

A BILL

FOR

AN ACT TO ESTABLISH THE FEDERAL COMPETITION COMMISSION AND FOR
PURPOSES CONNECTED THEREWITH

Sponsored by Rt. Hon. Yakubu Dogara

[] Commencement

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

1 PART I — FEDERAL COMPETITION COMMISSION

2 The Commission

3 1.—(1) There is hereby established under this Act a body corporate to
4 be known as the Federal Competition Commission (in this Act referred to as
5 “the Commission”) which shall have the powers and functions as conferred
6 on it by this Act.

Federal
Competition
Commission

7 (2) The Commission shall be—

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

9 (b) capable of suing and being sued in its corporate name;

10 (c) capable of acquiring, holding or disposing of any property,
11 movable or immovable for the purposes of performing its functions.

12 (3) The headquarters of the Commission shall be situated at the
13 Federal Capital Territory, Abuja, and it shall have other offices in such parts
14 of the Federation as it may determine.

15 (4) The Commission shall consist of such members as is provided for
16 in Part 1, Schedule 1 of this Bill.

17 (5) Members nominated under Section 3, Part 1, Schedule 1 herein
18 shall have the status of “Associate Member”, who shall only have the right to
19 attend and vote at meetings and on matters which are before the
20 Commission, and which are determined at the sole discretion of the
21 Permanent Members of the Commission to be connected with the sector

1 specific responsibilities of the Associate Member's agency.

2 (6) Members nominated under Sections 1 and 2, Part 1, Schedule 1
3 herein shall have the status of Permanent Member. They shall constitute the
4 Commission and have the responsibility for carrying out the functions and
5 duties and exercising the powers herein contained.

6 (7) The Director-General shall be a Permanent Member of the
7 Commission and shall be the Chief Executive thereof with responsibility for
8 the day-to-day running of the Commission and the implementation of policy
9 laid down and decisions taken by the Commission.

10 (8) Members of the Commission (including the Director-General) shall
11 hold office for a term of three years and shall be eligible for reappointment for a
12 second and final term of three years, provided that three of the six Permanent
13 Members nominated to the Commission shall hold office for a nonrenewable
14 single term of three years; and these three Permanent Members shall be
15 determined by ballot at the inaugural meeting of the Commission.

16 (9) Where a casual vacancy is created in the membership of the
17 Commission for any cause whatsoever, the person appointed to fill that
18 vacancy shall be deemed to have commenced a fresh three-year term and shall
19 also be eligible for reappointment for a second and filial three-year term.

20 (10) No action, claim, prosecution, or other proceedings shall be
21 instituted against ally member of the Commission for any act done in
22 pursuance or execution of their lawful and legitimate duties and authority
23 exercised under this Act.

24 (11) Notwithstanding anything to the contrary in any law, a member of
25 the Commission may be removed by the President where he is satisfied that—

26 (a) it is necessary to do so in order to facilitate improvements in the
27 Organisation of the Commission; or

28 (b) by reason of age, ill health or due to any other cause a member of the
29 Commission has been inefficient in the performance of his duties; or

30 (c) a member of the Commission has been engaged in corrupt practices

1 or has in any way corruptly enriched himself or any other person; or

2 (d) the general or continued service of the member in the Commission
3 is not in the overall public interest.

4 (12) The quorum for meetings of the, Commission shall be four
5 Permanent Members, including either the Chairman or the Director-General
6 of the Commission.

7 (13) The Commission may co-opt persons who are not members
8 thereof to any meeting of die Commission and such persons may take part in
9 the deliberations of the Commission but shall not be entitled to vote at a
10 meeting of the Commission.

11 (14) The Commission shall have power to regulate its proceedings
12 and may make Standing Orders for that purpose and, subject to any such
13 standing orders, may function notwithstanding any vacancy in its
14 membership or absence of any member.

15 (15) There shall be a Secretary of the Commission who shall be a legal
16 practitioner of not less than twelve years standing at the Bar and who shall
17 not be a member of the Commission. The Secretary shall have the
18 responsibility for keeping and maintaining the registers, records and other
19 official books of the Commission; and the custody of the Common Seal,
20 which shall be used only at the direction of the Commission.

21 (16) The Commission is to have such powers as are conferred on it
22 hereunder. The Commission shall—

23 (a) make enquiries and investigations on its own initiative or upon
24 receiving complaints;

25 (b) take necessary decisions, including the imposition or
26 recommendation of sanctions as it may deem appropriate having regard to
27 the circumstances of the case;

28 (c) undertake studies, publish reports and provide information to the
29 public;

30 (d) issue forms and maintain a register or registers of notifications;

1 (e) make and issue regulations for the regulation of competition, the pre-
2 notification and approval of mergers and acquisitions that are to take effect in
3 Nigeria;

4 (f) assist in the preparation, amendment, and review of legislation on
5 restrictive trade practices or on a related area of regulation and competition
6 policy;

7 (g) ensure the orderly and systematic conduct of the sale and distribution
8 of goods and services in the country;

9 (h) monitor the growth and development of the industries and commerce
10 in the country;

11 (i) identify areas where Government intervention is desirable in
12 achieving strategic objectives and proper equilibrium in Nigeria;

13 (j) collate detailed data relating to competition in various sectors of the
14 Nigerian economy;

15 (k) controlling the abuse or use of or acquisition and abuse of dominant
16 positions of market power by any means whatsoever;

17 (l) oversee the procedure for eliminating traditionally held Government
18 monopolies;

19 (m) introduce adequate measures to discourage collaborative practices
20 tending directly or indirectly to prevent, restrict or distort normal competition
21 within Nigeria by—

22 (i) monitoring the cooperating with the various agencies regulating
23 competition within and outside Nigeria,

24 (ii) enlightening the public and the private sector on the necessity of
25 competition regulation,

26 (iii) providing the maximum fine and sentence for engaging in activities
27 prohibited under this Act,

28 (iv) prescribing regulations and rules for the competitive conduct of
29 trade in goods and services and for the control of mergers and acquisitions
30 within the Nigerian market;

1 (v) promoting and supporting competition advocacy activities of
2 public and private agencies, professional bodies, the organised private
3 sector and consumer groups.

4 PART II—AGREEMENTS

5 *The Prohibition*

6 2.—(1) All agreements between undertakings, decisions by
7 associations of undertakings and concerted or collaborative practices
8 tending directly or indirectly to prevent, restrict or distort normal
9 competition within the economic community shall be prohibited, and
10 particularly those tending—

Agreements, etc.
preventing,
restricting or
distorting
competition

11 (a) to set or determine purchase or selling prices, terms of sale, or any
12 other trading conditions;

13 (b) to restrict or control production including by quota, markets,
14 technical development or investment;

15 (c) to regulate market or customer allocations, product or markets
16 shares, customers or sources of supply;

17 (d) to collaboratively refuse to sell or purchase goods and services;

18 (e) to deny access to an arrangement or association that is crucial to
19 competition or apply dissimilar conditions to equivalent transactions with
20 other trading parties, thereby placing them at a competitive disadvantage;

21 (f) to make the conclusion of contracts subject to acceptance by the
22 other parties of supplementary obligations which, by their nature or
23 according to commercial usage, have no connection with the subject of such
24 contracts.

25 (2) The prohibition imposed by Subsection (1) shall be referred to in
26 this Act as “a Part II prohibition”.

27 (3) Any reference to an “agreement” herein should be read as a
28 reference to an agreement between undertakings, a decision by a group of
29 undertakings or to a concerted collaborative practice more particularly
30 defined in Subsection (1) herein.

1 3. Without prejudice to Section 2 (1), the Commission may on the
2 notification of the parties concerned approve specialization agreements or
3 joint buying or joint selling agreements in respect of particular products, if it
4 finds that:

5 (1) such specialization or such joint buying or selling will make for a
6 substantial improvement in the production or distribution of those products;

7 (2) the agreement in question is essential in order to achieve these results
8 and is no more restrictive than is necessary for that purpose; and

9 (3) the agreement is not liable to give the persons concerned the power to
10 determine the prices, or to control or restrict the production or marketing, of a
11 substantial part of the products in question within Nigeria, or to shield them
12 against effective competition from other persons within Nigeria.

13 4.—(1) If the Commission finds that certain agreements are strictly
14 analogous in nature and effect to those referred to in Section 3 (1), having
15 particular regard to the fact that this section applies to distributive agreements,
16 it shall approve them also when satisfied that they meet the same requirements.

17 (2) Such approval may be granted subject to specified conditions and for
18 limited periods. In such cases the Commission shall renew an approval once or
19 several times if it finds that the requirements of Subsections (a) to (c) of Section
20 (2) are still met at the time of renewal.

21 (3) The Commission shall revoke or modify an approval if it finds that as
22 a result of a change in circumstances the agreement no longer meets these
23 requirements, or that the actual results of the agreement or of the notification
24 thereof are contrary to the requirements for its approval.

