

FEDERAL COMPETITION AND CONSUMER PROTECTION BILL, 2015

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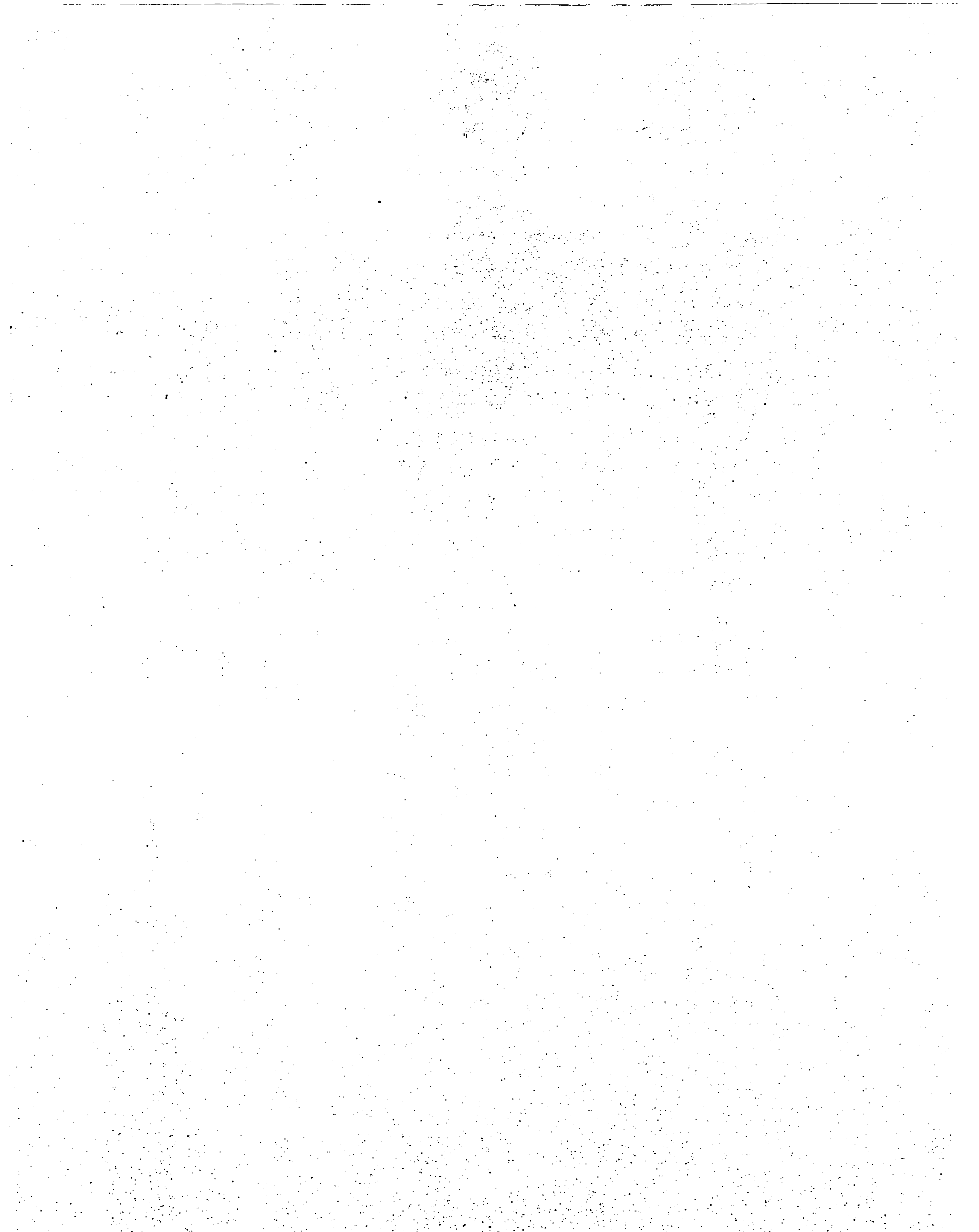
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SCHEDULES



A BILL

FOR

AN ACT TO REPEAL THE CONSUMER PROTECTION ACT, CAP C25, LFN, 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 OTHER RELATED MATTERS

Sponsored by Senator Nneji Athan Achonu

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

- 1 PART I - OBJECTIVES AND SCOPE OF APPLICATION
- 2 1. The objectives of this Act are to:
- 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 competitive prices and product choices;
- 8 (d) prohibit restrictive business practices which prevents, restricts
- 9 or distorts competition or constitutes an abuse of a dominant position of
- 10 market power in Nigeria; and contribute to the sustainable development of
- 11 the Nigerian economy.
- 12 2.-(1) Except as may be indicated otherwise, this Act applies to all
- 13 undertakings and all commercial activities within, or having effect within,
- 14 Nigeria.
- 15 (2) This Act applies to and is binding upon:
- 16 (a) a body corporate or agency of the government of the Federation

Objectives of the Act

Scope of application

1 or a body corporate or agency of a subdivision of the Federation, in so far as
2 such a body corporate or agency engages in commercial activities; and

3 (b) a body corporate in which a government of the Federation or of a
4 State of the Federation or a body corporate or agency of government of the
5 Federation or any State or Local Government has a controlling interest where
6 such a body corporate engages in economic activities.

7 PART II - ESTABLISHMENT OF THE FEDERAL COMPETITION AND
8 CONSUMER PROTECTION COMMISSION

Establishment
of the Federal
Competition and
Consumer
Protection
Commission

9 3. -(1) There is established the Federal Competition and Consumer
10 Protection Commission (in this Act referred to as "the Commission") for the
11 purpose of carrying out the functions, duties and responsibilities as conferred
12 upon it under the provisions of this Act.

