevant market and having the
10 power to behave to an appreciable extent independently of its competitors,
11 customers and ultimately consumers.

Criteria for
identifying the
relevant market

12 (3) The Commission shall publish the size of market share that may
13 constitute dominant position in particular markets.

14 **71.** For the purpose of delineating the relevant market under this Act,
15 the criteria that shall be taken into account include the-

16 (a) geographical boundaries that identify groups of sellers and buyers
17 of goods or services within which competition is likely to be restrained;

18 (b) goods or services which are regarded as interchangeable or
19 substitutable by the consumer by reason of their characteristics, prices and the
20 intended use; and

21 (c) suppliers to which consumers may turn to in the short term, if the
22 abuse of dominance leads to a significant increase in price or to other
23 detrimental effect upon the consumer.

Abuse of a
dominant position
prohibited

24 **72.**-(1) Subject to the provisions of subsection (3), any abuse by one
25 or more undertakings of a dominant position in a market is prohibited.

26 (2) For the purposes of this Act, an abuse of dominant position occurs
27 where one or more undertakings in a dominant position -

28 (a) charge an excessive price to the detriment of consumers;

29 (b) refuse to give a competitor access to an essential facility when it is
30 economically feasible to do so;

1 (c) engage in an exclusionary act, other than an act listed in
2 paragraph (d), if the anti-competitive effect of that act outweighs its
3 technological efficiency and other pro-competitive gains; or

4 (d) engage in any of the following exclusionary acts, unless the
5 firm concerned can show technological efficiency and other pro-
6 competitive gains which outweigh the anti-competitive effect of its act-

7 (i) requiring or inducing a supplier or customer not to deal with a
8 competitor,

9 (ii) refusing to supply scarce goods to a competitor when supplying
10 those goods is economically feasible,

11 (iii) selling goods or services on condition that the buyer purchases
12 separate goods or services unrelated to the object of a contract, or forcing a
13 buyer to accept a condition unrelated to object of a contract,

14 (iv) selling goods or services below their marginal or average cost,

15 (v) buying up a scarce supply of intermediate goods or resources
16 required by a competitor.

17 (3) For the purpose of assessing market dominance, account shall
18 be taken in particular of-

19 (a) the market share of the undertaking or undertakings concerned
20 in the relevant market;

21 (b) its or their financial power;

22 (c) its or their access to supplies or markets;

23 (d) its or their links with other undertakings;

24 (e) legal or factual barriers to market entry by other undertakings;

25 (f) actual or potential competition by undertakings established
26 within or outside the scope of application of this Act;

27 (g) its or their ability to shift supply or demand to other goods or
28 services; and

29 (h) the ability of the opposite market side to resort to other
30 undertakings.

1 (4) An undertaking shall not be treated as abusing a dominant position
2 if its conduct-

3 (a) contributes to the improvement of production or distribution of
4 goods or services or the promotion of technological or economic progress,
5 while allowing consumers a fair share of the resulting benefit;

6 (b) is indispensable to the attainment of the objectives referred to in
7 paragraph (a); and

8 (c) does not afford the undertaking the possibility of eliminating
9 competition in respect of a substantial part of the goods or services concerned.

10 (5) An undertaking may be considered as abusing its dominant
11 position with regard to subsection (3) (c) of this section if the Commission is
12 satisfied that its activities-

13 (a) have the effect of unreasonably lessening competition in a market;
14 and

Consequences
of abuse of a
dominant position

15 (b) impede the transfer or dissemination of technology.

16 **73.**-(1) Where the Commission finds that an undertaking has abused
17 or is abusing its dominant position in a market, the Commission shall prepare a
18 report indicating the practices that constitutes the abuse and shall-

19 (a) notify the undertaking of its findings accompanied by a copy of
20 the report; and

21 (b) direct the undertaking to immediately cease the abusive practice.

22 (2) The provisions of this section shall not apply to exclusive dealing
23 arrangements or market restrictions between or among affiliated or
24 interconnected undertakings.

25 (3) An undertaking that abuses its dominant position in a market
26 commits an offence under this Act and is liable on conviction to a fine of not
27 less than 10% of its turnover in the preceding business year or such higher
28 percentage as the court may determine under the circumstances of the
29 particular case.

Penalties for
failure to comply
with a cease order

30 **74.**-(1) An undertaking that fails to cease an abusive practice after

1 receiving an order of the Commission to that effect commits an offence and
 2 is liable on conviction to a fine not exceeding 10% of its turnover in the
 3 preceding business year or to such higher percentage as the court may
 4 determine given the circumstances of the particular case.

5 (2) Any director of an undertaking that commits an offence under
 6 subsection (1) is liable on conviction to imprisonment for a term not
 7 exceeding three years, or to payment of a fine not exceeding
 8 N50,000,000.00 or to both the fine and imprisonment.

Suspension of
 punishment

9 **75.** Where upon receipt of the directive under section 73 (1) (b) of
 10 this Act, the undertaking or undertakings concerned submits or submit to the
 11 Commission the measures it or they propose to take to cease the abusive
 12 practice and a timetable for giving effect to the measures, and the
 13 Commission is satisfied as to the measures, the Commission may decide not
 14 to proceed with the institution of action that leads to the penalties prescribed
 15 in section 74 of this Act against the undertaking or undertakings.

16 PART X - MONOPOLY

Power of the
 Commission to
 investigate a
 monopoly situation

17 **76.** Where it appears to the Commission that there are grounds for
 18 believing that a monopoly situation may exist in relation to the production or
 19 distribution of goods or services of any description, or in relation to exports
 20 of goods or services of any description from Nigeria, it shall cause an
 21 investigation to be held into a particular sector of the economy or into a
 22 particular type of agreements across various sectors to determine the extent
 23 of the situation in relation to the market.

Determination of
 a monopoly
 situation by the
 Commission

24 **77.** For the purposes of this Part, a monopoly situation shall be
 25 taken to exist in relation to the-

26 (a) supply of goods or services of any description; or
 27 (b) import and export of goods and services of any description from
 28 Nigeria, to the extent it has an effect on competition in a market in Nigeria,
 29 as may be prescribed in regulations made by the Commission.

General powers
 of the Commission
 to obtain information

30 **78.** When conducting a monopoly investigation under section 77 of

1 this Act, the Commission may-

2 (a) exercise any of its powers, as contained under section 30 of this
3 Act; and

4 (b) require any person or body corporate to furnish the Commission
5 with such information as the Commission may consider necessary for the
6 purposes of conducting such investigation.

Supplementary
provisions as to
the requirement
to furnish
information

7 **79.** Any power conferred on the Commission under this Act to require
8 a person or body corporate to furnish information shall be exercisable by notice
9 in writing served on that person or body corporate.

Penalties for
refusal to furnish
information to
the Commission

10 **80.**-(1) A person or body corporate who refuses or willfully neglects
11 to furnish to the Commission information required under this Act commits an
12 offence and is liable on conviction to a fine not exceeding N10,000,000.00.

13 (2) A person who furnishes information or makes a statement required
14 by the Commission under this Act knowing that such statement is false in any
15 material respect or recklessly makes a statement which is false in any material
16 way, commits an offence and is liable on conviction to imprisonment for a term
17 not exceeding two years or to a fine not exceeding N2,000,000.00 or to both the
18 fine and imprisonment.

Order for
monopoly
investigation

19 **81.** An order for a monopoly investigation under section 76 of this
20 Act shall-

21 (a) specify the description of goods or services to which the order
22 relates;

23 (b) state whether it relates to supply, import or export of goods and
24 services; and

25 (c) specify the part of Nigeria in respect of which the investigation is
26 to be limited where it is to be limited to a part of Nigeria.

Request for a
monopoly
investigation

27 **82.**-(1) Any person or body corporate may make a request for a
28 monopoly investigation to the Commission.

29 (2) A monopoly investigation may be referred to the Commission by a
30 court, agency of the Government of the Federation or any State or Local

1 Government of the Federation.

2 (3) A request made under subsection (1) shall be accompanied by
3 an affidavit deposing to the facts giving rise to the request.

4 (4) In responding to a request or referral referred to in subsections
5 (1) and (2), the Commission may limit its report to-

6 (a) whether a monopoly situation exists in relation to the matters
7 set out in the request or reference;

8 (b) where a monopoly situation is determined to exist, which of the
9 provisions of this Act is applicable;

10 (c) the undertaking or undertakings in whose favour the monopoly
11 situation exists;

12 (d) the acts taken by way of anti-competition practices or otherwise
13 by the undertaking or undertakings concerned to exploit or maintain the
14 monopoly situation or to further an anti-competitive practice; and

15 (e) any act or omission on the part of the undertaking or
16 undertakings concerned attributable to the existence of the monopoly
17 situation and, if so, by what manner it is so attributable.

18 **83.** Where the Commission gives a direction under this Act with
19 respect to a request for or a referral of a monopoly investigation, the
20 Commission shall notify all relevant parties in writing and shall place a
21 notice of such direction on the website of the Commission.

Notification of
a request for a
monopoly
investigation

22 **84.-** (1) The Commission shall furnish to the Tribunal reports on
23 completed monopoly investigations at such times or intervals as may be
24 agreed from time to time between the Tribunal and the Commission.

Report on a
monopoly
investigation

25 (2) In making a report on a monopoly investigation, the
26 Commission shall include in the report definite conclusions on the questions
27 or issues that prompted the investigation, together with an account of the
28 Commission's reasons for those conclusions.

29 (3) Where the Commission finds that a monopoly situation exists
30 and that facts found by the Commission in pursuance of its investigation

1 operate or may be expected to operate against the public interest, its report shall
2 specify those facts and the particular effects which in the Commission's
3 opinion, those facts have or may be expected to have.

4 (4) The Commission-

5 (a) shall, as part of any investigation under this Part, consider the
6 actions to be taken to remedy or prevent any adverse effects resulting from a
7 monopoly situation; and

8 (b) may, if it deems fit, include in its report on a monopoly
9 investigation recommendations in support of the actions to be taken.

10 (5) The phrase "action to be taken" in subsection (4) (a) and (b) means
11 the action to be taken by-

12 (a) the Minister or any other Minister of the Government of the
13 Federation or any department or agency of Government where the resulting
14 adverse effects affects the sphere of responsibility or the statutory function of
15 any Minister or of any of the departments or agencies of Government; or

16 (b) the undertaking or undertakings in whose favour the monopoly
17 situation in question exists.

Time frame for
a report on a
monopoly
investigation

18 **85.**-(1) Upon the commencement of a monopoly investigation under
19 this Part, the Commission shall specify a period within which the Commission
20 is to report on the monopoly investigation.

21 (2) Where a report of the Commission is not made before the end of
22 the period specified by the Commission under subsection (1) or if one or more
23 extended periods allowed for making the report under subsection (3) is not met
24 before the end of that extended period or of the last of those extended periods,
25 as the case may be, the investigation shall cease to have effect and no action or,
26 if action has already been taken, no further action shall be taken in relation to
27 that investigation.

28 (3) Where a monopoly investigation cuts across the sphere of
29 responsibilities of more than one Minister and the period of reporting on an
30 investigation has already been extended once or more than once under any

1 direction issued under this subsection, a joint directive of all the Ministers
2 concerned may be issued allowing the Commission such extended period to
3 report on the reference as may be specified in the direction.

4 **86.-(1)** The provisions of this section shall have effect where a
5 report of the Commission on a monopoly investigation is referred to the
6 Tribunal with the conclusions of the Commission that -

7 (a) a monopoly situation exists and that facts found by the
8 Commission in its investigations operate or may be expected to operate,
9 against the public interest; and

10 (b) a report of the Commission herein shall specify particular
11 adverse effects of the monopoly situation to the public interest.

12 (2) The Tribunal may, based on the findings of the Commission
13 pursuant to subsection (1), exercise any of its powers under this Act or make
14 such orders as considered necessary for the purpose of remedying or
15 preventing the adverse effects specified in the report.

16 (3) An order of the Tribunal made under subsection (2) may, in
17 particular-

18 (a) declare an agreement to be unlawful to such extent and in such
19 circumstances as may be provided by this Act or regulations made under this
20 Act;

21 (b) require any party to such agreement as may be specified or
22 described in the order to terminate the agreement within such time as may be
23 so specified, either wholly or to such extent as may be specified;

24 (c) require a person supplying goods or services to publish a list of
25 prices, with or without such further information as may be specified or
26 described in the order;

27 (d) prohibit or restrict the acquisition by any undertaking of the
28 whole or part of another undertaking; or

29 (e) provide for the division of any undertaking by the sale of any
30 part of its shares, assets or otherwise for which purpose all the activities

Powers of the
Tribunal in
relation to a report
on a monopoly

1 carried on by way of business by any one undertaking or by any two or more
2 interconnected undertakings may be treated as a single business or for the
3 division of any group of interconnected undertakings and for all such matters
4 as may be necessary to effect or take account of the division, including the-

5 (i) transfer or vesting of property rights, liabilities or obligation;
6 (ii) adjustment of contracts, whether by discharge or reduction of any
7 liability or obligation or otherwise;
8 (iii) creation, allotment, surrender or cancellation of shares, stock or
9 securities;

10 (iv) formation or winding up of an undertaking or association,
11 corporate or unincorporated, or the amendment of the memorandum and
12 articles or other instruments regulating any undertaking or association;

13 (v) extent to which and the circumstances in which provisions of the
14 order affecting an undertaking or association in its share capital, constitution or
15 other matters may be altered by the undertaking or association and the
16 registration under any enactment of the order by undertakings or associations
17 so affected; or

18 (vi) continuation with any necessary change of parties of any legal
19 proceedings.

20 (4) The reference in subsection (3) (e) to the division of an
21 undertaking shall be construed as including a reference to the separation by the
22 sale of any part of any shares or assets concerned of undertakings which are
23 under joint control.

24 (5) In determining whether or not and to what extent or in what
25 manner to exercise any of the powers referred to in subsection (2), the Tribunal
26 shall take into account the objectives of this Act.

27 (6) Where a report made under subsection (1) specifies that the
28 undertaking in whose favour the monopoly situation exists is a body corporate
29 fulfilling the following conditions-

30 (a) that the affairs of the body corporate are managed by its members,

1 and

2 (b) that by virtue of any enactment, those members are appointed
3 by a supervising Minister of that body corporate,
4 the Tribunal shall, if requested, receive representations from the Minister
5 who appointed members of that body corporate and shall consider such
6 representations before making any orders or exercising any powers.