25 (4) Decisions granting, renewing, amending, refusing or revoking an
26 approval under Section 15 shall be published together with the reasons
27 therefore.

28 5. The Commission may obtain any information it considers necessary
29 before granting an approval under the provisions of Section 2 either by making
30 a request to the parties concerned for such information to be provided or by

1 means of regulations stating the kinds of agreements, decisions or practices
2 that must be communicated to it.

3 6. Any agreement or decision prohibited by Subsection (1) of Section
4 2 shall be automatically void and may not be relied upon before any court or
5 tribunal in Nigeria.

6 7. The Commission shall have jurisdiction to pronounce on the
7 compatibility or otherwise of any such agreement or decision within the
8 provisions of this Act.

9 PART III—ABUSE OF DOMINANT POSITION

10 8.—(1) All acts or behaviour constituting an abuse or acquisition and
11 abuse of a dominant position of market power is hereby prohibited
12 particularly—

Abuse of
dominant
position

13 (a) where an enterprise, either by itself or acting together with a few
14 other enterprises, positions itself with a view to control a relevant market for
15 a particular good or service, or groups of goods or services or;

16 (b) where the acts or behaviour of a dominant enterprise limit access to
17 a relevant market or otherwise unduly restrain competition;

18 (c) where the purpose of conduct is not for the attainment of a
19 legitimate commercial objective such as quality, or safety or adequate
20 distribution or service.

21 (2) Conduct may, in particular, constitute such an abuse where it
22 consists of—

23 (a) directly or indirectly introducing or imposing unfair purchase or
24 selling prices or other unfair trading conditions with the view of eliminating
25 competitors;

26 (b) limiting production, markets or technical development to the
27 prejudice of consumers;

28 (c) fixing resale prices of sold goods and services including import or
29 export goods and services;

30 (d) restricting the importation of goods lawfully marked overseas with

1 a trademark identical or similar to a protected trademark of identical or similar
2 goods in the importing country where the trademarks in question are of the
3 same origin or are used by enterprises which are affiliated by economic,
4 organizational, managerial, or legal ties and where the purpose of such
5 restrictions is to maintain high prices by artificial means;

6 (e) applying unjustifiably dissimilar conditions to equivalent
7 transactions with other unaffiliated trading parties, thereby placing them at a
8 competitive disadvantage;

9 (f) making the supply of particular goods or services dependent upon the
10 purchase of other goods or services from the supplier or his nominee;

11 (g) making the supply of particular goods or services subject to the
12 acceptance of restrictions on the distribution or manufacture of competing or
13 other goods;

14 (h) partially or completely refusing to transact business according an
15 enterprise's customary commercial terms;

16 (i) making the conclusion of contracts subject to acceptance by the other
17 parties of supplementary obligations which, by their nature or according to
18 commercial usage, have no connection with the subject of the contracts.

19 (3) The prohibition imposed in Subsection (1) shall be referred to in this
20 Act as a Part III prohibition.

Authorised or
Excluded cases

21 9. Conducts, practices, or transactions not absolutely prohibited under
22 this Part may be authorised or exempted as the case may be if the Commission
23 is notified under Section 15 before being put into effect, and all relevant facts
24 disclosed and it is then determined that the proposed conduct as altered or
25 regulated if necessary will be consistent with the objectives of this Act,
26 otherwise it will be prohibited.

Registration of
mergers affecting
concentrated
targets

27 10. Agreements in existence prior to the promulgation of this Act must be
28 registered with the Commission in accordance with Form FCC.101 in
29 Schedule 2 to this Act within three months of the passing into law of this Act.
30 Only agreements and concerted practices which have been registered shall

1 remain provisionally in force until a decision has been taken by the
2 Commission.

3 PART IV—MERGERS, TAKEOVERS AND ACQUISITIONS

4 11.—(1) Every merger, takeover, joint venture, or other acquisition or
5 business combination including interconnected directorships whether of a
6 horizontal, vertical, or conglomerate nature between or among companies
7 shall be prohibited where—

Prohibition of
mergers affecting
concentrated
targets

8 (a) the proposed transaction substantially tends to enable an enterprise
9 or groups of enterprises acting alone or in concert to profitably maintain
10 prices at an uncompetitive level for a significant period of time;

11 (b) the resultant market share in the country, or any significant part
12 thereof attributable to any good or service will result in a dominant position
13 or in a substantial reduction of trade in the market.

14 (2) No merger shall come into effect before the expiration of ninety
15 days from the issuance of a notification under Section 15 by the Commission
16 provided that this period may be extended by the Commission with the
17 consent of the enterprises concerned.

18 (3) Any merger prohibited by Subsection (1) of this section shall be
19 automatically void and of no effect in the any state in the Nigeria.

20 12.—(1) All mergers, takeovers, joint ventures, or other acquisitions
21 of control, including interconnected directorships, whether of a horizontal,
22 vertical, or conglomerate nature, shall be notified to the Commission
23 where—

24 (a) at least one of the enterprises concerned is incorporated within the
25 Federal Republic of Nigeria; and

26 (b) the resultant market share in the country or any substantial part of
27 it, relating to any product or service, is likely to create a dominant position in
28 the relevant market.

29 13.—(1) Mergers or acquisitions not absolutely prohibited under this
30 Part may be authorized or excluded if notified under Section 15.

1 (2) The prohibition imposed in Subsection (1) of Section 11 shall be
2 referred to in this Act as a Part IV prohibition.

Registration of
Mergers

3 **14. Mergers and acquisitions in existence prior to the promulgation of**
4 **this Bill must be registered with the Commission in accordance with Form**
5 **FCC. 102 in Schedule 2 to this Act within three months of the passing into law**
6 **of this Act. Only mergers and acquisitions which have been registered shall**
7 **remain provisionally in force until a decision has been taken by the**
8 **Commission,**

9 PART V—NOTIFICATION, INVESTIGATION AND ENFORCEMENT

Notification and
requests for
Commission to
examine
Agreements,
Conduct and
Mergers

10 **15.—(1) An agreement, conduct or merger ostensibly falling within the**
11 **scope of a prohibition under this Act but not being explicitly prohibited may be**
12 **examined by the Commission on—**

13 (a) the notification of all parties concerned or;

14 (b) the notification of any one or more persons acting on behalf of all the
15 parties or;

16 (c) the notification by any person so authorized to act on their behalf or;

17 (d) by the Commission on its own initiative under this Part.

18 (2) An agreement may be notified to the Commission where a person
19 together with other persons is party to more than one agreement restraining
20 trade having identical provisions provided that particulars of all parties and
21 future parties to the agreement are supplied to the Commission.

22 (3) Notification may be made to the Commission where any agreement,
23 conduct or merger or situation notified under the provisions of this Part—

24 (a) has been subject to change either in respect of its terms or in respect of
25 the parties; or

26 (b) has been terminated (otherwise than by the affluxion of time); or

27 (c) has been abandoned; or

28 (d) there has been a substantial alteration in the circumstances within
29 months of the event.

30 (4) A notification must be—

1 (a) in writing; and
2 (b) addressed to the Director-General of the Commission;
3 (c) accompanied by such particulars as may be requested by the
4 Commission, provided that such notification is in Substantial compliance
5 with in accordance with Forms FCC 201/202 in Schedule 2 to this Act.

6 (5) A party to an agreement who applies for the agreement, conduct or
7 merger to be examined under this Part must—

8 (a) notify the Commission of the agreement; and

9 (b) apply to it for a decision.

10 (6) Upon receiving a notification, the Commission may—

11 (a) give the party guidance as to whether or not, in its view, the
12 agreement, conduct, transaction or merger is likely to infringe a prohibition
13 under this Act;

14 (b) make a decision as to—

15 (i) whether a prohibition has been infringed, and

16 (ii) if it has not been infringed, whether that is because of the effect
17 of an exemption or because the agreement is excluded from the prohibition,

18 (iii) whether it would be likely to grant the agreement an exemption
19 if asked to do so.

20 (7) If an agreement, conduct or merger to which a prohibition applies
21 has been notified to the Commission under this section, no penalty is to be
22 imposed under this Part in respect of any infringement of the prohibition by
23 the agreement which occurs during the period—

24 (a) beginning with the date on which notification was given; and

25 (b) ending with such date as may be specified in a notice in writing
26 given to the party by the Commission when the notification has been
27 determined,

28 provided that the date specified in such notice may not be earlier than the
29 date on which the notice is given.

30 16.—(1) Where the Commission has determined that an agreement,

Effect of
guidance

1 conduct or merger is unlikely to infringe a prohibition under this Act, it shall

2 take no further action under this Part with respect to the conduct to which this
3 section applies, unless—

4 (a) it has reasonable grounds for believing that there has been a material
5 change of circumstance since it gave its guidance; or

6 (b) it has a reasonable suspicion that the information on which it based its
7 guidance was incomplete, false or misleading in a immaterial particular; or

8 (c) a complaint about the conduct has been made to it.

9 (2) No penalty may be imposed under this Part in respect of any
10 infringement of any prohibition by conduct to which this section applies.

11 (3) The Commission may however remove the immunity given by
12 Subsection (2) if—

13 (a) it takes action under this Part with respect to the conduct in one of the
14 circumstances mentioned in Subsection (1); or

15 (b) it considers that it is likely that the conduct will infringe the
16 prohibition; and

17 (c) it gives notice in writing to the person on whose notification the
18 guidance was given that it is removing the immunity as from the date specified
19 in his notice.

20 (4) If the Commission has a reasonable suspicion that information—

21 (a) on which it based its guidance, and

22 (b) which was provided to it by a person engaging in the conduct,

23 was incomplete, false or misleading in a material particular, the date specified

24 in a notice under Subsection (3) (c) may be earlier than the date on which the
25 notice is given.

26 *Investigations*

The
Commission's
power to
investigate

27 17.—(1) Notwithstanding anything to the contrary contained in any
28 enactment, the Commission shall investigate, review and authorise every
29 merger, takeover, joint venture, or other acquisition or business combination
30 including interconnected directorships whether of a horizontal, vertical, or

1 conglomerate nature between or among companies.

2 (2) The Commission shall approve any notification made under this
3 Part if and only if the Commission is satisfied that—

4 (a) such acquisition whether overtly or covertly, of the whole or part of
5 the equity or other share capital or of the whole or any part of the assets of
6 another company, is not likely to cause a substantial restraint of trade or tend
7 to create a monopoly in any line of business concern; or

8 (b) the use of such share by voting or granting of proxies or otherwise
9 shall not cause a substantial restraint of trade or tend to create a monopoly in
10 any line of business concern.

11 (3) The Commission may also conduct an investigation if there are
12 reasonable grounds for suspecting that a prohibition under this Act has been
13 infringed.

14 **18.—(1)** For the purposes of an investigation under Section 17, the
15 Commission may require any person to produce to it a specified document,
16 or to provide it with specified information, which it considers relevant to any
17 matter under investigation.

Powers when
conducting
investigations

18 (2) The power conferred by Subsection (1) is to be exercised by a
19 notice in writing indicating—

20 (a) the subject matter and purpose of the investigation; and, where
21 relevant;

22 (b) the nature of the offences created by Sections 30 to 38, which may
23 have been committed by or on behalf of the undertaking.

24 (3) The Commission may also specify in the notice—

25 (a) the time and place at which any document is to be produced or any
26 information is to be provided;

27 (b) the manner and form in which it is to be produced or provided.

28 (4) The power under this section to require a person to produce a
29 document includes power—

30 (a) if the document is produced—

1 (i) to take copies of it or extracts from it;

2 (ii) to require him, or any person who is a present or past officer of his, or
3 is or was at any time employed by him, to provide an explanation of the
4 document;

5 (b) if the document is not produced, to require him to state, to the best of
6 his knowledge and belief, where it may be found.

Power to enter
premises without
a warrant

7 **19.—(1)** Any officer of the Commission who is approved in writing by
8 the Director-General to do so (“an investigating officer”) may enter any
9 premises in connection with an investigation under Section 17.

10 (2) No investigating officer is to enter any premises in the exercise of his
11 powers under this section unless he has given to the occupier of the premises a
12 written notice which—

13 (a) gives at least two working days' notice of the intended entry;

14 (b) indicates the subject matter and purpose of the investigation; and,
15 where relevant (c) indicates the nature of the offences created by Sections 30 to
16 31, which may have been committed by or on behalf of the undertaking.

17 (3) Subsection (2) does not apply—

18 (a) if the Commission has a reasonable suspicion that the premises are, or
19 have been, occupied by—

20 (i) a party to an agreement which it is investigating under Section 17, or

21 (ii) a person the conduct of which he is investigating under Section 17; or

22 (b) if the investigating officer has taken all such steps as are reasonably
23 practicable to give notice but has not been able to do so.

24 (4) In a case falling within Subsection (3), the power of entry conferred
25 by Subsection (1) is to be exercised by the investigating officer on production
26 of—

27 (a) evidence of his authorization; and

28 (b) a document containing the information referred to in Subsection (2)

29 (b) and (c).

- 1 (5) An investigating officer entering any premises under this section
2 may—
- 3 (a) take with him such equipment as appears to him to be necessary;
4 (b) require any person on the premises—
5 (i) to produce any document which he considers relates to any matter
6 relevant to the investigation; and
7 (ii) if the document is produced, to provide an explanation of it;
8 (c) require any person to state, to the best of his knowledge and belief,
9 where any such document is to be found;
10 (d) take copies of, or extracts from, any document that is produced;
11 (e) require any information which is held in a computer and is
12 accessible from the premises and which the investigating officer considers
13 relates to any matter relevant to the investigation, to be produced in a form—
14 (i) in which it can be taken away, and
15 (ii) in which it is visible and legible.
- 16 **20.—(1)** On a notification made by the Commission to the court in
17 accordance with rules of court, a judge may issue a warrant if he is satisfied
18 that—
- 19 (a) there are reasonable grounds for suspecting that there are on any
20 premises documents—
21 (i) the production of which has been required under Section 18, and
22 (ii) which have not been produced as required;
23 (b) there are reasonable grounds for suspecting that—
24 (i) there are on any premises documents which the Commission has
25 power under Section 18 to require to be produced, and
26 (ii) if the documents were required to be produced, they would not be
27 produced but would be concealed, removed, tampered with or destroyed; or
28 (c) an investigating officer has attempted to enter the premises in
29 exercise of his powers under Section 17 but has been unable to do so and that
30 there are reasonable grounds for suspecting that there are on the premises

Power to enter
premises under
a warrant

1 documents the production of which could have been required under that
2 section.

3 (2) A warrant under this section shall approve a named officer of the
4 Commission, and any driver of his officers whom he has approved by the
5 commission in writing to accompany the named officer—

6 (a) to enter the premises specified in the warrant, using such force as is
7 reasonably necessary for the purpose;

8 (b) to search the premises and take copies of, or extracts from, any
9 document appearing to be of a kind in respect of which the notification under
10 Subsection (1) was granted;

11 (c) to take possession of any documents appearing to be of the relevant
12 kind if—

13 (i) such action appears to be necessary for preserving the documents or
14 preventing interference with them; or

15 (ii) it is not reasonably practicable to take copies of the documents on the
16 premises;

17 (d) to take any other steps which appear to be necessary for the purpose
18 mentioned in Subsection (1);

19 (e) to require any person to provide an explanation of any document
20 appearing to be of the relevant kind or to state, to the best of his knowledge and
21 belief, where it may be found;

22 (f) to require any information that is held in any medium of information
23 technology or information retrieval and is accessible from the premises and
24 which the named officer considers relates to any matter relevant to the
25 investigation, to be produced in a form—

26 (i) in which it can be taken away, or

27 (ii) in which it is visible and legible.

28 (3) If, in the case of a warrant under Subsection (1) (b), the judge is
29 satisfied that it is reasonable to suspect that there are also on the premises other
30 documents relating to the investigation concerned, the warrant shall also

1 approve action mentioned in Subsection (2) to be taken in relation to any
2 such document under Subsection (1) (b), if the judge is satisfied that it is
3 reasonable to suspect that there are such documents on the premises.

4 (4) Any person entering premises by virtue of a warrant under this
5 section may take with him such equipment as appears to him to be necessary.

6 (5) On leaving any premises that he has entered by virtue of a warrant
7 under this section, the named officer must, if the premises are unoccupied or
8 the occupier is temporarily absent, leave them as effectively secured as he
9 found them.

10 (6) A warrant under this section continues in force until the end of the
11 period of one month beginning with the day on which it is issued.

12 (7) Any document of which possession is taken under Subsection (2)
13 (c) may be retained for a period of three months, at the end of which it must
14 be returned.

15 **21.—**(1) A warrant issued under Section 20 must indicate—

16 (a) the subject matter and purpose of the investigation;

17 (b) the nature of the offences created by Sections 30 to 38.

18 (2) The powers conferred by section 20 are to be exercised only
19 production of a warrant issued under that section.

20 (3) If there is no one at the premises when the named officer proposes,
21 to execute such a warrant he must, before executing it—

22 (a) take such steps as are reasonable in all the circumstances to inform
23 the occupier of the intended entry; and

24 (b) if the occupier is informed, afford him or his legal or other
25 representative a reasonable opportunity to be present when the warrant is
26 executed.

27 (4) If the named officer is unable to inform the occupier of the
28 intended entry he must, when executing the warrant, leave a copy of it in a
29 prominent place on the premises.

30 (5) The Commission may on the notification by an interested party

Entry of premises
under warrant:
supplementary

1 investigate cases of suspected infringement of these provisions in which case it
2 shall exercise the powers set out herein as if it had initiated the investigation of
3 its own volition.