7 (7) In relation to any such undertaking as is mentioned in
8 subsection (6) the powers exercisable under subsection (2) shall not include
9 the powers specified in subsection (3)(e).

10 **87.**-(1) The provisions of this section shall apply to an order made
11 under section 86 of this Act.

General provisions
relating to orders
made under this
Part

12 (2) An order made under section 86 of this Act declaring certain
13 acts to be unlawful shall apply to all undertakings or to such undertakings as
14 may be specified or described in the order.

15 (3) Nothing in any order made under section 86 of this Act shall
16 have effect so as to apply to any undertaking in relation to its conduct outside
17 Nigeria, unless that undertaking is-

18 (a) a citizen of Nigeria; or

19 (b) a body corporate incorporated under the Companies and Allied
20 Matters Act and carrying on business in Nigeria, either alone or in
21 partnership with one or more other undertakings.

22 (4) An order to which this section applies may be extended so as to
23 prohibit the carrying out of any agreement already in existence on the date
24 on which the order is made.

25 (5) Nothing in any order to which this section applies shall have the
26 effect as to restrict any act for the purpose of restraining an infringement of a
27 Nigerian patent or so as to restrict any undertaking as to the conditions
28 which it attaches to a licence to do anything the doing of which would, but
29 for the licence, be an infringement of a Nigerian patent.

30 (6) The Tribunal shall include, in an order made under section 86 of

1 this Act, the power to give any directive to a person, body corporate or
2 association specified in the order to-

3 (a) take such steps within its competence as may be specified or
4 described in the direction for the purpose of carrying out, or securing
5 compliance with the order; or

6 (b) do or refrain from doing anything so specified or described which
7 the person, body corporate or association may be required by the order to do or
8 refrain from doing, and may authorise the Minister in charge of the person,
9 body corporate or association to vary or revoke any directives so given.

10 (7) Prior to making any order under section 87 of this Act, the Tribunal
11 shall publish, in such manner as it deems appropriate, a notice -

12 (a) stating its intention to make the order;

13 (b) indicating the nature of the provisions to be embodied in the
14 order; and

15 (c) requesting any person, body corporate or association whose
16 interest is likely to be affected by the order and who is desirous of making
17 representations in respect of the order to do so in writing within 30 days from
18 the date of publication of the notice for consideration by the Tribunal.

Declaration of
price

19 PART XI - PRICE REGULATION

20 **88.**-(1) For the purpose of regulating and facilitating competition
21 only, the President may, from time to time, by order published in the Federal
22 Gazette, declare that the prices for goods or services specified in the order shall
23 be controlled in accordance with the provisions of this Act.

24 (2) The President shall not make an order under subsection (1) unless
25 the President is satisfied that-

26 (a) goods or services to which the order relates are or will be supplied
27 or acquired in a market in which competition is limited or is likely to be
28 lessened;

29 (b) it is necessary or desirable for the prices of those goods or services
30 to be controlled in accordance with this Act in the interest of users, consumers,

1 or, as the case may be, suppliers; and

2 (c) the declaration of price regulation is narrowly designed, both in
3 terms of duration and the list of goods and services affected, as is necessary
4 to remedy the effects of the absence of competition in the relevant market.

5 (3) An order shall not be made under subsection (1) prior to the
6 submission to the President of a report of the Commission assessing the state
7 of competition in the relevant market and providing recommendations on
8 the desirability and likely effects of implementing price regulation or other
9 remedies.

10 (4) An order made under subsection (1) shall identify the goods or
11 services to which it pertains by-

12 (a) a description of the goods or services;

13 (b) a description of the kind or class of the goods or services;

14 (c) a description of the market to which the goods or services
15 belong; and

16 (d) the specification of the sector of the economy affected or likely
17 to be affected.

18 (5) Any order made under subsection (1) shall specify the date on
19 which it shall expire.

20 **89.**-(1) The President may, by notice in writing, require the
21 Commission to report by such date as the President shall specify in the
22 notice, on the need to amend, vary or revoke an order made under section 88
23 of this Act.

Commission to
report to the
President on price
regulation

24 (2) Upon the issuance of a notice to the Commission under
25 subsection (1)-

26 (a) the Commission shall cause to be published in such manner as
27 the Commission may consider appropriate, including the mass media, a
28 notice-

29 (i) stating that the requirement has been made and specifying the
30 matter to which it pertains, and

1 (ii) inviting interested persons to present their views on that matter to
2 the Commission, and specifying the time and manner within which they may
3 do so; and

4 (b) the Commission shall not submit a report to the President until it
5 has given a reasonable opportunity to interested persons to furnish their views
6 in accordance with the requirement of paragraph (a) (ii).

7 (3) The Commission may at its discretion recommend to the President
8 to amend, vary or revoke an order made under section 88 of this Act.

9 (4) The President shall cause a copy of every report submitted by the
10 Commission under this section to be published in such manner as it considers
11 appropriate.

Regulated goods
or services to be
supplied in
accordance with
authorized prices

12 **90.**-(1) For the purpose of this Part, "regulated goods" or "regulated
13 services" means goods or services in respect of which there is, for the time
14 being in force, an order made under section 88 of this Act.

15 (2) Within a reasonable period after an order under section 88 of this
16 Act is made, the Commission shall set and cause to be published an authorised
17 price of the regulated goods or services that are the subject of the order.

18 (3) Following the publication of an authorised price by the
19 Commission under subsection (2), an undertaking shall not supply the
20 regulated goods or services in Nigeria other than for the authorised price.

21 (4) Any provision of an agreement in violation of the provisions
22 subsection (3) is unenforceable.

23 (5) A person who violates any of the provisions of this Part commits
24 an offence and is liable on conviction to a fine not exceeding N50,000,000.00.

25 (6) A body corporate that violates any of the provisions of this Part
26 commits an offence and is liable on conviction to a fine not exceeding 10% of
27 the turnover of the body corporate in the business year preceding the date of the
28 commission of the offence.

29 (7) Each director of the body corporate referred to in subsection (6)
30 shall be liable to be proceeded against and on conviction dealt with as specified

1 in subsection (5).

2 **91.**-(1) Any undertaking that supplies or distributes regulated
3 goods or services shall retain all accounting and costing records on the
4 regulated goods or services as the Commission may specify either in relation
5 to suppliers or distributors of those goods or services generally or in relation
6 to a particular supplier or distributor of the goods or services.

Retention of
accounting and
costing records
by suppliers or
distributors

7 (2) Any undertaking that supplies or distributes regulated goods or
8 services shall retain the records referred to in subsection (1) for a period of
9 three years from the date of the revocation or expiry of the order in respect of
10 the regulated goods or services to which they relate.

11 PART XII - MERGERS

Merger defined

12 **92.**-(1) For the purposes of this Act-

13 (a) a merger occurs when one or more undertakings directly or
14 indirectly acquire or establish direct or indirect control over the whole or
15 part of the business of another undertaking; and

16 (b) a merger contemplated in paragraph (a) of this subsection may
17 be achieved in any manner, including through -

18 (i) the purchase or lease of the shares, an interest or assets of the
19 other undertaking in question;

20 (ii) the amalgamation or other combination with the other
21 undertaking in question; or

22 (iii) a joint venture.

23 (2) For the purposes of subsection (1), an undertaking has control
24 over the business of another undertaking if it -

25 (a) beneficially owns more than one half of the issued share capital
26 or assets of the undertaking;

27 (b) is entitled to cast a majority of the votes that may be cast at a
28 general meeting of the undertaking or has the ability to control the voting of
29 a majority of those votes, either directly or through a controlled entity of that
30 undertaking;

1 (c) is able to appoint or to veto the appointment of a majority of the
2 directors of the undertaking;

3 (d) is a holding company, and the undertaking is a subsidiary of that
4 company as contemplated under the Companies and Allied Matters Act;

5 (e) in the case of an undertaking that is a trust, has the ability to control
6 the majority of the votes of the trustees, to appoint the majority of the trustees or
7 to appoint or change the majority of the beneficiaries of the trust;

8 (f) has the ability to materially influence the policy of the undertaking
9 in a manner comparable to a person who, in ordinary commercial practice, can
10 exercise an element of control referred to in paragraphs (a) to (f).

11 (3) For the purposes of subsection (1), an undertaking shall not be
12 deemed to exercise control over the business of another undertaking where -

13 (a) credit institutions or other financial institutions or insurance
14 companies, the normal activities of which include transactions and dealing in
15 securities for their own account or for the account of others, hold on a
16 temporary basis securities which they have acquired in an undertaking with a
17 view to reselling them, provided that they do not exercise voting rights in
18 respect of those securities with a view to determining the competitive
19 behaviour of that undertaking or provided that they exercise such voting rights
20 only with a view to preparing the disposal of all or part of that undertaking or of
21 its assets or the disposal of those securities and that any such disposal takes
22 place within one year of the date of acquisition; that period may be extended by
23 the Commission on request where such institutions or companies can show that
24 the disposal was not reasonably possible within the period set; or

25 (b) control is acquired by an office-holder according to the laws of the
26 Federation relating to liquidation, winding up, insolvency, cessation of
27 payments, compositions or analogous proceedings.

28 (4) For the purposes of this Act-

29 (a) a "small merger" means a merger with a value at or below the
30 threshold stipulated by the Commission by regulations; and

1 (b) a "large merger" means a merger with a value above the
2 threshold stipulated by the Commission by regulations.

Commission to
approve mergers

3 **93.**-(1) Subject to the notification threshold to be determined from
4 time to time as set out in this Part, a proposed merger shall not be
5 implemented unless it has first been notified to and approved by the
6 Commission.

7 (2) The Commission shall, by regulations, determine-

8 (a) a threshold of annual turnover for the purposes of determining
9 the categories of mergers contemplated under section 92 (4) of this Act; and

10 (b) a method for the calculation of annual turnover to be applied in
11 relation to the threshold determined under paragraph (a).

12 (3) Prior to making a determination contemplated in subsection
13 (2), the Commission shall publish, in the Federal Gazette, a notice -

14 (a) setting out the proposed threshold and method of calculation for
15 purposes of this section; and

16 (b) inviting written submissions on that proposal.

17 (4) Within 60 days after publishing a notice as required under
18 subsection (3), the Commission shall publish, in the Federal Gazette, a
19 notice setting out-

20 (a) the threshold and method of calculation for the purposes of this
21 section; and

22 (b) the effective date of the threshold.

23 **94.**-(1) When considering a merger or a proposed merger, the
24 Commission shall-

Consideration
by the Commission
of effect of a
merger on
competition

25 (a) determine whether or not the merger is likely to substantially
26 prevent or lessen competition, by assessing the factors set out in subsection
27 (2); and

28 (b) if it appears that the merger is likely to substantially prevent or
29 lessen competition, then determine-

30 (i) whether or not the merger is likely to result in any technological

1 efficiency or other pro-competitive gain which will be greater than, and off-set,
2 or is likely to result from the merger, and would not likely be obtained if the
3 merger is prevented; and

4 (ii) whether the merger can or cannot be justified on substantial public
5 interest grounds by assessing the factors set out in subsection (3);

6 (c) otherwise, determine whether the merger can or cannot be justified
7 on substantial public interest grounds by assessing the factors set out in
8 subsection (3).

9 (2) When determining whether or not a merger or a proposed merger
10 is likely to substantially prevent or lessen competition, the Commission shall
11 assess the strength of competition in the relevant market and the probability
12 that the undertakings in the market, after the merger, will behave competitively
13 or co-operatively, taking into account any factor that is relevant to the
14 competition in that market, including-

15 (a) the actual and potential level of import competition in the market;

16 (b) the ease of entry into the market, including tariff and regulatory
17 barriers;

18 (c) the level and trends of concentration, and history of collusion in
19 the market;

20 (d) the degree of countervailing power in the market;

21 (e) the dynamic characteristics of the market, including growth,
22 innovation, and product differentiation;

23 (f) the nature and extent of vertical integration in the market;

24 (g) whether the business or part of the business of a party to the merger
25 or proposed merger has failed or is likely to fail; and

26 (h) whether the merger or proposed merger will result in the removal
27 of an effective competitor.

28 (3) Where it appears that a merger or proposed merger is likely to
29 substantially prevent or lessen competition, the Commission shall determine-

30 (a) whether or not the merger or proposed merger is likely to result in

1 any technological efficiency or other pro-competitive advantage which will
2 be greater than, and offset, the effects of any prevention or lessening of
3 competition, while allowing consumers a fair share of the resulting benefit;
4 and

5 (b) whether the merger or proposed merger can or cannot be
6 justified on substantial public interest grounds by assessing the factors set
7 out in subsection (4).

8 (4) When determining whether a merger or proposed merger can or
9 cannot be justified on grounds of public interest, the Commission shall
10 consider the effect that the merger or proposed merger will have on-

11 (a) a particular industrial sector or region;

12 (b) employment;

13 (c) the ability of national industries to compete in international
14 markets; and

15 (d) the ability of small and medium scale enterprises to become
16 competitive.

Notification
requirement for
a small merger

17 **95.-** (1) A party to a small merger-

18 (a) is not required to notify the Commission of that merger unless
19 the Commission requires it to do so in accordance with the provision of
20 subsection (3); and

21 (b) may implement that merger without approval, unless it is
22 required to notify the Commission in accordance with the provisions of
23 subsection (3).

24 (2) A party to a small merger may voluntarily notify the
25 Commission of that merger at any time.

26 (3) Within six months after a small merger is implemented, the
27 Commission may require the parties to that merger to notify it of the merger
28 in the prescribed manner and form if, in the opinion of the Commission,
29 having regard to the provisions of the section, the merger may substantially
30 prevent or lessen competition.

1 (4) The notification of the merger referred to in subsection (3) shall be
2 published within five business days after receipt by the Commission.

3 (5) A party to a merger to which subsection (4) applies may take no
4 further steps to implement that merger until the merger has been approved by
5 the Commission with or without conditions.