Decisions
following an
investigation

4 22.—(1) Where, as the result of an investigation conducted under
5 Section 17, the Commission proposes to rule that a prohibition has been
6 infringed, before making any such ruling, the Commission must—

7 (a) give written notice to the person (or persons) likely to be affected by
8 the proposed decision providing that persons with a copy of the report of
9 investigation and the reasons for making the proposed decision; and

10 (b) give that person (or those persons) an opportunity to make
11 representations.

Privileged
communications

12 23.—(1) A person shall not be required, under any provision of this Part,
13 to produce or disclose a privileged communication provided that with respect
14 to this section, there is a relationship of privilege or confidentiality recognized
15 by law, which applies to the communication sought to be protected.

16 (2) A person may disclose communication containing legitimate trade
17 secrets to the Commission to aid it in assessing and evaluating an enterprise in
18 furtherance of the objectives of this Act provided that no communication
19 disclosed in this respect shall be utilized to the detriment of a person disclosing
20 it or in any manner injurious to the goodwill and reputation of such person.

21 24.—(1) The Commission shall handle, use, treat, utilize and ensure that
22 any other person handles, uses, and utilizes any such “privileged
23 communication” as follows—

24 (a) holds it with the highest degree of confidence and uses it solely for the
25 purpose of carrying out its functions and for the furtherance of the objectives of
26 this Act and for no other purpose whatsoever;

27 (b) use a reasonable degree of care which in any event shall not be less
28 than the same degree of care which it uses to protect its own proprietary or
29 privileged communications and to keep any and all such information and data
30 confidential.

Cancellation, etc.
of exemption
under this Act

1 do so only in specified circumstances.

2 26.—(1) If the Commission has reasonable grounds for believing that
3 there has been a material change of circumstance since it granted an exemption
4 under Section 25 of this Act, it may by notice in writing—

5 (a) cancel the exemption;

6 (b) vary or remove any condition or obligation; or

7 (c) impose one or more additional conditions or obligations.

8 (2) If the Commission has a reasonable suspicion that—

9 (a) the information on which it based its decision to grant an exemption
10 under Section 25 of this Act was incomplete, false or misleading in a material
11 particular; or

12 (b) there has been a breach of a condition of granting the exemption; or

13 (c) there has been failure to comply with an obligation it may by notice in
14 writing take any of the steps mentioned in Subsection (1).

15 (3) The date specified in the notice canceling the exemption under
16 Subsection (1) (a) of this section may be earlier than the date on which the
17 notice is given.

18 (4) Any step taken by the Commission under Subsection (1) has effect
19 from such time as may be specified in the notice.

20 (5) An agreement which is notified under any provision included in an
21 exemption order by virtue of Subsection (1) is to be treated, as from the end of
22 the notice period, as falling within a category specified in the exemption order
23 unless the Commission—

24 (a) is opposed to its being so treated; and

25 (b) gives notice in writing to the party concerned of its opposition before
26 the end of that period.

27 (6) If the Commission gives notice of its opposition under Subsection
28 (2), the notification under Subsection (1) is to be treated as both notification
29 under section 15 and as an application for an exemption under Section 25 of
30 this Bill made under Subsection (3) of that section.

1 (7) In this section “notice period” means such period as may be
2 specified with a view to giving the Commission sufficient time to consider
3 whether to oppose under Subsection (2).

4 27.—(1) Before making a recommendation under Section 25 (1), the
5 Commission shall—

Exemption:
procedure

6 (a) publish details of its proposed recommendation in such a way as it
7 thinks most suitable for bringing it to the attention of those likely to be
8 affected; and

9 (b) consider any representations about the proposed recommendation
10 that are made to it.

11 (2) If the Commission proposes to give effect to such a
12 recommendation subject to modifications, it must inform the President of
13 the proposed modifications and take into account any comments made by
14 him.

15 (3) If, in the opinion of the Commission, it is appropriate to vary or
16 revoke an exemption under Section 25 of this Bill it may make a
17 recommendation to that effect to the President.

18 (4) Subsection (1) also applies to any proposed recommendation
19 under Subsection (3).

20 (5) Before exercising its power to vary or revoke an exemption order
21 (in a case where there has been no recommendation under Subsection (3)),
22 the Commission must—

23 (a) inform the President of the proposed variation or revocation; and

24 (b) take into account any comments made by the President.

25 (6) An exemption order may provide for an exemption to have effect
26 from a date earlier than that on which the order is made.

27 28.—(1) An agreement is excluded from a prohibition under this Act
28 if—

The criteria for
Exemption under
Section 25 of
this Act

29 (a) by virtue of a regulation it has been given exemption under Section
30 25 of this Act by the Commission, or

1 (b) it has been notified to the Commission under the appropriate
2 opposition or objection procedure and—

3 (i) the time for opposing, or objecting to, the agreement has expired and
4 the Commission has not opposed it; or

5 (ii) the Commission has opposed, or objected to, the agreement but has
6 withdrawn its opposition or objection.

7 (2) This section applies to any agreement which—

8 (a) contributes to—

9 (i) improving production or distribution, or

10 (ii) promoting technical or economic progress,

11 while allowing consumers a fair share of the resulting benefit; but

12 (b) does not—

13 (i) impose on the persons concerned restrictions which are not
14 indispensable to the attainment of those objectives, or

15 (ii) afford the persons concerned the possibility of eliminating
16 competition in respect of a substantial part of the products in question.

17 (3) Any such exemption—

18 (a) takes effect on the date on which the relevant prohibition takes effect;

19 and

20 (b) ceases to have effect—

21 (i) if the exemption from the prohibition ceases to have effect; or

22 (ii) on being canceled by virtue of Subsection (4) or (5).

23 (4) In such circumstances and manner as may be specified in guidelines
24 to be published, the Commission may—

25 (a) impose conditions or obligations subject to which an exemption is to
26 have effect;

27 (b) vary or remove any such condition or obligation;

28 (c) impose one or more additional conditions or obligations;

29 (d) cancel the exemption.

30 (5) Breach of a condition imposed by the Commission has the effect of

1 canceling an exemption.

2 (6) In exercising his powers under this section, the Commission may
3 require any person who is a party to the agreement in question to give it such
4 information as it may require.

5 (7) For the purpose of this section references to an agreement being
6 excluded from a prohibition are to be read as including references to the
7 prohibition being inapplicable to the agreement by virtue of a Regulation or
8 a decision by the Commission.

9 29.—(1) The fact that a ruling may be given on the question whether
10 or not this Bill prohibits agreements of a particular kind does not prevent
11 such agreements from being subject to a prohibition.

Exemption for
certain other
agreements

12 (2) But the Commission may by regulations make such provision as it
13 considers appropriate for the purpose of granting an exemption from a
14 prohibition, in prescribed circumstances, in respect of such agreements.

15 (3) The Commission may by regulations make provision as to the
16 application of Sections 25 to 28, with such modifications (if any) as may be
17 prescribed, in cases where the Commission—

18 (a) has given a direction withdrawing an exemption; or

19 (b) is considering whether to give such a direction.

20 PART VII—OFFENCES, PENALTIES AND APPEALS

21 30.—(1) A person is guilty of an offence if he fails to comply with a
22 requirement imposed on him under this Act.

General
Offences

23 (2) Where a person or enterprise—

24 (a) is guilty of an infringement of any of the prohibitions of this Act;

25 (b) has failed to comply with any decision or order of the Commission
26 or of the court;

27 (c) has failed to supply information or documents requested by the
28 Commission in accordance with conditions and guidelines governing the
29 same he shall be guilty of an offence.

30 31.—(1) Where a person has—

Offences under
Part II

1 (a) entered into an agreement which is automatically void by virtue of
2 Section 2 (1); or

3 (b) enforced or attempted to enforce, by arbitration, penalty, boycott or
4 any other means an agreement or decision which is automatically void by
5 virtue of Section 2 (1) or an agreement for which approval under Part II has
6 been refused or revoked by virtue of Section 4 (1); or

7 (c) has obtained an approval by means of information which it
8 knew to be false or misleading or has engaged in practices prohibited under this
9 Act;
10 he shall be guilty of an offence.

Offences under
Part V

11 **32.—(1)** If a person is charged with an offence in respect of a
12 requirement to produce a document under Section 18, it is a defence for him to
13 prove—

14 (a) that the document was not in his possession or under his control; and

15 (b) that it was not reasonably practicable for him to comply with the
16 requirement.

17 (2) If a person is charged with an offence under section 18 in respect of a
18 requirement—

19 (a) to provide information;

20 (b) to provide an explanation of a document; or

21 (c) to state where a document is to be found;

22 it is a defence for him to prove that he had a reasonable excuse for failing to
23 comply with the requirement.

24 **33.—(1)** Failure to comply with a requirement imposed under Section 19
25 or 20 is not an offence if the person imposing the requirement has failed to act in
26 accordance with that section.

27 (2) A person is guilty of an offence if he intentionally obstructs an officer
28 acting in the exercise of his powers under Section 18.

29 **34.** A person guilty of an offence under section or is liable—

30 (a) on summary conviction, to a fine not exceeding the statutory

1 maximum;

2 (b) on conviction on indictment, to a fine.

3 35. A person who intentionally obstructs an officer in the exercise of
4 his powers under a warrant issued under Section 21 is guilty of an offence
5 and liable—

6 (a) on summary conviction, to a fine not exceeding the statutory
7 maximum;

8 (b) on conviction on indictment, to imprisonment for a term not
9 exceeding two years or to a fine or to both.

10 36.—(1) A person is guilty of an offence if, having been required to
11 produce a document under Section 18—

Offences relating
to production of
Information to
the Commission

12 (a) he intentionally or recklessly destroys or otherwise disposes of it,
13 falsifies it or conceals it; or

14 (b) he causes or permits its destruction, disposal, falsification or
15 concealment.

16 (2) A person guilty of an offence under Subsection (1) is liable—

17 (a) on summary conviction, to a fine not exceeding the statutory
18 maximum;

19 (b) on conviction on indictment, to imprisonment for a term not
20 exceeding two years or to a fine or to both.

21 37.—(1) If information is provided by a person to the Commission in
22 connection with any function of the Commission under this Bill, that person
23 is guilty of an offence if—

24 (a) the information is false or misleading in a material particular; and

25 (b) he knows that it is or is reckless as to whether it is.

26 (2) A person who—

27 (a) provides any information to another person, knowing the
28 information to be false or misleading in a material particular, or

29 (b) recklessly provides any information to another person which is
30 false or misleading in a material particular, knowing that the information is

1 to be used for the purpose of providing information to the Commission in
2 connection with any of his functions under this Bill, is guilty of an offence.

3 (3) A person guilty of an offence under this section is liable—

4 (a) on summary conviction, to a fine not exceeding the statutory
5 maximum;

6 (b) on conviction on indictment, to imprisonment for a term not
7 exceeding two years or to a fine or to both.

Unfair financial
profit

8 **38.—(1)** Where a person has realised unfair financial profit as a result of
9 activities prohibited under this Act, he shall be liable to three years
10 imprisonment without any option of a fine.

11 (2) Where an enterprise has realised unfair financial profit as a result of
12 activities prohibited under this Act, it shall be liable to a fine of 5% of its annual
13 turnover in the case of fines, or a periodic penalty payment of 10% of the daily
14 turnover.

Liability of an
Officer or
Agent

15 **39.—(1)** Where any offence against any provision of this Bill has been
16 committed by any person, any person who was a director, manager, secretary,
17 or other similar officer of the enterprise or other similar officer of the enterprise
18 purporting to act in such capacity shall, in addition to the enterprise be deemed
19 to be guilty of that offence and unless he proves that the offence was committed
20 without his consent or connivance and that he exercised all such diligence to
21 prevent the commission of the offence as he ought have exercised having
22 regard to the nature of his functions in that capacity and to all the circumstances
23 of the case.

24 (2) Where any person would be liable under this Bill to any punishment
25 or penalty for any act, omission, neglect or default, he shall be liable to the same
26 punishment or penalty for every such act, omission, neglect or default of any
27 clerk, servant, or agent of such agent.

Statutory
maximum
sentence (this
should be
substantial)

28 **40.—(1)** Where the offence was committed by a natural person, he shall
29 be liable to a fine of N500,000 or a minimum of three and a maximum of five
30 years imprisonment or both.

1 (2) Where the offence was committed by an enterprise, it shall be
2 liable to pay a fine not exceeding twice of the turnover on the products which
3 were the subject matter of the agreement, conduct, or merger prohibited by
4 this Act.

5 41. If however, the purpose of the agreement, practice, or merger is to
6 restrict Production, technical development or investment this maximum
7 may be raised to 5% of the annual turnover of the persons in question in the
8 case of fines, and 10% of the daily turnover in the case of periodic penalty
9 payments.

10 *Appeals*

11 42.—(1) Any party to an agreement in respect of which the
12 Commission has made a decision may appeal to the Appeal Tribunal of the
13 Commission, against, or with respect to the decision.

General
provisions

14 (2) Any person in respect of whose conduct the Commission has made
15 a decision may appeal to the Appeal Tribunal against, or with respect to, the
16 decision.

17 (3) In this section “decision” means a decision of the Commission—
18 (a) as to whether a prohibition has been infringed;
19 (b) as to whether to grant an exemption;
20 (c) in respect of an exemption—
21 (i) as to whether to impose any condition or obligation,
22 (ii) where such a condition or obligation has been imposed, as to the
23 condition or obligation,
24 (iii) as to the period fixed under section,
25 (iv) as to the date fixed under section;
26 (d) as to—
27 (i) whether to extend the period for which an exemption has effect, or
28 (ii) the period of any such extension;
29 (e) canceling an exemption;
30 (f) as to the imposition of any penalty under Sections 40 and 41 or as to

1 the amount of any such penalty;

2 (g) withdrawing or varying any of the decisions in paragraphs (a) to (e)

3 following all application under Section 42 (1),

4 and includes a direction given under Section 17 and such other decision as the

5 Commission may take on any matters provided for under Parts II - VII herein.

6 (4) Except in the case of an appeal against the imposition, or the amount,

7 of a penalty, the making of an appeal under this section does not suspend the

8 effect of the decision to which the appeal relates, such that there shall be a

9 presumption of correctness of any decision of the Commission; and a stay of

10 such a decision shall be given only in exceptional circumstances.

Application to
the Commission

11 **43.—**(1) A person who does not fall within Section 42 (1) or (2) may

12 apply to the Commission asking it to withdraw or vary a decision (“the relevant

13 decision”) falling within paragraphs (a) to (e) of Section 42 (3) or such other

14 decision as may be prescribed.

15 (2) The application must—

16 (a) be made in writing, within such period as the Commission may

17 specify in rules under Section 44; and

18 (b) give the applicant's reasons for considering that the relevant decision

19 should be withdrawn or (as the case may be) varied.

20 (3) If the Commission decides—

21 (a) that the applicant does not have a sufficient interest in the relevant

22 decision;

23 (b) that, in the case of an applicant claiming to represent persons who

24 have such an interest, the applicant does not represent such persons; or

25 (c) that the persons represented by the applicant do not have such an

26 interest it must notify the applicant of its decision.

27 (4) If the Commission, having considered the application, decides that it

28 does not show sufficient reason why it should withdraw or vary the relevant

29 decision, it must notify the applicant of its decision, and its reasons for that

30 decision.

1 (5) Otherwise, the Commission must deal with the application in
2 accordance with such procedure as may be specified in rules under Section
3 44.

4 (6) The applicant may appeal to the Tribunal against a decision of the
5 Commission notified under Subsection (3) or (4).

6 (7) The making of an application does not suspend the effect of the
7 relevant decision.

8 **44.—(1)** Any appeal made to the Commission under Subsection (1) or
9 (2) of Section 42 is to be determined by the Appeal tribunal, which shall have
10 exclusive jurisdiction to hear and determine such matters.

Appeals to the
Appeal Tribunal

11 (2) The Appeal Tribunal shall comprise not less than five and not more
12 than nine members, including—

13 (a) a President nominated by the Chief Justice of the Federation who
14 shall be a serving Judge of the Federal High Court:

15 (b) not less than two or more than four legal practitioners who shall
16 have been in legal practice for a period of not less than 12 years;

17 (c) not less than two or more than four persons who shall have
18 experience or learning in consumer protection or economic or accounting
19 issues related to competition;

20 and shall have the powers of the Federal High Court in the exercise of its
21 exclusive jurisdiction defined herein.

22 (3) The Commission may, after consulting the President of the Appeal
23 Tribunal and such other persons as it considers appropriate, make rules with
24 respect to practice and procedure in the conduct of appeals at the Appeal
25 Tribunal.

26 **45.—(1)** An appeal lies from the Appeal Tribunal to the Court of
27 Appeal—

Appeals to the
Court

28 (a) on a point of law arising from an interlocutory decision of the
29 Appeal Tribunal; or

30 (b) from a final decision of the Appeal Tribunal.

- 1 (2) An appeal under this section may be made only—
- 2 (a) to the appropriate court;
- 3 (b) with leave; and
- 4 (c) at the instance of a party or at the instance of a person who has a
- 5 sufficient interest in the matter.

6 **46.—(1)** Where the Court is of the opinion that as a result of an

7 agreement, conduct or merger arrangement the public interest is harmed by

8 (a) the level of prices of a good or service

9 (b) the low quality of a good or service

10 (c) the quantity of goods delivered or conditions of service or supply the

11 Court shall uphold any revocation made by the commission in relation to the

12 said agreement, conduct or merger arrangement.

Repeals, savings,
citation and
coming into
force

13 **47.—(1)** Nothing in this section shall be construed to imply the validity

14 of any enactment chiefly the following enactments where such enactment is

15 inconsistent with any of the provisions of this Act—

16 (a) the Industrial Development Coordination Act, cap 178, Laws of the

17 Federation of Nigeria, 1990;

18 (b) the Commodities Board Act, Cap. 58, Laws of the Federation of

19 Nigeria, 1990;

20 (c) the Custom and Duties (Dumped and Subsidised Goods) Act, Cap.