6 (6) Within 20 business days after parties to a small merger have
7 fulfilled the notification requirement referred to in subsection (3), the
8 Commission may extend the period in which it has to consider the merger by a
9 single period not exceeding 40 business days and, in that case, the Commission
10 shall-

11 (a) issue an extension notice to any party who notified it of the merger;

12 (b) after having considered the merger as required under this section,
13 issue a report in the prescribed form-

14 (i) approving the merger;

15 (ii) approving the merger subject to any conditions;

16 (iii) prohibiting implementation of the merger, if it has not been
17 implemented; or

18 (iv) declaring the merger to be prohibited.

19 (7) Where, upon the expiry of the 20 business days provided for in
20 subsection (6), the Commission has not issued the extension notice referred to
21 in subsection (6) (a) or, upon the expiry of an extension period referred to in
22 that subsection, the Commission has not issued a report referred to in
23 subsection (6) (b), the merger shall be deemed to have been approved.

24 (8) The Commission shall-

25 (a) publish a notice of any decision it makes pursuant to this section
26 in the Federal Government Gazette; and

27 (b) issue written reasons for the decision if-

28 (i) it prohibits or conditionally approves a merger; or

29 (ii) requested to do so by a party to a merger.

30 **96.-(1)** A party to a large merger shall notify the Commission of the

1 merger in the prescribed manner and form.

2 (2) The notification of the merger referred to in subsection (1) shall
3 be published within five business days after receipt by the Commission.

4 (3) The primary acquiring undertaking and the primary target
5 undertaking shall each provide a copy of the notice contemplated in
6 subsection (1) to-

7 (a) any registered trade union that represents the employees in the
8 acquiring and target undertakings respectively; or

9 (b) the employees or representatives of the employees of the
10 acquiring and target undertakings, if there are no such registered trade
11 unions.

12 (4) The parties to a large merger shall not implement the merger
13 unless approved, with or without conditions, by the Commission in
14 accordance with the provisions of this Act.

15 (5) Any action undertaken by any party in violation of the
16 provisions of subsection (4) is void.

17 (6) The Commission may exercise any of the powers available to it
18 under this Act to render void any violation of the provisions of subsection
19 (3).

20 (7) An undertaking that violates the provision of subsection (4)
21 commits an offence and is liable on conviction to a fine not exceeding 10%
22 of turnover of the undertaking in the business year preceding the date of the
23 commission of the offence or to such other percentage as the court may
24 determine having regard to the circumstances of the case.

25 **97.-(1)** Within 60 business days after the parties to a large merger
26 have fulfilled all notification requirements referred to in section 96 of this
27 Act, the Commission-

28 (a) may extend the period in which it has to consider the proposed
29 merger to 120 business days and issue an extension notice to all parties to the
30 merger; or

Power of the
Commission to
extend the period
of consideration
of a larger merger

1 (b) after having considered the merger in accordance with the
2 provisions of this Act, issue a report in the prescribed form -

3 (i) approving the merger;

4 (ii) approving the merger subject to conditions; or

5 (iii) prohibiting implementation of the merger.

6 (2) Where upon the expiry of the 60 business day period provided for
7 in subsection (1), the Commission has not issued an extension notice as
8 provided for in that subsection or, upon the expiry of an extension period
9 contemplated in subsection (1) (a), the Commission has not issued a report
10 referred to in subsection (1) (b), the merger shall be regarded as having been
11 approved, subject to the provision of section 99 and 100 of this Act.

12 (3) Subject to the provisions of this Part, the Commission shall-

13 (a) give to the parties applying for approval of a large merger its
14 decision and cause a notice of the decision to be published in at least two
15 national newspapers; and

16 (b) issue written reasons for its decision where-

17 (i) it prohibits or conditionally approves the merger; or

18 (ii) it is requested to do so by a party to the merger.

Investigation
of a proposed
merger

19 **98.** The Commission may direct any of its officers to investigate a
20 merger, and may require any person or undertaking to provide information in
21 respect of the merger.

Revocation of
merger approval

22 **99.**-(1) The Commission may revoke its own decision to approve or
23 conditionally approve a small or large merger if-

24 (a) the decision was based on incorrect information for which a party
25 to the merger is responsible;

26 (b) the approval was obtained by deceit;

27 (c) the parties fail to implement the merger within 12 months after the
28 approval was granted; or

29 (d) an undertaking concerned has breached an obligation attached to
30 the decision of the Commission approving the merger.

1 (2) Where the Commission revokes its decision approving a
2 merger under subsection 1, it may prohibit that merger even though any time
3 limit set out under the relevant provision of this Part may have elapsed and
4 the merger was approved on account of the failure of the Commission to
5 reach a decision within the period prescribed under this Act.

Prohibition of
merger

6 **100.**-(1) The Minister is entitled to make representations on any
7 public interest grounds indicated in section 94(4) of this Act to the
8 Commission with respect to any large merger which is under consideration
9 by the Commission.

10 (2) Subject to the overriding objectives of this Act, the
11 Commission shall have special regard to the representations made by the
12 Minister on any public interest grounds indicated in Section 94(4) of this Act
13 in arriving at the decision on a larger merger notification.

14 (3) Further to the provisions of subsections (1) and (2), the Minister
15 may participate as an observer in any merger proceedings before the
16 Commission in the prescribed manner.

Power to hear
persons in merger
proceedings

17 **101.**-(1) In making a determination in respect of a merger
18 notification, the Commission may hear any person, other than parties to the
19 merger, who, in the opinion of the Commission, is able to assist in making a
20 determination or the merger notification.

21 (2) Before making a determination in relation to a merger or a
22 proposed merger, the Commission may decide to hold a hearing publicly or
23 in private and shall appoint a date, time and place for holding the hearing and
24 give notice of the date, time, and place so appointed and of the matters to be
25 considered at the hearing to the persons entitled to be present at the hearing.

Provisions of
documentations
proposed merger
to the Commission

26 **102.**-(1) Any undertaking making a merger notification shall
27 furnish to the Commission such documents and information as may be
28 required in the consideration of the merger or proposed merger to enable the
29 Commission exercise their functions under this Act.

30 (2) Any undertaking that has given notice in respect of a merger or

1 proposed merger may, at any time by notice in writing to the Commission,
2 advise the Commission that it does not wish to proceed with the
3 implementation of the merger and the Commission shall not give a decision on
4 the notification.

Appeals

5 **103.** A person aggrieved by the Commission's decision under this
6 Part may file an application for review before the Tribunal and where the
7 decision relates to a decision of the Tribunal, to the Court of Appeal.

Supremacy of
the Federal
Competition
and Consumer
Protection Act

PART XIII - REGULATED INDUSTRIES

9 **104.** Notwithstanding the provisions of any other law but subject to
10 the provisions of the Constitution of the Federal Republic of Nigeria, in all
11 matters relating to competition and consumer protection, the provisions of this
12 Act shall override the provisions of any other law.

Designation of
regulated
industries

13 **105.**-(1) The operation by an undertaking in an industry subject to the
14 authority of a regulatory agency set up by an Act of the National Assembly or
15 the Laws of a State is sufficient to make such an undertaking a member of a
16 regulated industry for the purpose of this Act.

17 (2) In so far as this Act applies to an industry or sector of an industry
18 that is subject to the jurisdiction of another government agency by the
19 provisions of any other law, in matters or conducts which affect competition
20 and consumer protection, this Act shall be construed as establishing a
21 concurrent jurisdiction between the Commission and the relevant government
22 agency, with the Commission having precedence over and above the relevant
23 government agency.

24 (3) For the purposes of this Act, any government or regulatory agency
25 whose mandate includes enforcement of competition and consumer protection
26 Laws or principles is hereby recognized as a government agency for the
27 avoidance of conflicts between the powers and functions of the Commission
28 conferred by or under this Act and the powers and functions of any other
29 government agency as contained in any other law, rule or regulation in force.

30 (4) The Commission shall negotiate agreements with all government

1 agencies whose mandate includes enforcement of competition and
2 consumer protection for the purpose of coordinating and harmonising the
3 exercise of jurisdiction over competition and consumer protection matters
4 within the relevant industry or sector, and to ensure the consistent
5 application of the provisions of this Act.

6 (5) A government agency or regulatory authority, which in
7 accordance with the provision of an existing law or regulation has
8 jurisdiction in respect of an industry or sector, shall commence negotiation
9 of agreements with the Commission as anticipated in subsection (4) and
10 shall conclude such negotiations within one year thereof, and in respect of
11 matters within its jurisdiction, may exercise its jurisdiction by way of such
12 an agreement.

13 (6) An agreement under subsections (4) and (5) shall -

14 (a) identify and establish efficient procedures for the management
15 of areas of concurrent jurisdiction;

16 (b) promote cooperation between the regulatory agency and the
17 Commission;

18 (c) preserve the coordinating and leadership role of the
19 Commission in relation to the exercise of the concurrent power as envisaged
20 under this Act;

21 (d) provide for the exchange of information and the protection of
22 confidential information, and

23 (e) be published in the Federal Government Gazette.

24 (7) Where the negotiations contemplated by subsections (4) and
25 (5) are inconclusive, the areas of disagreement shall be referred to the
26 Attorney-General and Minister of Justice in the case of a large merger, for
27 advise on public interest grounds.

28 **106.**-(1) Whenever it is alleged that a provision of this Act has been
29 contravened by an undertaking acting or operating within any regulated
30 industry designated under section 105 of this Act, the undertaking against

Exemption of
regulated
industries

1 whom such allegation is made must demonstrate that the conduct in question
2 was ordered or required by a regulatory agency possessing jurisdiction over
3 that regulated industry.

4 (2) Where the undertaking against whom an allegation referred to in
5 subsection (1) is made demonstrates that the conduct in question was ordered
6 or required by a regulatory agency possessing jurisdiction over the regulated
7 industry, the Commission may, subject to the agreement referred to in section
8 105, proceed with the issuance of a cease-and-desist order prohibiting the
9 undertaking concerned from further violations of the provisions of this Act..

Price-fixing

10 PART XIV - SPECIFIC OFFENCES AGAINST COMPETITION

11 **107.**-(1) An undertaking shall not directly or indirectly -

12 (a) by agreement, threat, promise or any other means, attempt to
13 influence or conspire to influence upward or discourage the reduction of, the
14 price at which any other undertaking supplies, offers to supply or advertises
15 any goods or services; or

16 (b) refuse to supply goods or services to or otherwise discriminate
17 against any undertaking because of the pricing policy of that undertaking.

18 (2) The provision of subsection (1) (a) shall not apply if the
19 undertaking attempting to influence the conduct of another undertaking and
20 that other undertaking are interconnected undertakings as defined by this Act
21 or, as the case may be, principal and agent.

22 (3) For the purposes of subsection (1) (a), the publication by an
23 undertaking, other than a retailer, of any notice or advertisement that mentions
24 a resale price of any goods or services constitutes an attempt to influence
25 upward the selling price of those goods or services, unless the resale price is so
26 expressed as to make it clear to a reasonable person that the goods or services
27 may be sold at a lower price.

28 (4) An undertaking that violates any of the provisions of this section
29 commits an offence and-

30 (a) where the undertaking is a natural person, is liable on conviction to

1 imprisonment for a term not exceeding three years or to payment of a fine
2 not exceeding N10,000,000.00 or to both the fine and imprisonment;

3 (b) where the undertaking is a body corporate, is liable on
4 conviction to a fine not exceeding 10% of its turnover in the preceding
5 business year; and

6 (c) in the case of a corporate body referred to in paragraph (b), each
7 director of the body corporate is liable to be proceeded against and on
8 conviction dealt with as specified in paragraph (a).

Conspiracy

9 **108.-(1)** An undertaking shall not conspire, combine, agree or
10 arrange with another undertaking to-

11 (a) limit unduly the facilities for transporting, producing,
12 manufacturing, storing or dealing in or supplying any goods or services;

13 (b) prevent, limit or reduce unduly, the manufacture or production
14 of any goods or services or to unreasonably enhance the price of any goods
15 or services;

16 (c) unduly reduce competition in the production, manufacture,
17 purchase, barter, sale, supply, rental or transportation of any goods or
18 services or in the price of personal or property insurance; or

19 (d) otherwise unduly restrain or injure competition.

20 (2) Nothing in subsection (1) applies to a conspiracy, combination,
21 agreement or arrangement which relates only to a service and to standards of
22 competence and integrity that are reasonably necessary for the protection of
23 the public-

24 (a) in the practice of a trade or profession relating to the service; or

25 (b) in the collection and dissemination of information relating to
26 the service.

27 (3) An undertaking that violates any provision of this section
28 commits an offence and where the undertaking is-

29 (a) a natural person, is liable on conviction to imprisonment for a
30 term not exceeding three years, or to payment of a fine not exceeding

1 N10,000,000.00 or to both fine and imprisonment;

2 (b) a body corporate, is liable on conviction to a fine not exceeding
3 10% of its turnover in the preceding business year; and

4 (c) a body corporate referred to in paragraph (b), each director of the
5 body corporate is liable to be proceeded against and on conviction dealt with as
6 specified in paragraph (a).

Bid-rigging

7 **109.**-(1) Subject to subsection (2), no two or more undertakings shall
8 enter into an agreement whereby-

9 (a) one or more of them agree not to submit a bid in response to a call
10 or request for bids or tenders; or

11 (b) as bidders or tenderers, they submit, in response to a call or
12 request, bids or tenders that are arrived at by agreement between or among
13 themselves.

14 (2) This section shall not apply in respect of an agreement that is
15 entered into or a submission that is arrived at only by undertakings each of
16 which, in respect of every one of the others, is an affiliate.

17 (3) An undertaking that violates any provision of this section commits
18 an offence and where the undertaking is-

19 (a) a natural person, is liable on conviction to imprisonment for a term
20 not exceeding three years, or to payment of a fine not exceeding
21 N10,000,000.00 or to both fine and imprisonment;

22 (b) a body corporate, is liable on conviction to a fine not exceeding
23 10% of its turnover in the preceding business year; and

24 (c) a body corporate referred to in paragraph (b), each director of the
25 body corporate is liable to be proceeded against and on conviction dealt with as
26 specified in paragraph (a).

Obstruction of
investigation or
inquiry

27 **110.** Any person, who, in any manner, impedes, prevents or obstructs
28 any investigation or inquiry by the Commission under this Act commits an
29 offence and is liable, on summary conviction, to imprisonment for a term of not
30 less than two years or to a fine of not less than N2,000,000.00 or to both the fine

1 and imprisonment.