21 87, Laws of the Federation of Nigeria, 1990;

22 (d) the Import (Prohibition) Act, Cap. 172, Laws of the Federation of

23 Nigeria, 1990;

24 (e) the Productivity, Prices and Income Board, Cap 372, Laws of the

25 Federation of Nigeria, 1990.

26 (2) This Act may be cited as the Competition (Antitrust) Bill, 2007 and

27 shall come into force on the 30th day after it is assented to by the President or is

28 passed by the National Assembly after the President has failed to give his

29 assent thereto.

PART VIII—GENERAL

1
2 **48.—(1) The powers, duties and obligations provided in Parts II - VI**
3 **shall be exercised, applied and enforced concurrently by any non-**
4 **ministerial agency established by statute to regulate a specific sector of the**
5 **Nigerian economy, in so far as the matters sought to be concurrently**
6 **regulated to commercial activities connected with the specific sector**
7 **concerned.**

Concurrent
jurisdiction

8 **(2) Such non-ministerial regulatory agencies shall include—**

9 **(a) the Central Bank of Nigeria;**

10 **(b) the Nigerian Broadcasting Commission;**

11 **(c) the Nigerian Communications Commission;**

12 **(d) the Nigerian Electricity Commission;**

13 **(e) the Nigerian Copyright Commission;**

14 **(f) the Securities and Exchange Commission; and**

15 **(g) such other economic or technical regulatory agency as may be**
16 **established from time to time by an Act of the National Assembly.**

17 **(3) In the event of such concurrent application of the provisions of this**
18 **Act, any reference to the Commission shall be deemed to mean a reference**
19 **to the regulatory agency with concurrent powers, functions and duties,**
20 **provided however that appeals against the decisions of the concurrent**
21 **regulatory agency shall lie to the Appeal Tribunal established herein.**

22 **49.—(1) The Commission will be financed and provided with funding**
23 **for recurrent and capital expenditure from—**

Eminences of
Competition
Commission

24 **(a) money that the President, in consultation with the Commission and**
25 **the Minister of Finance, allocates as a takeoff grant to the Commission from**
26 **public funds at the commencement of this Act;**

27 **(b) money that is appropriated thereafter by the National Assembly at**
28 **the instance of the President for the Commission;**

29 **(c) fees, fines and other financial impositions payable to the**
30 **Commission in terms of this Act;**

1 (d) income derived by the Commission from its investment and deposit
2 of surplus moneys as provided herein; and

3 (e) grants-in-aid, development loans or other financial support as may be
4 obtained from such domestic or international agency as may be approved by
5 the President.

6 (2) The financial year of the Commission is the period from 1st January
7 to 31st December or such other financial year as may be determined by the
8 Government of the Federation, except the first financial year of the
9 Commission, which begins on the date of coming into operation of this Act and
10 ends on 31st December.

11 (3) Each year, at a time determined by the President, the Commission
12 shall submit to the President a budget being a statement of the Commission's
13 estimated income and expenditure and the appropriation requested therefore
14 from the National Assembly in respect of the next ensuing financial year.

15 (4) The Commission shall open and maintain an account in the name of
16 the Commission with a licenced bank, or other registered financial institution
17 in Nigeria, and—

18 (a) any money received by the Commission must be deposited to that
19 account; and

20 (b) every payment on behalf of the Commission must be made from that
21 account.

22 (5) Cheques drawn on the account of the Commission must be signed on
23 its behalf by two persons authorized for that purpose by resolution of the
24 Commission.

25 (6) The Commission Management Board may invest or deposit money of
26 the Commission at is not immediately required, or contingencies or to meet
27 current expenditures—

28 (a) on call or short-term fixed deposit with any licensed bank or financial
29 institution in Nigeria; or

1 (b) in investment instruments as may be available at the Central Bank
2 of Nigeria.

3 (7) The Director-General shall be—

4 (a) the chief accounting officer of the Commission for purposes of
5 administration and financial control; and

6 (b) shall be accountable for all money that the Commission receives or
7 pays, and must keep proper accounting records as required by the relevant
8 generally accepted accounting principles and practices;

9 (8) Not later than 14 February (or the next working day following, if it
10 is not a working day), the Commission shall cause the commencement of an
11 audit of its accounts by an independent and internationally recognised
12 auditing firm. The auditor's report shall be submitted to the Commission not
13 later than 15th April (or the next working day following, if it is not a working
14 day).

15 (9) The Commission shall prepare and submit to the National
16 Assembly not later than 30th June each year, an annual report on its
17 activities during the preceding financial year, and shall include in such
18 report a copy of the audited accounts for that year and the auditor's report
19 thereon.

20 50. The purpose of this Act is to promote and maintain competition in
21 Nigeria in order to—

Purpose of the
Act

22 (a) to control or eliminate restrictive agreements or arrangements
23 among enterprises or mergers or acquisitions or abuse of dominant positions
24 of power, which limit access to markets or otherwise unduly restrain
25 competition, and establish rules for the protection and promotion of
26 competition in Nigeria;

27 (b) promote the efficiency, adaptability, and development of the
28 provision of goods and services of the widest variety, at the lowest prices and
29 to the highest standards of quality in Nigeria;

30 (c) promote employment and advance the social and economic

1 welfare of Nigeria;

2 (d) expand opportunities for Nigerian participation in world markets
3 while at the same time recognizing the role foreign competition in South
4 Africa;

5 (e) ensure that small and medium-sized enterprises have an equitable
6 opportunity to participate in the national economy.

Application of
the Act

7 **51.** This Act applies to all economic activity and commercial
8 agreements, actions or transactions regarding goods, services and intellectual
9 property by all natural and juristic persons within, or having all effect within,
10 Nigeria except—

11 (a) collective agreements defined in Section 47 of the Trade Disputes
12 Act, Cap. 432, Laws of the Federation of Nigeria, 1990 entered into by a
13 registered labour union;

14 (b) the rules of a professional association listed in Schedule 8 only to the
15 extent that such rules do not contain any restriction that has the effect of
16 substantially preventing, or lessening, competition in a market or are not
17 reasonably required to maintain professional standards, or the ordinary
18 function of the profession; or

19 (c) concerted conduct designed to achieve a noncommercial
20 socioeconomic or charitable objective or other similar purpose.

Transitional
provisions

21 **52.—**(1) Agreements made before the Bill comes into force, but which
22 would be the subject of this Act thereafter may continue in force for not more
23 than 1 year before being notified to the Commission for a relevant decision
24 thereon.

Confidentiality

25 **53.** The Commission shall at all times take steps and enforce measures
26 to-

27 (1) accord to information obtained from enterprises containing
28 legitimate business secrets reasonable safeguards to protect its confidentiality;

29 (2) protect the identity of persons who provide information to it and who
30 need confidentiality to protect themselves against any kind of retaliatory acts;

1 (3) protect the deliberations of the Commission or the Federal
2 Government of Nigeria in regard to current or uncompleted matters.

3 54. Any person, whether or not a member or employee of the
4 Commission, who contravenes Section 51 above is guilty of an offence and
5 is liable on conviction to not more than 5 years imprisonment or a fine not in
6 excess of one million Naira.

Breach of
Section 51

7 55.—(1) In this Act, unless the context otherwise requires the
8 following expressions shall have the meanings hereby assigned to them
9 respectively, that is to say—

Interpretation

10 “agreement” means an arrangement or contract whether overt or
11 covert, written, oral or implied, whether required by statute or not;

12 “Appeals Tribunal” means the Appeals Tribunal of the National
13 Antitrust Commission;

14 “the Federal Republic of Nigeria” means the Federal Republic of
15 Nigeria or any part of it;

16 “the appropriate court” means the Federal High Court;

17 “bid” means an invitation or an offer;

18 “commercial activities connected with the specific sector concerned”
19 means the provision, supply, production or acquisition for domestic supply
20 or export of such goods and services as are specifically the concern of the
21 economic sector sought to be concurrently regulated;

22 “Commission” means the National Antitrust Commission;

23 “company” means a company incorporated under the Companies and
24 Allied Matters Act, 1990, Cap. 59 Laws of the Federation of Nigeria, 1990;

25 “Court” means the Court of Appeal;

26 “dominant position of market power” means a situation where an
27 enterprise, either by itself or acting together with a few other enterprises is in
28 a position to control the relevant market for a particular good or service or
29 group of goods and services;

30 “an investigating officer” means a person authorized under Section 17

1 of this Act to conduct an investigation;

2 “enterprises” means firms, partnerships, corporations, companies,
3 associations, and other juridical persons irrespective of whether created or
4 controlled by private persons or Government or its agencies which engage in
5 commercial activities, and includes their branches, subsidiaries, affiliates, or
6 other entities directly or indirectly controlled by them;

7 “leave” means leave of the tribunal in question or of the appropriate
8 court;

9 “merger” includes the acquisition of a majority holding in the assets of a
10 company by another company or acquisition of shares in the company by
11 another company that accord tile acquiring company more than a quarter of the
12 face value of the issued share capital, or of the voting power or the power to
13 appoint more than a quarter of the directors or participation in more then one
14 quarter of the company's profits; the acquisition may be direct or indirect or
15 through rights accorded by contract;

16 “merger” means any amalgamation of the undertakings or interest of die
17 undertakings or any part of the undertakings or interest of the undertakings of
18 one or more companies and one or more bodies corporate;

19 “the Minister” means the Minister for Commerce and Industries;

20 “named officer” means the officer named in the warrant issued under
21 Section 20; and

22 “occupier”, in relation to any premises, means a person whom the named
23 officer reasonably believes is the occupier of those promises;

24 “offer” means a statement, however expressed, that offers to acquire
25 shares from the holder of the shares;

26 “offeree company” means a company whose shares are the subject of a
27 takeover bid;

28 “offeror” means a party or two or more parties jointly or in concert who
29 make a take-over bid;

30 “person” includes natural and artificial persons;

1 “party”, in relation to a decision, means a person who was a party to
2 the proceedings in which the decision was made;

3 “price” includes linkage differences to an index or currency, interest,
4 payment rates and other terms of payment;

5 “price fixing agreement” means an agreement which has as its object
6 or effect, or one of its objects or effects, restricting the freedom of a party to
7 the agreement to determine the price to be charged (otherwise than as
8 between that party and another party to the agreement) for the product,
9 service or other matter to which the agreement relates;

10 “Private enterprise” means an industry, undertaking, project, or
11 business—

12 (a) not owned by the Federal Government,

13 (b) in which the Federal Government does not have equity or other
14 interest;

15 “Privileged communication” means a communication between a
16 professional legal adviser and his client, or made in connection with, or in
17 contemplation of, legal proceedings and for the purposes of those
18 proceedings, which in proceedings in the Court would be protected from
19 disclosure on grounds of legal professional privilege;

20 “President” means the President of the Federal Republic of Nigeria;

21 “relevant market” refers to the line of commerce in which competition
22 has been restrained and to the geographic area involved, defined to include
23 all reasonably substitutable products or services, and all proximate
24 competitors to which consumers could turn in the short term if the restraint
25 or abuse increased prices by a material margin;

26 “specified” means specified, or described, in a notice under this Act or
27 failing within a category that is specified, or described, in such notice;

28 “subsidiary” means subsidiary as defined by the Companies and
29 Allied Matters Act 1990, Cap. 59, Laws of the Federation of Nigeria, 1990;

30 “takeover bid” means a bid made for the purposes of a takeover as

1 provided in section of this Act;

2 "the relevant kind" means documents with reference to Section 20 (2)

3 (b).

4 SCHEDULES

5 SCHEDULE 1 —REGULATORS

6 PART 1

7 A. Federal Competition Commission

8 1. The Director-General of the Commission shall be nominated by the
9 President with the confirmation of the Senate of the National Assembly, shall
10 be a person who in the opinion of the President is a person possessing ability,
11 specialised knowledge or experience and achievement of commercial or
12 industrial or economic matters or of business or professional achievement.

13 2. Associate Members representing the following bodies, that is—

14 (i) the Bureau of Public Enterprises;

15 (ii) the Central Bank of Nigeria;

16 (iii) the National Copyright Commission;

17 (iv) the Nigerian Broadcasting Commission; the

18 (v) Nigerian Communications Commission;

19 (vi) the Securities and Exchange Commission; and

20 (vii) the regulatory agency for the electric power industry, and any other
21 economic or technical regulatory agency as may be established from time to
22 time by an Act of the National Assembly.

23 3. Six Permanent Members nominated by the President with the
24 confirmation of the Senate of the National Assembly, who shall be persons of
25 impeccable integrity and shall also be persons versed in—

26 (i) economics (with experience or reaming in econometrics or
27 competition);

28 (ii) law (with experience or learning in the policy, law and regulatory
29 practice relating to utilities and infrastructure or network industries);

30 (iii) accounting (with experience or learning in cost accounting);

1 (iv) public administration; and
2 (v) banking and finance,
3 and who shall include a retired Justice of the Court of Appeal or the Supreme
4 Court of Nigeria.

5 4. One of the Permanent Members shall also be nominated by the
6 President, separate from his nomination as a Permanent Member, as
7 Chairman of the Commission.

8 5. The confirmation or rejection of a nomination to the Commission
9 by the President shall be notified to the President within, 10 working days of
10 the receipt of the said nomination.

11 7. UTILITIES: MINOR AND CONSEQUENTIAL AMENDMENTS

12 *Electricity Distribution and Generation*

13 (1) The National Electric Power Authority (Amendment) Decree, No.
14 29, 1998 insofar as it deletes those provisions in the National Electric Power
15 Authority Act, Cap. Laws of the Federation of Nigeria referred to as the
16 Principal Act, which inhibit competition in the electric power sector of the
17 economy is now hereby repealed and reenacted in this Act.

18 (2) The National Electric Power Commission which shall have the
19 sole power to regulate, issue and approve all licenses and permits to the
20 exclusion of any other person or body. In particular, notwithstanding any
21 provision to the contrary in the Principal Act, no person shall—

22 (a) use, work or operate or permit to be used, worked, or operated, any
23 plan, apparatus, or works designed for the supply or use of electrical energy;
24 or

25 (b) supply to or for the use of any other person, energy from any plan,
26 apparatus, or works designed for the supply or use of electrical energy,
27 except in accordance with the terms of a License under the relevant
28 legislation expressly authorizing such use or supply as the case may be.

29 (3) For the avoidance of doubt, a license under Subsection (1) of this
30 section may be granted ,to any person other than the National Electrical

1 Power Authority, a state government, or any of its agencies, for any of the
2 purposes set out in subsection of the Electricity Act or statutory re-enactment,
3 amendment or modification thereof.

4 *Telecommunications*

5 *The Nigerian Communications Commission (Amendment) Decree, No. 30,*
6 *1998*

7 (1) The Nigerian Communications Commission (Amendment) Decree,
8 1998 insofar as it deletes those provisions in the Nigerian Communication
9 Commission Decree, 1992 which inhibit competition in the communications
10 sector is now hereby repealed and reenacted in this Act.

11 (2) In particular, notwithstanding any provision to the contrary in the
12 Principal Act, the National Communications Commission shall have the sole
13 power to regulate, issue and approve all licenses and permits to the exclusion of
14 any other person or body.

15 *Minerals Mining and Exploration*

16 *Minerals (Amendment) Decree, No. 24 of 1998*

17 (1) The Minerals (Amendment) Decree No. 24 of 1998 insofar as it
18 deletes those provisions in the Minerals Act, Cap. Laws of the Federation of
19 Nigeria which inhibit competition in the solid minerals sector of the economy
20 is now hereby repealed and reenacted in this Act.

21 *The Nigerian Coal Corporation (Amendment) Decree, No. 26, 1998*

22 (1) The Nigerian Coal Corporation (Amendment) Decree, No. 26 1998
23 insofar as it deletes those provisions in the Nigerian Coal Corporation Act,
24 Cap. Laws of the Federation of Nigeria which grant the Nigerian Coal
25 Corporation exclusive rights to mine coal in Nigeria is now hereby repealed
26 and reenacted in this Act.

27 **8. Professional Associations**

28 For the purpose of this Schedule—

29 'professional association' means an association referred to in Part B of
30 this Schedule;

- | * Valuers
- 2 Valuers Act, 1982 (Act No. 23 of 1982).
- 3 * Medical
- 4 Medical, Dental and Supplementary Health Service Professions Act,
- 5 1974 (Act No. 56 of 1974).
- 6 Nursing Act, 1978 (Act No. 50 of 1978).
- 7 Dental Technicians Act, 1979 (Act No. 19 of 1979).
- 8 Pharmacy Act, 1974 (Act No. 53 of 1974).
- 9 Veterinary and Para-veterinary Professional Act, 1982 (Act No. 19 of
- 10 1982).
- 11 Chiropractors Homeopaths and Allied Health Service Professions 1982
- 12 (Act No. 63 of 1982).
- 13 *Miscellaneous*
- 14 Any other professional associations to whom the provisions of Schedule have
- 15 been declared applicable by the Minister by notice the Gazette.