Offence against
records

2 **111.**-(1) An undertaking that -

3 (a) refuses to produce any document or supply any information
4 when required to do so by the Commission under this Act;

5 (b) destroys or alters any document or causes a document to be
6 destroyed or altered; or

7 (c) intentionally withholds the production of a document within his
8 possession or control,
9 commits an offence under this Act.

10 (2) An undertaking that commits an offence under subsection (1),
11 where the undertaking is a-

12 (a) natural person, is liable on conviction to imprisonment for a
13 term not exceeding three years, or to payment of a fine not exceeding
14 N10,000,000.00 or to both the fine and imprisonment;

15 (b) body corporate, is liable on conviction to a fine not exceeding
16 10% of its turnover in the preceding business year; and

17 (c) body corporate referred to in paragraph (b), each director of the
18 body corporate is liable to be proceeded against and on conviction dealt with
19 as specified in paragraph (a).

Giving of false
or misleading
information

20 **112.** An undertaking that gives to the Commission or an
21 authorised officer of the Commission, any information which the
22 undertaking knows to be false or misleading commits an offence and where
23 the undertaking is a

24 (a) natural person, is liable on conviction to imprisonment for a
25 term not exceeding two years, or to payment of a fine not exceeding
26 N10,000,000.00 or to both the fine and imprisonment;

27 (b) body corporate, is liable on conviction to a fine not exceeding
28 10% of its turnover in the preceding business year; and

29 (c) body corporate referred to in paragraph (b), each director of the
30 body corporate is liable to be proceeded against and on conviction dealt with

Failure to attend
or give evidence

1 as specified in paragraph (a).
2 **113.**-(1) A person who has been required to appear before the
3 Commission and-
4 (a) without reasonable excuse, refuses or fails to appear, or
5 (b) refuses to take an oath or to make an affirmation as a witness or to
6 answer a question put to him,
7 commits an offence and is liable on summary conviction to imprisonment for a
8 term not exceeding three years, or to a fine not exceeding N10,000,000.00 or to
9 both fine and imprisonment.
10 (2) The Commission may prosecute or refer violations of criminal
11 offences created under this Act to the office of the Attorney-General of the
12 Federation and Minister for Justice for prosecution and imprisonment.

Right to
information in
plain and
understandable
language

13 **PART XV - CONSUMERS' RIGHTS**
14 **114.**-(1) The producer of a notice, document or visual representation
15 that is required under this Act or any other law, to be produced, provided or
16 displayed to a consumer must produce, provide or display that notice,
17 document or visual representation -
18 (a) in the prescribed form, if any, for that notice, document or visual
19 representation; or
20 (b) in plain language, if no form has been prescribed for that notice,
21 document or visual representation.
22 (2) For the purposes of this Act, a notice, document or visual
23 representation is in plain language if it is reasonable to conclude that an
24 ordinary consumer of the class of persons for whom the notice, document or
25 visual representation is intended, with average literacy skills and minimal
26 experience as a consumer of the relevant goods or services, could be expected
27 to understand the content, significance, and import of the notice, document or
28 visual representation without undue effort, having regard to-
29 (a) the context, comprehensiveness and consistency of the notice,

1 document or visual representation;

2 (b) the organisation, form and style of the notice, document or
3 visual representation;

4 (c) the vocabulary, usage and sentence structure of the notice,
5 document or visual representation; and

6 (d) the use of any illustrations, examples, headings or other aids to
7 reading and understanding.

8 (3) The Commission may publish guidelines on methods for
9 assessing whether a notice, document or visual representation satisfies the
10 requirements of subsections (1) and (2).

11 **115.**-(1) An undertaking shall not display any goods or services for
12 sale without adequately displaying to the consumer a price of those goods or
13 services.

Disclosure of
price of goods
or services

14 (2) For the purposes of this subsection, a price is adequately
15 displayed to a consumer if, in relation to any particular goods or services, a
16 written indication of the price, expressed in the currency of the Federal
17 Republic of Nigeria, is annexed or affixed to, written, printed, stamped or
18 located upon, or otherwise applied to the goods or services or to any band,
19 ticket, covering, label, package, reel, shelf, or other thing used in connection
20 with the goods or services, or on which the goods or services are mounted for
21 display or exposed for sale, or published in relation to the goods or services
22 in a catalogue, brochure, newspaper, circular or similar publication
23 available to the consumer, or to the public generally.

24 (3) An undertaking shall not require a consumer to pay a price for
25 any goods or services higher than the displayed price for those goods or
26 services, or if more than one price is concurrently displayed, higher than the
27 lower or lowest of the prices so displayed.

Product labelling
and trade
descriptions

28 **116.**-(1) For the purposes of this section, a trade description is
29 applied to goods if it is-

30 (a) applied to the goods, or to any covering, label or reel in or on

1 which the goods are packaged, or attached to the goods;

2 (b) displayed together with, or in proximity to, the goods in a manner
3 that is likely to lead to the belief that the goods are designated or described by
4 that description; or

5 (c) is contained in any sign, advertisement, catalogue, brochure,
6 circular, wine list, invoice, business letter, business paper, or other commercial
7 communication on the basis of which a consumer may request or order the
8 goods.

9 (2) An undertaking shall not knowingly apply to any goods a trade
10 description that is likely to mislead consumers as to any matter implied or
11 expressed in that trade description or alter, deface, cover, remove or obscure a
12 trade description or trade mark applied to any goods in a manner calculated to
13 mislead consumers.

14 (3) An undertaking shall not supply, offer to supply or display any
15 goods if the undertaking knows, reasonably could determine, or has reason to
16 suspect, that-

17 (a) a trade description applied to those goods is likely to mislead
18 consumers as to any matter implied or expressed in that trade description; or

19 (b) a trade description or trade mark applied to those goods has been
20 altered.

Disclosure of
re-conditioned
or second-hand
goods

21 **117.** An undertaking that offers or agrees to supply, or supplies, any
22 goods that have been used or are second-hand or have been re-conditioned, re-
23 built or re-made, must apply a conspicuous notice to those goods stating clearly
24 that they have been used or are second-hand or have been re-conditioned, re-
25 built or re-made.

Sales records

26 **118.** Except where it is impracticable to do so, an undertaking shall
27 provide a written record of each transaction to any consumer to whom goods or
28 services are sold or supplied, and include in that record at least-

29 (a) the undertaking's full name, or registered business name;

30 (b) the address of the premises at which, or from which, the goods or

1 services were sold or supplied;

2 (c) the date on which the transaction occurred;

3 (d) a name or description of any goods or services supplied or to be
4 supplied;

5 (e) the unit price of any particular goods or services supplied or to
6 be supplied;

7 (f) the quantity of any particular goods or services supplied or to be
8 supplied;

9 (g) the total price of the transaction, before any applicable taxes;

10 (h) the amount of any applicable taxes; and

11 (i) the total price of the transaction, including any applicable taxes.

Consumer's
right to select
suppliers

12 **119.** An undertaking shall not require, as a condition of offering to
13 supply or supplying any goods or services, or as a condition of entering into
14 an agreement or transaction, that a consumer shall -

15 (a) purchase any other particular goods or services from that
16 undertaking,

17 (b) enter into an additional agreement or transaction with the same
18 undertaking or a designated third party, or

19 (c) agree to purchase any particular goods or services from a
20 designated third party, unless the undertaking can demonstrate that the
21 convenience to the consumer in having those goods or services bundled
22 outweighs the limitation of the consumer's right to choice, or that the
23 bundling of those goods or services results in economic benefit for the
24 consumer.

Consumer's
right to cancel
advance
reservation,
booking or order

25 **120.-(1)** A consumer shall have the right to cancel any advance
26 booking, reservation or order for any goods or services, subject to a
27 reasonable charge for cancellation of the order or reservation by the supplier
28 or service provider.

29 (2) For the purpose of this section, a charge is unreasonable if it

1 exceeds a fair amount in the circumstances, having regard to-

2 (a) the nature of the goods or services that were reserved, booked or
3 ordered;

4 (b) the length of notice of cancellation provided by the consumer;

5 (c) the reasonable potential for the supplier or service provider, acting
6 diligently, to find an alternative consumer between the time of receiving the
7 cancellation notice, and the time of the cancelled reservation, booking or order;
8 and

9 (d) the general practice of the relevant industry.

10 (3) A supplier or service provider may not impose any cancellation fee
11 in respect of a booking, reservation or order if the consumer is unable to honour
12 the booking, reservation or order because of the death or hospitalisation of the
13 person for whom, or for whose benefit the booking, reservation or order was
14 made.

Consumer's
right to choose
or examine goods

15 **121.**-(1) Notwithstanding any statement or notice to the contrary, a
16 consumer or potential consumer is not responsible for any loss or damage to
17 any goods displayed by a supplier, unless the loss or damage results from action
18 by the consumer amounting to gross negligence or recklessness, malicious
19 behaviour or criminal conduct.

20 (2) Where goods are displayed in or sold from open stock, a consumer
21 has the right to select or reject any particular item from that stock before
22 completing the transaction.

23 (3) Where a consumer has agreed to purchase goods solely on the
24 basis of a description or sample, or both provided by the supplier, the goods
25 delivered to the consumer shall in all material respects and characteristics,
26 correspond to that which an ordinary alert consumer would have been entitled
27 to expect based on the description, or on a reasonable examination of the
28 sample, as the case may be.

29 (4) Where the supply of goods is by sample, as well as by description,
30 it is not sufficient that any of the goods correspond with the sample, if the goods

1 do not also correspond with the description.

Consumer's right
to return goods

2 **122.** In addition to the consumer's right to return unsafe or
3 defective goods under any law or enactment, the consumer may return
4 goods to the supplier and receive a full refund of any consideration paid for
5 those goods, if the supplier has delivered-

6 (a) goods intended to satisfy a particular purpose communicated to
7 the supplier and within a reasonable time after delivery to the consumer, the
8 goods have been found to be unsuitable for that particular purpose; or

9 (b) goods that the consumer did not have an opportunity to examine
10 before delivery, and the consumer has rejected delivery of the goods within a
11 reasonable time after delivery to the consumer for the reason that the goods
12 do not correspond with description, sample or that they are not of the type
13 and quality reasonably contemplated in the sales agreement.

General
standards for the
marketing of goods
and services

14 **123.-(1)** A producer, importer, distributor, retailer, trader or service
15 provider shall not, in pursuance of trade and for the purpose of promoting or
16 marketing, directly or indirectly, goods or services make any representation
17 to a consumer-

18 (a) in a manner that is likely to imply any false or incorrect
19 representation concerning those goods or services;

20 (b) that is reasonably misleading or likely to be misleading in any
21 material respect concerning those goods and services;

22 (c) in a manner that is erroneous, fraudulent or deceptive in any
23 way, including in respect of-

24 (i) the nature, properties, advantages or uses of the goods or
25 services;

26 (ii) the manner in, or conditions on, which those goods or services
27 may be supplied;

28 (iii) the price at which the goods or services may be supplied, or the
29 existence of, or relationship of the price to, any previous price, or
30 competitor's price for comparable or similar goods or services;

- 1 (iv) the sponsoring of any event; or
- 2 (v) any other material aspect of the goods or services;
- 3 (d) in the form of a statement, warranty or guarantee of performance,
- 4 efficacy or length of life of products that is not based on an adequate and proper
- 5 test of the goods or services, the proof of which lies on the person making the
- 6 representation;
- 7 (e) in a form that purports to be a warranty or a guarantee of any goods
- 8 or services, or a promise to replace, maintain or repeat an article or any part
- 9 thereof or to repeat or continue the service until it has achieved a specified
- 10 result, if the form of purported warranty, guarantee or promise is materially
- 11 misleading or there is no reasonable prospect that it will be carried out;
- 12 (f) to falsely represent to the public in the form of a statement,
- 13 warranty or guarantee that services are of a particular kind, standard, quality or
- 14 quantity, or are supplied by any particular undertaking or any undertaking of a
- 15 particular trade, qualification or skill;
- 16 (g) that is materially a misleading representation to the public
- 17 concerning the price at which particular goods or services or like goods or
- 18 services have been, are or will be ordinarily supplied.
- 19 (2) For the purpose of this Act, the following types of representations
- 20 shall be deemed to be made to the public by, and only by, the undertaking who
- 21 caused it to be expressed, made or contained, that is to say, a representation that
- 22 is-
- 23 (a) expressed on goods or services offered or displayed for sale;
- 24 (b) expressed on anything attached to, inserted in or accompanying
- 25 goods offered or displayed for sale, their wrapper or container, or anything on
- 26 which the goods are mounted for display or sale;
- 27 (c) expressed on a display in the place where the goods or services are
- 28 sold;
- 29 (d) made in the course of selling goods or services to the ultimate
- 30 consumer; or

1 (e) contained in or on anything that is sold, sent, delivered,
2 transmitted or in any other manner made available to a member of the public.

3 (3) Where the undertaking referred to in subsection (2) is outside
4 Nigeria, the representation shall be deemed to be made-

5 (a) in a case described in subsection (2) (a), (b) or (e), by the
6 undertaking that imported the goods or services; and

7 (b) in the case described in subsection (2) (c), by the undertaking
8 that imported the display into Nigeria.

Right to fair
dealings

9 **124.-(1)** An undertaking or any person acting on its behalf shall not
10 use physical force, coercion, undue influence or pressure, harassment,
11 unfair tactics or any other similar conduct against any person in connection
12 with-

13 (a) marketing of any goods or services;

14 (b) supply of goods or services to a consumer;

15 (c) negotiation, conclusion, execution or enforcement of an
16 agreement to supply any goods or services to a consumer;

17 (d) demand for, or collection of, payment for goods or services by a
18 consumer; or

19 (e) the conduct of a legitimate business transaction.

20 (2) In addition to any conduct contemplated in subsection (1), an
21 undertaking or any person acting on its behalf shall not knowingly to take
22 advantage of the fact that a potential consumer was substantially unable to
23 protect the consumer's own interests because of physical or mental
24 disability, illiteracy, ignorance, inability to understand the language of an
25 agreement, or any other similar factor.