SCHEDULE 2—FORM

FEDERAL COMPETITION COMMISSION
(Established under the Competition Act, 2001)

FORM FCC.101

REGISTRATION OF AGREEMENTS/ TRADE PRACTICES

(Pursuant to Section 10)

Name(s) and Addresses of Parties to the Agreement

1. _____

2. _____

3. _____

4. _____

RC. No.(s) _____

FCC Registration No(s) _____

Nature of Agreement (whether contract of service, supply, purchase or other please specify)

Was Agreement was entered into before the coming into effect of this Bill? Indicate the year: 199—
/200—

Have any of the Parties been investigated or are they being investigated by the Commission
Yes— No— (Give particulars of investigation)

Financial information of Parties (for the last two years):

Year end	Total assets	Total debt	Shareholders' funds	Total turnover	Profit/loss
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Directors, Secretary, and Shareholders of Parties (holding more than 20% of Share Capital of Company)

Name	Officer/Shareholder	Interest (%)
_____	_____	_____
_____	_____	_____
_____	_____	_____

Declaration

I conscientiously declare that the representations contained herein are true to the best of my knowledge and information and that all the requirements of this Act in respect of the matter precedent to the said Parties and incidental thereto have been complied with. I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Law.

DECLARANT

DECLARED AT _____

Thisday of, 2001.

BEFORE ME

A Commissioner For Oaths

Attachments (attach the following where applicable to this form)

- Investigative report
- Public companies/Private companies—the most recent audited annual financial statements, Memorandum and Articles of Association
- Private individuals—the most recent financial records of business, permits, licenses, and/or leases
- The Register of Members (nationality specified)
- The Particulars of Directors and Secretaries
- Particulars of shareholders (holding more than 20% equity shares of the concern).

FEDERAL COMPETITION COMMISSION
(Established under the Competition Act, 2001)

FORM FCC.102

REGISTRATION OF MERGERS/BUSINESS COMBINATIONS

(Pursuant to Section 14)

Name(s) and Addresses of Parties to the Merger

- 1. _____

- 2. _____

- 3. _____

- 4. _____

RC. No.(s) _____

FCC Registration No(s) _____

Nature of Merger (whether acquisition, arrangement, compromise, takeover, reconstruction)

If Merger took place within the past 5 years, indicate the year: 199—/200—

Have any of the Parties been investigated or are they being investigated by the Commission
Yes— No— (Give particulars of investigation)

Financial information of Parties (for the last two years):

Year end	Total assets	Total debt	Shareholders' funds	Total turnover	Profit/loss
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Directors, Secretary, and Shareholders of Parties (holding more than 20% of Share Capital of Company)

Name	Officer/Shareholder	Interest (%)	Foreign Participation (% , if any)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Declaration

I conscientiously declare that the representations contained herein are true to the best of my knowledge and information and that all the requirements of this Act in respect of the matter precedent to the said Parties and incidental thereto have been complied with. I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Law.

DECLARANT

DECLARED AT _____

Thisday of, 2001.

BEFORE ME

A Commissioner for Oaths

Attachments (attach the following where applicable to this form)

- Investigative report
- Public companies/Private companies—the most recent audited annual financial statements, Memorandum and Articles of Association
- Private individuals—the most recent financial records of business, permits, licenses, and/or leases
- The Register of Members (nationality specified)
- The Particulars of Directors and Secretaries
- Particulars of shareholders (holding more than 20% equity shares of the concern).

FEDERAL COMPETITION COMMISSION
(Established under the Competition Act, 2001)

FORM FCC.201

NOTIFICATION OF AGREEMENTS/TRADE PRACTICES

(Pursuant to Section 15)

Name(s) and Addresses of Party(ies)

- 1. _____

- 2. _____

- 3. _____

- 4. _____

RC. No.(s) _____

FCC Registration No(s). _____

Nature of Agreement (whether contract of service, supply, purchase please specify)

Was Agreement entered into before the coming into effect of this Act? Indicate the year: 199—/
200—

Have any of the Parties been investigated or are they being investigated by the Commission
Yes— No— (Give particulars of investigation)

Financial information of Parties (for the last two years):

Year end	Total assets	Total debt	Shareholders' funds	Total turnover	Profit/loss
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Directors, Secretary, and Shareholders of Parties (holding more than 20% of Share Capital of Company)

Name	Officer/Shareholder	Interest (%)
_____	_____	_____
_____	_____	_____

Declaration

I conscientiously declare that the representations contained herein are true to the best of my knowledge and information and that all the requirements of this Act in respect of the matter precedent to the said Parties and incidental thereto have been compiled with. I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Law.

DECLARANT

DECLARED AT _____

Thisday of, 2001.

BEFORE ME

A Commissioner for Oaths

Attachments (attach the following where applicable to this form)

- Investigative report
- Public companies/Private companies—the most recent audited annual financial statements, Memorandum and Articles of Association
- Private individuals—the most recent financial records of business, permits, licenses, and/or leases
- The Register of Members (nationality specified)

- The Particulars of Directors and Secretaries
- Particulars of shareholders (holding more than 20% equity shares of the concern).

Decision

In my opinion, the above agreement/trade practice does —/does not — constitute a breach of any provision of the Competition Act, 2001.

The Party(ies) will be —/will not — be designated for close monitoring.

The Director-General: _____ Date: _____

Secretary: _____ Date: _____

Terms and Conditions of Notification

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

FEDERAL COMPETITION COMMISSION
(Established under the Competition Act, 2001)

FORM FCC.202

MERGER/BUSINESS COMBINATIONS NOTIFICATION

(Pursuant to Section 15)

Pursuant to Section 15 of the Competition Act, 2001, I/We hereby notify the Director-General of the following Merger/Business Combination:

Name(s) and Addresses of Parties to the Merger

1. _____

2. _____

3. _____

4. _____

RC. No(s) _____

FCC Registration No(s) _____

Nature of Merger (whether acquisition, arrangement, compromise, takeover, reconstruction, or other please specify) _____

If Merger took place into within the past 5 years, indicate the year: 199—/200—

Have any of the Parties been investigated or are they being investigated by the Commission
Yes— No— (Give particulars of investigation)

Financial information of Parties (for the last two years):

Year end	Total assets	Total debt	Shareholders' funds	Total turnover	Profit/loss
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Directors, Secretary, and Shareholders of Parties (holding more than 20% of Share Capital of Company)

Name	Officer/Shareholder	Interest (%)	Foreign Participation (% , if any)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Declaration

I conscientiously declare that the representations contained herein are true to the best of my knowledge and information and that all the requirements of this Act in respect of the matter precedent to the said Parties and incidental thereto have been compiled with. I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Law.

DECLARANT

DECLARED AT _____

Thisday of, 2001.

BEFORE ME

A Commissioner For Oaths

Attachments (attach the following where applicable to this form)

- Investigative report
- Public companies/Private companies—the most recent audited annual financial statements,

Memorandum and Articles of Association

- Private individuals—the most recent financial records of business, permits, licenses, and/or leases
- The Register of Members (nationality specified)
- The Particulars of Directors and Secretaries
- Particulars of shareholders (holding more than 20% equity shares of the concern).

Decision

In my opinion, the above merger/business combination does —/does not — constitute a breach of any provision of the Competition Act, 2001.

The Party(ies) will be —/will no — be designated for close supervision.

The Director-General: _____ Date: _____

Secretary: _____ Date: _____

Terms and Conditions of Notification

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

FEDERAL COMPETITION COMMISSION
(Established under the Competition Act, 2001)

FORM FCC. 301

EXEMPTION—AGREEMENTS/TRADE PRACTICES

(Pursuant to Section 25)

Name(s) and Addresses of Parties to the Merger

1. _____

2. _____

3. _____

4. _____

RC. No.(s) _____

FCC Registration No(s) _____

Full Addresses of Branches (if any): _____

General Nature of Business: _____

Nature of Agreement/Trade Practice (whether contract of service, supply, purchase or other please specify)

If Agreement took place before the coming into effect of this Act, indicate the year: 199—/200—

Have any of the Parties been investigated or are they being investigated by the Commission
Yes— No— (Give particulars of investigation)

Ground(s) for Exemption

1. _____

2. _____

3. _____

4. _____

5. _____

Financial information of Parties (for the last two years):

Year end	Total assets	Total debt	Shareholders' funds	Total turnover	Profit/loss
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Particulars of Directors, Secretary, and Shareholders of Parties (holding more than 20% of Share Capital of Company)

Name	Officer/Shareholder	Interest (%)	Foreign Participation (% , if any)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Declaration

I conscientiously declare that the representations contained herein are true to the best of my knowledge and information and that all the requirements of this Act in respect of the matter precedent to the said Parties and incidental thereto have been complied with. I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Law.

DECLARANT

DECLARED AT _____

Thisday of, 2001.

BEFORE ME

A Commissioner for Oaths

Attachments (attach the following where applicable to this form)

- Investigative report
- Public companies/Private companies—the most recent audited annual financial statements, Memorandum and Articles of Association
- Private individuals—the most recent financial records of business, permits, licenses, and/or leases
- The Register of Members (nationality specified)
- The Particulars of Directors and Secretaries
- Particulars of shareholders (holding more than 20% equity shares of the concern).

Grant Exemption

I have considered the application submitted by the above applicant and hereby do —/do not — exempt this agreement/trade practice from a Part II/III Prohibition.

The Applicant(s) will be ——/Will not —— be designated for close supervision.

The Director-General:_____

Date:_____

Secretary:_____

Date:_____

Terms and Conditions of Exemption

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