False, misleading
or deceptive
representations

26 **125.-(1)** Where in the marketing of any goods or services an
27 undertaking or any person acting on its behalf by words or conduct-

28 (a) directly or indirectly expresses or implies a false, misleading or
29 deceptive representation concerning a material fact to a consumer or
30 prospective consumer, or

1 (b) fails to correct an apparent misapprehension on the part of a
2 consumer or prospective consumer, amounting to a false, misleading or
3 deceptive representation or permit or require any other person to do so, the
4 undertaking is liable for damages to any person damaged, and shall be ordered
5 to make monetary restitution.

6 (2) A person acting on behalf of a supplier of any goods or services
7 shall not-

8 (a) falsely represent that the person has any sponsorship, approval or
9 affiliation, or

10 (b) engage in any conduct that the supplier is prohibited from
11 engaging in under subsection (1).

Representation
test and publication
testimonials

12 **126.**-(1) An undertaking shall not, for the purpose of promoting,
13 directly or indirectly, the supply or use of any goods or services or any business
14 interest, make a representation to the public that a test as to the performance,
15 efficacy or length of life of the goods or services has been made by any person
16 or publish a testimonial with respect to the products, unless it can establish the
17 matters specified in subsection (2) of this section

18 (2) The matters referred to in subsection (1) of this section are -

19 (a) that the representation or testimonial was previously made or
20 published by the person by whom the test was made or the testimonial was
21 given, as the case may be; or

22 (b) that before the representation or testimonial was made or
23 published, it was approved and permission to make or publish it was given in
24 writing by the person who made the test or gave the testimonial, as the case may
25 be, and it accords with the representation or testimonial previously made,
26 published or approved.

Unfair,
unreasonable
or unjust contract
terms

27 **127.**-(1) An undertaking shall not-

28 (a) offer to supply, supply, or enter into an agreement to supply, any
29 goods or services at a price that is manifestly unfair, unreasonable or unjust, or
30 on terms that are unfair, unreasonable or unjust;

1 (b) market any goods or services, or negotiate, enter into or
2 administer a transaction or an agreement for the supply of any goods or
3 services, in a manner that is unfair, unreasonable or unjust; or

4 (c) require a consumer, or other person to whom any goods or
5 services are supplied at the direction of the consumer, to waive any rights,
6 assume any obligation, or waive any liability of the undertaking, on terms
7 that are unfair, unreasonable or unjust, or impose any term as a condition of
8 entering into a transaction.

9 (2) Without limiting the generality of the provision of subsection
10 (1), a transaction or agreement, a term or condition of a transaction or
11 agreement, or a notice to which a term or condition is purportedly subject, is
12 unfair, unreasonable or unjust if-

13 (a) it is excessively one-sided in favour of any person other than the
14 consumer or other person to whom goods or services are to be supplied;

15 (b) the terms of the transaction or agreement are so adverse to the
16 consumer as to be inequitable;

17 (c) the consumer relied upon a false, misleading or deceptive
18 representation or a statement of opinion provided by or on behalf of the
19 undertaking that supplied the goods or services concerned, to the detriment
20 of the consumer; or

21 (d) the fact, nature and effect of that term, condition or notice was
22 not drawn to the attention of the consumer.

23 **128.**-(1) Any notice to consumers or potential consumers, or
24 provision of a consumer agreement, which purports to-

25 (a) limit in any way the risk or liability of an undertaking supplying
26 goods or services or any other person;

27 (b) constitute an assumption of risk or liability by the consumer;

28 (c) impose an obligation on the consumer to indemnify an
29 undertaking supplying goods or services or any other person for any cause;

30 (d) be an acknowledgement of any fact by the consumer;

Notice required
for certain terms
and conditions

1 shall be drawn to the attention of the consumer in a conspicuous manner and
2 form that is likely to attract the attention of an ordinarily alert consumer having
3 regard to the circumstances.

4 (2) Before the consumer enters into the transaction, or is required or
5 expected to offer consideration for the transaction or agreement, the consumer
6 shall be given adequate opportunity in the circumstances to receive and
7 comprehend the provision or notice.

Prohibited
transactions,
agreements,
terms or
conditions

8 **129.**-(1) An undertaking shall not make a transaction or agreement
9 subject to any term or condition if-

10 (a) its general purpose or effect is to defeat the purposes and policy of
11 this Act, mislead or deceive the consumer, or subject a consumer to fraudulent
12 conduct;

13 (b) it directly or indirectly purports to-

14 (i) waive or deprive a consumer of a right to return defective goods or
15 any right set out in this Act,

16 (ii) avoid the undertaking's obligation or duty under this Act,

17 (iii) set aside or override the effect of any provision of this Act,

18 (iv) authorise the undertaking to do anything that is unlawful under
19 this Act, and

20 (v) or fail to do anything that is required under this Act;

21 (c) it purports to-

22 (i) limit or exempt the undertaking from liability for any loss directly
23 or indirectly attributable to the gross negligence of the undertaking or any
24 person acting for or controlled by the undertaking;

25 (ii) constitute an assumption of risk or liability by a consumer for the
26 said loss;

27 (iii) impose an obligation on a consumer to pay for damage, or

28 (iv) otherwise assume the risk of handling any goods displayed by the
29 supplier;

30 (d) it falsely expresses an acknowledgment by the consumer that

1 before an agreement was made, no representations or warranties were made
2 in connection with the agreement by the undertaking or a person acting on
3 behalf of the undertaking or the consumer has received goods or services, or
4 a document that is required by this Act to be delivered to the consumer; and

5 (e) it expresses an agreement by the consumer to-

6 (i) deposit with the undertaking, or with any other person at the
7 direction of the undertaking, an identity document, credit or debit card, bank
8 account or automatic teller machine access card, or any similar identifying
9 document or device, and

10 (ii) provide a personal identification code or number to be used to
11 access an account.

12 (2) A purported transaction or agreement, provision, term or
13 condition of a transaction or agreement, or notice to which a transaction or
14 agreement is purported to be subject, is void to the extent that it contravenes
15 the provisions of this section.

16 **130.**-(1) When an undertaking agrees to perform any service for or
17 on behalf of a consumer, the consumer has a right to-

18 (a) the timely performance and completion of those services, and
19 timely notice of any unavoidable delay in the performance of the services;

20 (b) performance of the services in a manner and quality that
21 reasonable persons are generally entitled to expect;

22 (c) the use, delivery or installation of goods that are free of defects
23 and of a quality that persons are generally entitled to expect, if the goods are
24 required for the performance of the services; and

25 (d) the return of any property or control over any property of the
26 consumer in at least as good a condition as it was when the consumer made it
27 available to the undertaking for the purpose of performing the services,
28 having regard to the circumstances of the supply, and any specific criteria or
29 conditions agreed between the undertaking and the consumer before or
30 during the performance of the services.

Rights pertaining
to the quality and
safety of goods
and services

1 (2) Where an undertaking fails to perform a service to the standards
2 contemplated in subsection (1), the consumer may require the undertaking to
3 either-

4 (a) remedy any defect in the quality of the services performed or
5 goods supplied; or

6 (b) refund to the consumer a reasonable portion of the price paid for
7 the services performed and goods supplied, having regard to the extent of the
8 failure.

Consumers'
right to safe,
good quality
goods

9 **131.**-(1) Every consumer has a right to receive goods that-

10 (a) are reasonably suitable for the purposes for which they are
11 generally intended;

12 (b) are of good quality, in good working order and free of defects;

13 (c) will be useable and durable for a reasonable period of time, having
14 regard to the use to which they would normally be put and to all the surrounding
15 circumstances of their supply; and

16 (d) comply with any applicable standards set by industry sector
17 regulators.

18 (2) In addition to the right set out in subsection (1), if a consumer has
19 specifically informed an undertaking of the particular purpose for which the
20 consumer wishes to acquire any goods, or the use to which the consumer
21 intends to apply those goods, and the undertaking ordinarily offers to supply
22 such goods or acts in a manner consistent with being knowledgeable about the
23 use of those goods, the consumer has a right to expect that the goods are
24 reasonably suitable for the specific purpose that the consumer has indicated.

Implied warranty
of quality

25 **132.**-(1) In any transaction or agreement pertaining to the supply of
26 goods to a consumer, there is an implied warranty that the goods shall comply
27 with the requirements and standards contemplated in section 131 (1) and (2) of
28 this Act.

29 (2) Within three months after the delivery of any goods to a consumer,
30 the consumer may return the goods to the undertaking that supplied those

1 goods, without penalty and at the undertaking's risk and expense, if the
2 goods fail to satisfy the requirements and standards contemplated in section
3 131 (1) of this Act and the undertaking shall either repair or replace the
4 failed, unsafe or defective goods or refund to the consumer the price paid by
5 the consumer for the goods.

Safety monitoring
and recall

6 **133.-(1)** The Commission shall promote the development,
7 adoption and application of industry-wide codes of practice providing for
8 effective and efficient systems to-

9 (a) receive notice of consumer complaints or reports of product
10 failures, defects or hazards; the return of any goods because of a failure,
11 defect or hazard personal injury, illness or damage to property caused
12 wholly or partially as a result of a product failure, defect or hazard and other
13 indication of failure, defect or hazard;

14 (b) monitor the sources of information contemplated in paragraph
15 (a), and analyse the information received with the object of detecting or
16 identifying any previously undetected or unrecognised potential risk to the
17 public from the use of or exposure to those goods;

18 (c) conduct investigations into the nature, causes, extent and
19 degree of the risk to the public;

20 (d) notify consumers of the nature, causes, extent and degree of the
21 risk pertaining to those goods; and

22 (e) if particular goods are unsafe, recall those goods for repair,
23 replacement or refund.

24 (2) Where the Commission has reasonable grounds to believe that
25 any goods may be unsafe, or that there is a potential risk to the public from
26 the continued use of or exposure to the goods, and the undertaking that
27 produced, distributed or imported those goods has not taken any step
28 required by an applicable code contemplated in subsection (1), the
29 Commission, by written notice, may require that undertaking to recall the

	1	goods on any term required by the Commission.
	2	PART XVI - DUTIES OF MANUFACTURERS, IMPORTERS, DISTRIBUTOR AND
	3	SUPPLIERS OF GOODS AND SERVICES
Duty to label goods properly	4	134. A manufacturer, importer or distributor of goods shall label or
	5	describe the goods in a manner that will be easily traceable to the manufacturer,
Duty to withdraw hazardous goods from the market	6	importer or distributor.
	7	135. -(1) Upon becoming aware of any unforeseen hazard arising
	8	from the use of goods already placed on the market, the manufacturer or
	9	distributor of such goods shall notify the general public immediately of such
	10	risk or danger and cause such goods to be withdrawn from the market.
	11	(2) An undertaking that violates the provisions of section 134 of this
	12	Act or subsection (1) commits an offence and-
	13	(a) where the undertaking is a natural person, is liable on conviction to
	14	imprisonment for a term not exceeding three years or to payment of a fine not
	15	exceeding N10,000,000.00 or to both the fine and imprisonment; and
	16	(b) where the undertaking is a body corporate, is liable on conviction
	17	to a fine not exceeding 10% of its turnover in the preceding business year
	18	(3) In the case of a body corporate referred to in subsection (2) (b),
	19	each director of the body corporate is liable to be proceeded against and on
	20	conviction dealt with as specified in subsection (2) (a).
	21	(4) Where a consumer suffers loss or injury by the violation of any
	22	person of provisions of section 134 of this Act or subsection (1), the consumer
Liability for defective goods	23	shall have a right to be awarded compensation by the Commission.
	24	136. -(1) Where a damage is caused wholly or partly by defective
	25	goods or the supply of a service, the undertaking that supplied the goods or
	26	service is liable for the damage.
	27	(2) For the purpose of this Act, damage includes personal injury and
	28	damage to the consumer's property.
	29	(3) An undertaking that supplied the defective goods or service is
	30	liable whether or not the user or consumer bought the goods or service from or

1 entered into any contractual agreement with the undertaking.

2 (4) A person affected by the defective goods or services has the
3 right to sue under this section.

4 (5) The liability of any undertaking under this section shall not be
5 excluded or restricted.

6 **137.-(1)** In the case of goods of a type ordinarily supplied for
7 private use or consumption, where loss or damage arises from the goods
8 proving defective while in consumer use or results from the negligence of an
9 undertaking concerned in the manufacture or distribution of the goods,
10 liability for the loss or damage cannot be excluded or restricted by reference
11 to any contract term or notice contained in or operating by reference to a
12 guarantee of the goods.

13 (2) For the purpose of this section-

14 (a) goods are to be regarded as "in consumer use" when a person is
15 using them or has them in his possession for use, otherwise than exclusively
16 for the purposes of a business; and

17 (b) anything in writing is a guarantee if it contains or purports to
18 contain some promise or assurance (however worded or presented) that
19 defects will be made good by complete or partial replacement, or by repair,
20 monetary compensation or otherwise.

21 **138.-(1)** Liability for breach of the obligations arising from a
22 seller's implied undertaking as to title not be excluded or restricted by
23 reference to any contract term.

24 (2) As against a person dealing as a consumer, liability for breach
25 of the obligations arising from seller's implied undertakings as to
26 conformity of goods with description or sample, or as to their quality or
27 fitness for a particular purpose, shall not be excluded or restricted by
28 reference to any contract term.

29 (3) As against a person dealing otherwise than as a consumer, the

Liability arising
from sale or supply
of goods not to
be excluded

Liability for
breach of implied
obligations by law

	1	liability specified in subsection (2) may be excluded or restricted by reference
	2	to a contract term only if the term satisfies the requirement of reasonableness.
Miscellaneous contracts under which goods pass	3	139. -(1) Where the possession or ownership of goods pass under or in
	4	pursuance of a contract, subsections (2), (3) and (4) apply as regards the effect,
	5	if any, to be given to contract terms excluding or restricting liability for breach
	6	of obligation arising by implication of law from the nature of the contract.
	7	(2) As against a person dealing as a consumer, liability in respect of
	8	the goods' correspondence with description or sample or quality or fitness for
	9	any particular purpose shall not be excluded or restricted by reference to any
	10	contract term.
	11	(3) As against a person dealing otherwise than as a consumer, liability
	12	may be excluded or restricted by reference to a contract term only if the term
	13	satisfies the requirement of reasonableness.
	14	(4) Liability in respect of-
	15	(a) the right to transfer ownership of the goods or give possession, or
	16	(b) the assurance of quiet possession to a person taking goods
	17	pursuant to a contract, shall not be excluded or restricted by reference to any
	18	contract term, except if the term satisfies the requirement of reasonableness.
Liability for misrepresentation	19	140. Where a contract contains a term which excludes or restricts any
	20	liability to which a part of a contract may be the subject by reason of any
	21	misrepresentation made before the contract was made, or any remedy available
	22	to another party to the contract by reason of such a misrepresentation, that term
	23	shall have no effect.
Evasion by means of secondary contract	24	141. -(1) A person is not bound by any contract term prejudicing or
	25	taking away the person's rights arising under, or in connection with, the
	26	performance of another contract, so far as those rights extend to the
	27	enforcement of another's liability which this Act prevents that other from
	28	excluding or restricting.
	29	(2) This Act prevents-
	30	(a) the exclusion or restriction of any liability;

1 (b) making any liability or its enforcement subject to restrictive or
2 onerous conditions;

3 (c) excluding or restricting any right or remedy in respect of the
4 liability or subjecting a person to any prejudice in consequence of the person
5 pursuing any such right or remedy; and

6 (d) excluding or restricting rules of evidence or procedure.

7 (3) An agreement in writing to submit present or future differences
8 to arbitration is not to be treated under this Act as excluding or restricting
9 any liability.

10 **142.**-(1) A contract is a contract for the supply of a service for the Supply of services
11 purposes of this Act whether or not goods are also transferred or to be
12 transferred, or bailed or to be bailed by way of hire, under the contract and
13 whatever is the nature of the consideration for which the service is to be
14 carried out.

15 (2) For the purpose of this Act, a contract for apprenticeship is not a
16 contract for the supply of a service.

17 (3) In a contract for the supply of a service where the supplier is
18 acting in the course of a business, there is an implied term that the supplier
19 will carry out the service with reasonable care and skill.

20 **143.** Where under a contract for the supply of a service by a Implied term
21 supplier acting in the course of a business, the time for the service to be about for execution
22 carried out is not fixed by the contract, left to be fixed in a manner agreed by of contract
23 the contract or determined by the course of dealing between the parties, it is
24 implied that the supplier will carry out the service within a reasonable time.

25 **144.**-(1) Where a right, duty or liability would arise under a Exclusion of
26 contract for the supply of a service, it may be negated or varied by express implied terms
27 agreement or by the course of dealing between the parties or by such usage
28 as binds both parties to the contract provided that an express term does not
29 negate a term implied by this section unless it is inconsistent with it.

30 (2) A supplier of service shall not, while dealing with a consumer,

1 exclude or restrict its liability for breach of any term implied under sections 142
2 (3) and 143 of this Act.

3 (3) Nothing in this section shall prejudice any rule of law which
4 imposes on the supplier a duty stricter than that imposed by section 143 of this
5 Act.

Onus of proof

6 **145.** Where it is alleged that goods or services are defective, the onus
7 of proof shall lie on the undertaking that supplied the goods or services.

8 PART XVII - ENFORCEMENT OF CONSUMERS' RIGHTS

Enforcement
of rights by a
consumer

9 **146.-(1)** A consumer may seek to enforce any right under this Act, a
10 transaction or agreement, or otherwise resolve any dispute with an undertaking
11 that supplied the goods or services to the consumer by-

12 (a) referring the matter directly to the undertaking that supplied the
13 goods or services;

14 (b) referring the matter to the applicable industry sector regulator
15 with jurisdiction, if the undertaking is subject to the jurisdiction of the
16 regulator; or

17 (c) filing a complaint directly with the Commission.

18 (2) Notwithstanding the provisions of subsection (1), an aggrieved
19 consumer can directly approach a court with appropriate jurisdiction to seek
20 redress.

Conclusion by
industry sector
regulator

21 **147.** Where an industry sector regulator concludes that there is no
22 reasonable probability of the parties resolving their dispute through the process
23 provided for in the relevant industry code, the industry sector regulator may
24 terminate the process by notice to the parties and the party who referred the
25 matter to the industry sector regulator may then file a complaint with the
26 Commission.

Enforcement of
rights by the
Commission

27 **148.-(1)** A consumer shall file a complaint with the Commission in the
28 prescribed manner and form, alleging that an undertaking has acted in a manner
29 inconsistent with the provisions of this Act.

30 (2) The Commission shall directly initiate a complaint concerning

1 any allegedly prohibited conduct on its own motion, an industry sector
2 regulator or an accredited consumer protection group.

3 (3) Upon initiating or receiving a complaint under this Act, the
4 Commission may-

5 (a) issue a notice of non-referral to the complainant in the
6 prescribed form, if the complaint appears to be frivolous or vexatious or
7 does not allege any fact which would constitute grounds for a remedy under
8 this Act;

9 (b) refer the complaint to an industry sector regulator with
10 jurisdiction over the matter for investigation or resolution; or

11 (c) direct an inspector to investigate the complaint as quickly as
12 practicable.

13 (4) At any time during investigation, the Commission may
14 designate one or more persons to assist the inspector conducting the
15 investigation.

16 (5) After receiving a report of an investigation into a complaint, the
17 Commission shall-

18 (a) issue a notice of non-referral to the complainant in the
19 prescribed form;

20 (b) make an order; or

21 (c) issue a compliance notice.

22 **149.**-(1) Where a matter has been investigated by the Commission, Consent order
23 and the Commission and the respondent agree on the proposed terms of an
24 appropriate order, the agreed terms shall be made on the order of the
25 Commission.

26 (2) The Commission may, if it deems fit, register the order in a
27 court of competent jurisdiction and the court, without hearing any evidence,
28 may confirm that agreement as a consent order.

29 (3) An order of the Commission or a consent order confirmed
30 pursuant to the provision of this section may include an award of damages to

1 the complainant.

Compliance
notice

2 **150.**-(1) The Commission may issue a compliance notice in the
3 prescribed form to an undertaking or association of undertakings whom the
4 Commission on reasonable grounds believes has engaged in prohibited
5 conduct, provided that before issuing a notice to a member of a regulated
6 industry, the Commission shall consult the industry sector regulator that issued
7 a licence to that regulated entity.

8 (2) A compliance notice shall set out-

9 (a) the undertaking or association of undertakings to whom the notice
10 applies;

11 (b) the provisions of this Act that have not been complied with;

12 (c) details of the nature and extent of the non-compliance;

13 (d) steps that are required to be taken and the period within which
14 those steps shall be taken; and

15 (e) the penalty that may be imposed under this Act if those steps are
16 not taken.

17 (3) A compliance notice issued pursuant under this section remains in
18 force until it is set aside by a court, or until the Commission issues a compliance
19 certificate upon being satisfied that there has been sufficient compliance with
20 the compliance notice.

21 (4) If an undertaking or association of undertakings to whom a
22 compliance notice has been issued fails to comply with the notice, the
23 Commission shall-

24 (a) shut down or close any premises from which the notice continues
25 to be breached until the breach or non-compliance is remedied;

26 (b) impose the appropriate administrative fine; or

27 (c) refer the matter to a court of competent jurisdiction for
28 prosecution.

Redress by civil
society groups

29 **151.**-(1) The Commission may collaborate with, facilitate, or
30 otherwise support any of the following activities carried out by a consumer

- 1 protection group-
- 2 (a) consumer advice and education activities and publications;
- 3 (b) research, market monitoring, surveillance and reporting;
- 4 (c) promotion of consumers' rights and advocacy of consumers'
- 5 interests;
- 6 (d) representation of consumers, either specifically or generally, in
- 7 court;
- 8 (e) alternative dispute resolution through mediation or
- 9 conciliation; and
- 10 (f) participation in national and international associations,
- 11 conferences or forums concerned with consumer protection matters.
- 12 (2) An accredited consumer protection group may-
- 13 (a) commence or undertake any act to protect the interests of a
- 14 consumer individually, or of consumers collectively, in any matter or before
- 15 any forum contemplated in this Act; and
- 16 (b) intervene in any matter before any forum contemplated in this
- 17 Act, if the interests of consumers represented by that group are not otherwise
- 18 adequately represented in that forum.
- 19 (3) In addition to any other authority set out in this Act, an
- 20 accredited consumer protection group may direct a generally stated concern
- 21 or complaint to the Commission in respect of any matter within the purpose
- 22 of this Act.
- 23 (4) The Commission may accredit a consumer protection group if
- 24 that group-
- 25 (a) functions predominantly to promote or represent the interests of
- 26 all or a specific category of consumers generally;
- 27 (b) is committed to achieving the purposes of this Act; and
- 28 (c) engages in, or makes a realistic proposal to engage in, actions to
- 29 promote and advance the consumers' interests.
- 30 (5) The Commission may impose reasonable conditions for the

1 accreditation of a consumer protection group to provide the objectives of this
2 Act and shall monitor the effectiveness of any such accredited consumer
3 protection group and may reasonably require any accredited consumer
4 protection group to provide information necessary for monitoring purposes.

Redress by the
Court

5 **152.** Where upon an investigation by the Commission of a complaint
6 by a consumer, it is proved that-

7 (a) the consumer's right has been violated, or

8 (b) a wrong has been committed by the way of trade, provision of
9 services, supply of information or advertisement thereby causing injury or loss
10 to the consumer,

11 the consumer shall in addition to the redress which the Commission may
12 impose, have a right of civil action for compensation or restitution in a court of
13 competent jurisdiction.

Power to obtain
satisfactory written
assurance

14 **153.**-(1) Where it appears to the Commission that an undertaking has
15 in the course of business persisted in a course of conduct which is detrimental
16 to the interests of consumers, the Commission shall use its best endeavours to
17 obtain from the undertaking concerned a satisfactory written assurance that it
18 will refrain from a continuation of that course of conduct.

19 (2) Where the Commission is unable to obtain from the undertaking in
20 question the assurance referred to in subsection (1), or if that undertaking has
21 given such assurance and it appears to the Commission or the States office that
22 the undertaking has failed to observe the assurance, the Commission shall
23 cause proceedings to be commenced against such undertaking in a court of
24 competent jurisdiction to refrain the undertaking from continuing that course
25 of conduct.

26 (3) The Commission may order a temporary closure of any premises
27 or facilities reasonably believed to be carrying on in a manner detrimental to
28 the interest of consumers until the Commission is satisfied otherwise or
29 pending the commencement of action.

Compensation
order

30 **154.**-(1) A court by or before which an undertaking is convicted of an

1 offence under this Act may, in addition to dealing with such undertaking in
2 any other way, make an order requiring the undertaking to pay
3 compensation for any personal injury, loss or damage resulting from that
4 offence of such amount as it may deem fit or as assessed by competent
5 professional authority.

6 (2) In determining whether to make a compensation order against
7 any undertaking, and in determining the amount to be paid by any
8 undertaking under such an order, the court shall have regard to the means of
9 the undertaking if they appear or are known to the court.

10 **155.** Except where otherwise provided for in this Act, any person
11 who contravenes any consumer right commits an offence under this Act and-

Contravention
of consumer rights

12 (a) in the case of a natural person, is liable on conviction to
13 imprisonment for a term not exceeding five years, or to payment of fine not
14 exceeding N10,000,000.00 or to both the fine and imprisonment;

15 (b) in the case of a body corporate, is liable on conviction to a fine
16 of not less than N100,000,000.00 or 10% of its turnover in the preceding
17 business year, whichever is higher; and

18 (c) in the case of a body corporate referred to in paragraph (b) of
19 this section, each director of the body corporate is liable to be proceeded
20 against and dealt with as specified in paragraph (a).

21 PART XVIII - MISCELLANEOUS PROVISIONS

22 **156.**-(1) Subject to the provisions of this Act, the provisions of the
23 Public Officers Protection Act applies in relation to any suit instituted
24 against any member or employee of the Commission or the Tribunal.

Limitation of
suits against the
Commission and
the Tribunal

25 (2) Further to the provisions of subsection (1), a suit shall not lie or
26 be instituted in any court against any member of the Commission, the
27 Secretary or any other officer or employee of the Commission or the
28 Chairman, members, staff, officers or employees of the Tribunal for any act
29 done in pursuance or execution of the provisions of this Act or any other
30 enactment or law, or of any public duty or authority in respect of any alleged

1 neglect or default in the execution of the provision of this Act or such
2 enactment or law, duty or authority unless -

3 (a) it is commenced within three months next after the act, neglect or
4 default complained of; or

5 (b) in the case of a continuation of damage or injury, within six
6 months next after the damage or injury ceases.

7 (3) A suit shall not be commenced against any member of the
8 Commission, the Secretary or any other officer or employee of the
9 Commission or the Chairman, members, staff, officers or employees of the
10 Tribunal before the expiration of a period of 30 days after a written notice of
11 intention to commence suit shall have been served upon the Commission or
12 Tribunal by the intending plaintiff, or the agent or other lawful representative
13 of the plaintiff.

14 (4) The notice referred to in subsection (3) shall clearly state, the-

15 (a) cause of action;

16 (b) particulars of the claim;

17 (c) name and address of the intending plaintiff; and

18 (d) relief sought by the plaintiff.

Issuance of
notices by or
on behalf of
Commission

19 **157.**-(1) Any notice given by the Commission under, or for the
20 purpose of, this Act shall be-

21 (a) given in writing, under, the seal of the Commission signed by the
22 Executive Chairman, or by one or more of the members of the Commission, or
23 by any person purporting to act under the direction of the Commission; and

24 (b) served in accordance with section 158 of this Act on the person or
25 persons primarily concerned or on any person or persons deemed by the
26 Commission to represent the person or persons primarily concerned.

27 (2) All documents purporting to be signed by or on behalf of the
28 Commission or to be sealed with the seal of the Commission shall, in all courts
29 and in all proceedings under this Act, be deemed to have been so signed or
30 sealed with due authority unless the contrary is established.

1 **158.**-(1) Any notice or other document required or authorised to be Service of notices
2 served on or given to any person for the purpose of this Act may be served or
3 given by delivering it to that person, or by leaving it at that person's usual or
4 last known place of residence or business or at the address specified by that
5 person in any notice, application, or other document made, given or
6 tendered to the Commission under this Act, or by posting it by registered
7 mail to the person at that place of residence or business or at that address.

8 (2) Where any notice or other document is sent to a person by
9 registered mail, then, unless the contrary is shown, it shall be deemed to have
10 been delivered to the person when it would have been delivered in the
11 ordinary course of posting a mail, unless the contrary is established.

12 (3) In proving the delivery contemplated under subsection (2), it
13 shall be sufficient to prove that there is return post office slip showing actual
14 delivery.

15 (4) Where, for any purpose under this Act, a notice or document is
16 required to be served on an undertaking, the notice or document may be
17 served on the secretary, executive officer, manager, or other officer holding
18 a similar position in the undertaking and for the purpose of this Act, service
19 on an association or body shall, unless otherwise directed by the
20 Commission, be deemed to be service on all persons or undertakings who
21 are members of the association or body or who are represented on the
22 association or body by those members.

23 **159.**-(1) Subject to the provisions of this Act, a person shall not- Offences under
24 (a) without reasonable excuse, refuse or fail to comply with a this Part

25 notice issued under sections 157 and 158 of this Act;

26 (b) in purported compliance with such a notice, furnish
27 information, or produce a document, or give evidence, knowing it to be false
28 or misleading; or

29 (c) resist, obstruct, or delay an employee of the Commission acting
30 pursuant to a warrant issued under section 30 (3) of this Act.

1 (2) A person shall not attempt to deceive or knowingly mislead the
2 Commission in relation to any matter before it.

3 (3) A person, having been required to appear before the Commission
4 pursuant to the provision of section 29 (2) of this Act, shall not, without
5 reasonable excuse, refuse-

6 (a) or fail to appear before the Commission to give evidence;

7 (b) to take an oath or make an affirmation as a witness; or

8 (c) to produce to the Commission any book or document that is
9 required to be produced by the Commission.

10 (4) Subject to the provision of subsection (3), a person who violates
11 any of the provisions of this section commits an offence and is liable on
12 summary conviction-

13 (a) in the case of a natural person, to a fine not exceeding
14 N1,000,000.00 or to a term of imprisonment not exceeding three months, or to
15 both the fine and imprisonment; and

16 (b) in the case of a body corporate, to a fine not exceeding
17 N10,000,000.00.

Decisions of the
Commission to
be in writing

18 **160.**-(1) Any finding or decision given by the Commission under or
19 for the purpose of this Act shall be sufficiently given in writing under the seal of
20 the Commission or if signed by one or more members of the Commission or by
21 an officer or employee of the Commission authorised for that purpose.

22 (2) A copy of a finding or decision of the Commission, certified to be a
23 true copy by an officer or employee of the Commission authorised in that
24 behalf to certify copies of determinations or decisions of the Commission shall
25 be received in all courts as evidence of the determination or decision.

26 (3) A document purporting to be a copy of a determination or decision
27 of the Commission and certified to be a true copy in accordance with
28 subsection (2), unless the contrary is established, shall be deemed to be a copy
29 and to be so certified.

1 **161.**-(1) The Commission may delegate any of its powers subject
2 to such conditions and restrictions as it may deem fit, and the delegation may
3 be made either generally or in relation to any particular matter or class of
4 matters.

Delegation by
the Commission

5 (2) A person to whom the Commission delegates its power shall be
6 either a member or an officer of the Commission.

7 (3) Subject to any general or special direction given or condition or
8 restriction imposed by the Commission, any person to whom any power or
9 function is delegated may exercise the power or perform the function in the
10 same manner and with the same effect as if it had been conferred directly by
11 this Act.

12 (4) Any person purporting to act pursuant to any delegation under
13 this section shall be presumed to be acting in accordance with the terms of
14 the delegation, in the absence of proof to the contrary.

15 (5) Delegation of any power or function under this section shall not
16 prevent the exercise of that power or performance of that function by the
17 Commission.

18 (6) Until it is revoked or amended, every delegation shall continue
19 in force according to its terms.

20 **162.**-(1) No proceedings, civil or criminal, shall lie against the
21 Commission for anything it may do or fail to do in the course of the
22 performance or intended performance of its functions, unless it is shown that
23 the Commission acted without reasonable care or in bad faith.

Civil or criminal
proceedings in
respect of any
action of the
Commission

24 (2) No civil proceedings shall lie against any member of the
25 Commission, or any officer or employee of the Commission, for anything
26 that member, officer or employee may do or say or fail to do or say in the
27 course of carrying out of the functions of the Commission, unless it is shown
28 that the person acted without reasonable care or in bad faith.

29 (3) A person shall not be excused from-

30 (a) complying with any requirement to furnish information,

1 produce documents, or give evidence under this Act;

2 (b) appearing before the Commission;

3 (c) answering any question or producing any document, on the
4 ground that to do so might tend to incriminate that person or another person.

5 (4) Except as may be required under any law, rule or regulation, no
6 court or person is entitled to require any member of the Commission, or any
7 officer or employee of the Commission or any other person present at any
8 meeting of the Commission, to divulge or communicate any information
9 furnished or obtained, documents produced, obtained or tendered, or evidence
10 given, in connection with the functions of the Commission.

11 (5) Anything said, or information furnished, or document produced or
12 tendered, or evidence given by any person to the Commission shall be
13 privileged in the same manner as if that statement, information, document, or
14 evidence were made, furnished, produced, or given in proceedings in a court.

Power to make
regulations

15 **163.**-(1) The Commission may make regulations and issue guidelines
16 and notices for the effective implementation and operation of the provisions of
17 this Act, and in particular, prescribing-

18 (a) the procedures to be followed under this Act with regard to
19 applications, notices to and proceedings of the Commission;

20 (b) the forms of applications and related documents required for the
21 purposes of this Act;

22 (c) fees, administrative penalties, charges or levies and such other
23 related matters; and

24 (d) how information required can be obtained or accessed to
25 confidential information.

26 (2) The regulations, guidelines and notices referred to in subsection
27 (1) may include procedural and enforcement rules, and regulations or
28 guidelines-

29 (a) for the application of Part VIII of this Act prohibiting restrictive
30 agreements;

- 1 (b) for the application of Part IX of this Act prohibiting abuse of a
2 dominant position;
- 3 (c) on monopoly investigation under Part X of this Act;
- 4 (d) on the assessment of Mergers under Part XII of this Act;
- 5 (e) on the consumer protection regulation under Parts XV-XVII of
6 this Act;
- 7 (f) on market definition;
- 8 (g) on leniency programme; and
- 9 (h) any other regulation, guideline and notice as may be needed for
10 the implementation of this Act.

11 **164.** The provisions of any other enactment, including the
12 Investment and Securities Act, regulations or subsidiary laws in force
13 relating to or connected with the subject matter of this Act shall be read with
14 such modifications as are necessary to bring them in conformity with the
15 provisions of this Act.

Application of
other enactments

16 **165.**-(1) The Consumer Protection Council Act, Cap. C25, Laws of
17 the Federation of Nigeria, 2004, and sections 118, 119, 120, 121 (excluding
18 S. 121(i)(d), 122, 123, 124, 125, 126, 127 and 128 of the Investments and
19 Securities Act, Cap. I24, Laws of the Federation of Nigeria, 2004 are
20 repealed.

Repeals and
savings

21 (2) Without prejudice to section 6 of the Interpretation Act, the
22 repeal of the Act specified in subsection (1), shall not affect anything done
23 under or pursuant to the Act.

24 (3) There shall be vested in the Commission all assets, funds,
25 resources and other immovable property which before the commencement
26 of this Act, were vested in the Consumer Protection Council established
27 under the repealed Act.

28 (4) All rights, interest, obligations and liabilities of the Consumer
29 Protection Council under the repealed enactment in place before the
30 commencement of this Act under any contract or instrument, or in law or

1 equity shall, by virtue to this Act, be assigned to and vested in the Commission
2 established under this Act.

3 (5) Any contract or instrument referred to in subsection (4), shall be of
4 the same force and effect against or in favour of the Commission established
5 under this Act and shall be enforceable as fully and effectively as if, instead of
6 the Consumer Protection Council under the repealed Act, the Commission
7 established under this Act had been named or had been a party.

8 (6) The Commission established under this Act shall be subject to all
9 obligations and liabilities to which the Consumer Protection Council under the
10 repealed Act was subject to before the commencement of this Act.

11 (7) Any proceeding or course of action pending or existing before the
12 commencement of this Act against the Consumer Protection Council under the
13 repealed Act in respect of any right, interest, obligation or liability of the
14 Consumer Protection Council under the repealed Act may be continued, or as
15 the case may require, be commenced and the determination of any court of law
16 or other authority or person may be enforced by or against the Commission
17 established by this Act to the same extent that such course of action or
18 determination might have continued, or enforced by or against the Consumer
19 Protection Council under the repealed Act.

20 (8) Any regulation, order, bye-law or notice made or issued or deemed
21 to be made or issued by, or for the purposes, of the Consumer Protection
22 Council under the repealed Act existing before the commencement of this Act
23 shall be deemed to have been made or issued by or for the purposes of the
24 Commission established under this Act and shall continue in force until
25 revoked or amended, subject to such modifications as may be applicable to the
26 Commission established under this Act.

27 (9) As from the commencement of this Act, any disciplinary
28 proceeding pending or existing against any staff or employee of the Consumer
29 Protection Council shall be continued and completed by the Commission
30 established under this Act.

1	166. The provisions of this Act shall have effect with respect to	Transitional provisions
2	matters arising from the transfer under this Act to the Commission of the	
3	property of the Council before this Act, and with respect to the other matters	
4	mentioned in the Second Schedule to this Act.	
5	167.-(1) In this Act-	Interpretation
6	"acquiring undertaking" means an undertaking that-	
7	(a) as a result of a merger within the meaning of section 93 of this	
8	Act would directly or indirectly acquire, or establish, direct or indirect	
9	control over the whole or part of the business of another undertaking; or	
10	(b) as a result of a merger within the meaning of section 93 of this	
11	Act has direct or indirect control over the whole or part of the business of an	
12	undertaking referred to in paragraph (a).	
13	"Act" means the Federal Competition and Consumer Protection Act, 2017;	
14	"agent" means a person who is authorised to act for another person ("the	
15	principal") through employment or by contract, whether express or implied;	
16	"agreement" includes a contract, arrangement, understanding, written or	
17	oral, and a concerted practice;	
18	"authorised officer" means any person appointed as such by the	
19	Commission for the purposes of implementation of the provisions of this	
20	Act;	
21	"business" includes any activity that is carried on for gain or reward, or in the	
22	course of which goods or services are acquired or supplied or any interest in	
23	land is acquired or disposed of, otherwise than free of charge;	
24	"business secret" means trade, business or industrial information that	
25	belongs to a person which has a particular economic value and is not	
26	generally available to or known by others;	
27	"close corporation" means a corporation whose shares are not publicly	
28	traded and are held by a limited number of persons;	
29	"Code of Conduct" means a set of moral principles or rules of conduct or	
30	behavior drawn up by the Commission for the Commission, its employee	

- 1 and a person acting through the authority of the Commission;
- 2 "company" includes any entity registered under the Nigeria Companies and
3 Allied Matters Act or the laws of any other country;
- 4 "complainant" means a person who initiates a complaint;
- 5 "Commission" means the Federal Competition and Consumer Protection
6 Commission established under section 3 (1) of this Act;
- 7 "concerted practice" means a practice involving direct or indirect contacts
8 between competitors falling short of an actual agreement;
- 9 "consumer" includes any person-
- 10 (a) who purchases or offers to purchase goods otherwise than for the
11 purpose of resale but does not include a person who purchases any goods for
12 the purpose of using them in the production or manufacture of any other goods
13 or articles for sale; or
- 14 (b) to whom a service is rendered;
- 15 "court" means the Court of Appeal;
- 16 "dealer" means a person who buys goods or services for resale;
- 17 "document" means a document in any form, whether signed or otherwise
18 authenticated by its maker or not, and includes any-
- 19 (a) writing on any material;
- 20 (b) information recorded or stored by means of any tape-recorder,
21 computer, or other device, and any material subsequently derived from
22 information so recorded or stored;
- 23 (c) label, marking, or other writing that identifies or describes
24 anything of which it forms part, or to which it is attached by any means;
- 25 (d) book, map, plan, graph, or drawing; and
- 26 (e) photograph, film, negative, tape, or other device in which one or
27 more visual images are embodied so as to be capable (with or without the aid of
28 some other equipment) of being reproduced;
- 29 "enterprise" means any person involved in business;

1 "exclusive dealing" means any practice whereby an undertaking as a
2 condition of-

3 (a) supplying goods and services to a customer-

4 (i) requires the customer to deal only or primarily in goods or
5 services supplied or designed by undertaking or its nominee, or refrain from
6 dealing in a specified class or kind of goods or services, except as supplied
7 by the undertaking or its nominee, or

8 (ii) induces a customer to meet such condition by offering to supply
9 goods or supply goods or services to the customer on more favourable terms
10 or conditions if the customer agrees to meet that condition;

11 (b) purchasing a specified class or kind of goods or services from a
12 supplier, requires the supplier to refrain from supplying the same class or
13 kind of goods or services to other undertakings;

14 "Executive Vice Chairman" means the Chief Executive of the Commission;

15 "Federal" refers to the Federal Republic of Nigeria;

16 "function" includes powers and duties;

17 "give effect to", in relation to a provision of a contract, arrangement or
18 understanding, includes:

19 (a) doing an act in pursuance of, or in accordance with, that
20 provision; and

21 (b) enforcement or purport to enforce that provision;

22 "goods"-

23 (a) when used with respect to particular goods, includes any other
24 goods that are reasonably capable of being substituted for them, taking into
25 account ordinary commercial practice and geographical, technical and
26 temporal constraints;

27 (b) includes-

28 (i) ship, aircraft, and vehicles,

29 (ii) minerals, trees and crops, whether on, under, or attached to land

30 or not,

- 1 (iii) gas and electricity;
- 2 "Government of the Federation" means the Federal, States and any of the Local
3 Governments of the Federation;
- 4 "judge" means Judge of the Court of Appeal;
- 5 "members of the Commission" means the Executive Vice Chairman and the
6 Commissioners of the Commission;
- 7 "merger" means a transaction falling under the definition of section 93 of this
8 Act;
- 9 "Minister" means, unless otherwise stated, the Minister responsible for trade
10 matters;
- 11 "President" means the President and Commander-in-Chief of the Armed
12 Forces of the Federal Republic of Nigeria;
- 13 "person", includes any natural or legal person, whether incorporated or not;
- 14 "prescribed" means prescribed by regulations under this Act or by the
15 Commission;
- 16 "price" includes any-
- 17 (a) charge or fee or valuable consideration in any form, whether direct
18 or indirect; and
- 19 (b) consideration that in effect relates to the acquisition or supply of
20 goods or services or the acquisition or disposition of any interest in land,
21 although ostensibly relating to any other matter or thing;
- 22 "principal" means a person who authorises or empowers another person to act
23 as its representative or agent;
- 24 "products" includes goods or services;
- 25 "Public Service Rules" means the version of the Public Service Rules currently
26 in force;
- 27 "respondent" means a person against whom a complaint is made;
- 28 "restrictive practices" means practices in restraint of trade or which otherwise
29 hinder competition;
- 30 "retailer" means a person who sells goods or services to consumers;

1 "repealed enactment" includes sections 118, 119, 120, 121, 122, 123, 124,
2 125, 126, 127 and 128 of the Investments and Securities Act, Cap. I24 Laws
3 of the Federation of Nigeria, 2004 and the Consumer Protection Council Act
4 Cap. C25 Laws of the Federation of Nigeria, 2004;

5 "service" includes -

6 (a) a service of any description, whether industrial, trade,
7 professional or any other service; and

8 (b) the sale of goods, where the goods are sold in conjunction with
9 the rendering of a service;

10 "sale" includes advertisement for sale, display for sale, and offer for sale,
11 and "sell",;

12 "selling", and "sold" have corresponding meanings;

13 "share" means a share in the share capital of a company or other body
14 corporate, whether or not it carries the right to vote at general meetings, and
15 includes-

16 (a) a beneficial interest in any such share;

17 (b) a power to exercise, or control the exercise of, a right to vote
18 attaching to any such share that carries the right to vote at meetings of the
19 company;

20 (c) a power to acquire or dispose of, or control the acquisition or
21 disposition of, any such share; and

22 (d) a perpetual debenture and perpetual debenture stock;

23 "State office" means an official position, division or agency of a Local, State
24 or Federal Government;

25 "supplier" means a person who supplies goods or services to another person;

26 "supply", in relation to-

27 (a) goods, includes supply, or re-supply by way of gift, sale,
28 exchange, rent, lease, hire, or hire purchase; and

29 (b) services, includes provide, grant, or confer and "supply" as a
30 noun, and "supplied" have corresponding meanings;

1 "target undertaking" means an undertaking, which as a result of a merger
2 within the meaning of section 93 of this Act-

3 (a) the whole or part of whose business would be directly or indirectly
4 controlled by an acquiring undertaking; or

5 (b) would directly or indirectly transfer control of the whole or part of,
6 its business to an acquiring undertaking;

7 "turnover" means the amount of money taken by the business in a determined
8 period;

9 "trade" includes any business, industry, profession, occupation, activity of
10 commerce or undertaking relating to the supply or acquisition of goods or
11 services or to the disposition or acquisition of any interest in land;

12 "Tribunal" means the Competition and Consumer Protection Tribunal
13 established under section 39 (1) of this Act;

14 "undertaking" includes any person involved in the production of, or the trade
15 in, goods, or the provision of services;

16 (2) In this Act, a reference to "engaging in conduct" shall be read as a
17 reference to doing or refusing to do any act, including the entering into, or the
18 giving effect to a provision of, a contract or arrangement.

19 (3) In this Act-

20 (a) a reference to the "acquisition of goods" includes a reference to the
21 acquisition of property in, or rights in relation to, goods in pursuance of a
22 supply of the goods;

23 (b) a reference to "the supply or acquisition of goods or services"
24 includes a reference to agreeing to supply or acquire goods or services;

25 (c) a reference to "the supply or acquisition of goods" includes a
26 reference to the supply or acquisition of goods together with other property or
27 services or both; and

28 (d) a reference to "the supply or acquisition of services" includes a
29 reference to the supply or acquisition of services together with property or
30 other services or both.

1 (4) For the purpose of this Act, any two undertakings or
2 associations of undertakings are to be treated as affiliated if -

3 (a) one of them is an undertaking of which the other is a subsidiary,
4 as the subsidiary is understood under the provisions of the Companies and
5 Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004;

6 (b) both of them are subsidiaries (within the meaning of those
7 sections) of the same undertaking; or

8 (c) both of them are affiliated with undertakings that, in accordance
9 with paragraph (a) or (b) of this subsection, are affiliated.

10 (5) In this Act, "competition" means workable or effective
11 competition in relation to the supply and demand of goods or services in any
12 given market and unless the context otherwise requires, references to the
13 lessening of competition include references to the hindering or preventing
14 of competition.

15 (6) For the purpose of this Act, the effect on competition in a
16 market shall be determined by reference to all factors that affect competition
17 in that market, including competition from goods or services supplied or
18 likely to be supplied by undertakings not resident or not carrying on business
19 in Nigeria.

20 (7) For the purpose of this Act-

21 (a) a provision of a contract or arrangement shall be deemed to
22 have had, or to have, a particular purpose; if-

23 (i) the provision was or is included in the contract or arrangement
24 or is required to be given, for that purpose or purposes that included or
25 include that purpose, and

26 (ii) that purpose was or is a substantial purpose;

27 (b) a person is deemed to have engaged, or to engage, in conduct
28 for a particular purpose or a particular reason if that person engaged or
29 engages in that conduct for that purpose or reason or for purposes or reasons
30 that included or include that purpose or reason, and that purpose or reason

1 was or is a substantial purpose or reason.

2 (8) In this Act, a reference to-

3 (a) a contract shall be construed as including a reference to a lease of,
4 or a licence in respect of, any land or a building or part of a building, and shall
5 be so construed notwithstanding any express reference in this Act to the lease or
6 licence, but does not mean a reference to the memorandum of association or
7 articles of association of a company;

8 (b) making or entering into a contract, in relation to a lease or licence,
9 shall be read as a reference to granting or taking the lease or licence; and

10 (c) a party to a contract, in relation to such a lease or licence, shall be
11 read as including a reference to any person bound by, or entitled to the benefit
12 of, any provision contained in the lease or licence.

13 (9) For the purposes of this Act, any contract or arrangement entered
14 into by an association or body is deemed to have been entered into by all the
15 persons or undertakings who are members of the association or body;

16 (10) Nothing in subsection (9) shall apply to any member of an
17 association or body who-

18 (a) expressly notifies the association or body in writing that he
19 disassociates himself from the contract, or arrangement or any provision
20 thereof;

21 (b) establishes that he had no knowledge and could not reasonably
22 have been expected to have had knowledge of the contract, arrangement, or
23 understanding.

24 (11) In this Act, a reference to-

25 (a) Federal Government means the Federal Government of the
26 Federal Republic of Nigeria;

27 (b) State Government means the Government of any of the States that
28 constitute the territories of the Federal Republic of Nigeria, as recognised by
29 the Constitution of the Federal Republic of Nigeria, 1999.

30 (12) Every reference in this Act to the term, "market" is a reference to

1 a relevant market in Nigeria for goods or services as well as other goods or
2 services that, as a matter of fact and commercial common sense, are
3 substitutable for them and the meaning of the term relevant market shall be
4 based on examination of demand substitutability, supply substitutability and
5 potential competition.

6 (13) For the purpose of this Act, the term-

7 (a) "regulatory agency" means any Government agency
8 established to regulate the terms and conditions for demand and supply of
9 goods and services in any given industry and in this respect, the regulatory
10 agency in question is one established either by the Federal or State
11 Government;

12 (b) "regulated industry" means an industry which is designated as
13 such by the Commission and which is under the regulatory authority of a
14 regulatory agency.

15 (14) For the purpose of this Act, the term, "professional
16 associations" means the professional associations mentioned in the First
17 Schedule to this Act.

18 **168.** This Bill may be cited as the Federal Competition and Consumer Protection Bill, 2018. Citation

19 SCHEDULES

20 FIRST SCHEDULE

21 *Section 167 (14)*

22 PROFESSIONAL ASSOCIATIONS

23 The associations and their governing bodies established by the under listed
24 enactments are professional associations for the purposes of this Act -

25 (a) Architects (Registration, etc.) Act, Cap. A19, Laws of the
26 Federation of Nigeria, 2004;

27 (b) Institute of Chartered Accountants Act, Cap. I11, Laws of the
28 Federation of Nigeria, 2004;

29 (c) Dental Technologists (Registration, etc.) Act, Cap. D6, Laws of
30

- 1 the Federation of Nigeria, 2004;
- 2 (d) Engineers (Registration, etc.) Act, Cap. E11, Laws of the
3 Federation of Nigeria, 2004;
- 4 (e) Estate Surveyors and Valuers (Registration, etc.) Act, Cap. E13,
5 Laws of the Federation of Nigeria, 2004;
- 6 (f) Legal Practitioners Act, Cap. L11, Laws of the Federation of
7 Nigeria, 2004;
- 8 (g) Medical and Dental Practitioners Act, Cap. M8, Laws of the
9 Federation of Nigeria, 2004;
- 10 (h) Nursing and Midwifery (Registration, etc.) Act, Cap. N143, Laws
11 of the Federation of Nigeria, 2004;
- 12 (i) Pharmacists Commission of Nigeria Act, Cap. P11, Laws of the
13 Federation of Nigeria, 2004;
- 14 (j) Quantity Surveyors (Registration, etc.) Act, Cap. Q1, Laws of the
15 Federation of Nigeria, 2004;
- 16 (k) Surveyors Registration Commission of Nigeria Act, Cap. S18,
17 Laws of the Federation of Nigeria, 1990;
- 18 (l) Town Planners (Registration, etc.) Act, Cap. T7, Laws of the
19 Federation of Nigeria, 2004;
- 20 (m) Veterinary Surgeons Act, Cap. V3, Laws of the Federation of
21 Nigeria, 2004; and
- 22 (n) any other professional association created by any law and
23 designated as such by the Commission, provided that any designation of an
24 association as a professional association shall be published by the Commission
25 by regulations for the purpose of inclusion in this Schedule.

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SECOND SCHEDULE

Section 166

TRANSITIONAL PROVISIONS

Transfer of assets

1.-(1) All Assets and funds which immediately before the commencement of this Act were vested in the Consumer Protection Council (hereinafter referred to as "the Council") shall by virtue of this Act be vested in the Federal Competition and Consumer Protection Commission herein after referred to as "the Commission").

(2) All bonds, hypothecations, securities, deeds, contracts, instruments, documents, and working arrangements with respect to the assets transferred, that subsisted immediately before the commencement of this Act and to which the Council was a party shall be as fully effective and enforceable against or in favour of the Commission as if, instead of the Council, the Commission had been named therein.

(3) Any cause of action or proceeding which existed or was pending with respect to the assets transferred by or against the Council immediately before commencement of this Act, shall be enforced or continued, as the case may be, by or against or in favour of the Commission in the same way that it might have been enforced or continued by or against the Council had this Act not been passed.

(4) No action or other proceeding shall be commenced against the Commission in respect of an employee or asset that has been transferred to the Commission, if had there been no transfer, the time for commencing the action or other proceeding would have expired.

(5) Nothing in this Act and nothing done as a result of a transfer under subparagraph (1) of this paragraph shall create any new cause of action in favour of-

(a) a holder of a debt instrument that was issued by the Council before the commencement of this Act;

1 (b) a party to a contract with the Council that was entered into before
2 the commencement of this Act.

3 (6) Any guarantee or surety-ship given or made by the Federal
4 Government or any other person in respect of any debt or obligation of the
5 Council, and which was effective immediately before the transfer of the
6 principal debt or obligation, shall remain fully effective against the guarantor
7 or surety on and after the transfer date in relation to the payment of the debt or
8 the performance of the obligation, as the case may be, by the Commission, to
9 which the principal debt or obligation was transferred.

10 *Transfer of employees*

11 2.-(1) Upon the commencement of this Act, such number of persons
12 employed by the Council, as may be required by the Commission shall be
13 deemed to be staff of the Commission and shall be transferred to the service of
14 the Commission on a merit and value basis and on terms not less favourable
15 than those enjoyed immediately prior to the transfer.

16 (2) The service rendered by an employee transferred under
17 subparagraph (1) to the Council shall be deemed to be service with the
18 Commission for the purpose of determining employment related entitlements
19 as specified in the relevant laws of employment in Nigeria.

20 (3) Until such time as conditions of service are drawn up by the
21 Commission-

22 (a) the terms and conditions of service applicable to employees of the
23 Council shall continue to apply to every person transferred to the Commission
24 as if every such person were still in the service of the Council; and

25 (b) the Commission shall continue to contribute towards any pension
26 scheme to which the Council was contributing in respect of persons in the
27 employment of the Council prior to the transfer date.

28 (4) Any employees not transferred to the Commission shall be posted
29 to Ministries, Departments and Agencies within the Federal Civil Service and
30 Federal Public Service within a period of 3 months of coming into operation of

1 the Commission, by the Head of the Civil Service of the Federation.

2 (5) Nothing in this paragraph shall operate to-

3 (a) prevent any employee of the Council from resigning or being
4 dismissed from service; and

5 (b) create an entitlement for any employee of the Council to
6 become an employee of the Commission.

7 *Directions to the Council*

8 3.-(1) The Minister may give the members of the Board of the
9 Council directions in writing in order to ensure the proper transfer of the
10 assets of the Council to the Commission and the Council shall without delay,
11 comply with every such direction.

12 (2) Without derogating from subparagraph (1), directions given
13 under that subparagraph may provide for-

14 (a) the cessation of all or any of the functions of the Council;

15 (b) the termination of any contract entered into between the
16 Council and any person, provided that no such direction shall authorise the
17 Council to breach the provision of any such contract; and

18 (c) the production of any report and the provision of any
19 information concerning the conduct of the Council or the members of the
20 Board of the Council or anything done by or on behalf of the Council or the
21 members of the Council.

Explanatory Memorandum

This Bill seeks to provide for the establishment of the Federal Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal, and for the promotion of competition in the Nigerian markets at all levels by eliminating monopolies, prohibiting abuse of a dominant market positions and penalizing other restrictive trade and business practices.