13 (2) The Commission shall be independent in the exercise of its
14 functions, powers, duties and responsibilities conferred upon it by virtue of the
15 provisions of this Act.

16 (3) The Commission:

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

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

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

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

23 (5) The Commission may establish other offices for the purpose of its
24 business in any part of the Federal Republic of Nigeria, as the Commission may
25 from time to time determine.

Composition of
the Commission

26 4. -(1) The Commission shall comprise of:

27 (a) an Executive Chairman ("the Executive Chairman") to be
28 appointed from any one of the six geo-political zones of Nigeria, with at least
29 fifteen years professional experience in any of the fields specified in subsection
30 (4) of this section; and

1 (b) six full-time Commissioners (“the Commissioners”) to be
2 appointed from each of the six geopolitical zones of Nigeria with at least
3 fifteen years professional experience in any of the fields specified in
4 subsection (4) of this section.

5 (2) The Executive Chairman and Commissioners shall be
6 appointed by the President on the recommendations of the Minister, subject
7 to confirmation by the Senate.

8 (3) Where the Executive Chairman and Commissioners are
9 reappointed pursuant to the provision of section (5) of this Act, the
10 confirmation by the Senate referred to in subsection (2) of this section shall
11 not be required.

12 (4) A person shall not be appointed the Executive Chairman or
13 Commissioner unless the person possesses a degree and has knowledge and
14 experience in the educational fields, including industrial economics,
15 economics, law, accounting, public administration or finance.

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

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

23 5. The Executive Chairman and Commissioners shall hold office
24 for a term of four years in the first instance and may be re-appointed for a
25 further term of four years and no more.

Tenure of office

26 6. The Executive Chairman or any of the Commissioners may
27 resign their appointments by notice in writing addressed to the President
28 through the Minister.

Resignation
from the
Commission

29 7.-(1) The President may remove the Executive Chairman or a
30 Commissioner from office:

Removal from
office

1 (a) for inability or failure to discharge the functions of the office,
2 whether arising from infirmity of mind, body or any other cause;

3 (b) upon conviction for any crime;

4 (c) upon disqualification and removal by a competent authority from
5 the practice of the profession to which they belong;

6 (d) for any proven act of misconduct or gross misconduct as defined
7 under the Public Service Rules;

8 (e) for failure to comply with the reporting obligations regarding
9 personal and family assets as required by the Commission's Code of Conduct;

10 (f) for fraudulent, unethical or other behavior in the performance of
11 their official functions and duties.

12 (2) Any exercise of the powers of the President under this section shall
13 be subject to the approval of the Senate.

Vacancies

14 8. Where a vacancy occurs in the membership of the Commission, it
15 shall be filled by the appointment of a successor into the offices of the
16 Executive Chairman or a Commissioner in accordance with the provision of
17 subsection (2) of section 4 of this Act.

Emoluments of
Members of the
Commission

18 9. -(1) The Executive Chairman and the Commissioners shall be paid
19 from the funds of the Commission:

20 (a) such remuneration as may from time to time be approved for the
21 Commission in accordance with the recommendations of the National Salaries,
22 Income and Wages Commission; and

23 (b) such allowance as the Commission may from time to time
24 determine, having regard to the recommendations of the National Salaries,
25 Income and Wages Commission, to meet any reasonable expenses incurred in
26 connection with the business of the Commission.

27 (2) While making the recommendations for emoluments and other
28 compensations, the National Salaries, Income and Wages Commission shall
29 have due regard to the:

30 (a) specialized nature of work to be performed by the Commission;

1 (b) need to ensure the self-sufficiency of the Executive Chairman
2 and the Commissioners;

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

5 (d) nature of expenses incurred, including national and
6 international travel expenses.

7 10. -(1) The Executive Chairman shall be the accounting officer
8 and chief executive officer of the Commission and shall be responsible for
9 the day to day administration of the Commission.

Administration
of the
Commission

10 (2) The President, on the recommendation of the Minister, shall
11 designate one of the Commissioners as Vice-Chairman who shall perform
12 the Executive Chairman's functions whenever the Executive Chairman is
13 for any reason unable to perform the functions of his office.

14 11.-(1) Subject to the provisions of this Act and section 27 of the
15 Interpretation Act, the Commission may make standing orders regulating its
16 proceedings or those of any of its committees.

Proceedings of
the Commission

17 (2) At any meeting of the Commission, the Executive Chairman
18 shall preside and in his absence, the Vice-Chairman or in the absence of the
19 Vice - Chairman, the Commissioners present shall appoint one of their
20 numbers to preside at that meeting.

21 (3) Where the Commission desires to obtain the advice of any
22 person on a particular matter, the Commission may arrange for such a person
23 to consult or attend proceedings with the Commission for such period as it
24 deems necessary, but a person who is in attendance by virtue of this sub-
25 section shall not be entitled to vote at such proceedings.

26 12. The quorum of the Commission shall comprise the Executive
27 Chairman, or the person presiding at the meeting and four other Members of
28 the Commission, and the quorum of any committee of the Commission shall
29 be determined by the Commission.

Quorum

Validity of
proceedings

1 **13.** The validity of any proceedings of the Commission or of a
2 committee appointed pursuant to section 15 of this Act shall not be affected by:

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

5 (b) a defect in the appointment of a member of the Commission or of
6 a committee; or

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

Conflicts of
interest

9 **14.** Any member of the Commission and any member of a committee
10 appointed pursuant to the provisions of section 15 of this Act who has a
11 personal interest in any contract, arrangement or matter to be considered by the
12 Commission or of a committee shall forthwith disclose such interest to the
13 Commission or committee and shall not vote on any question relating to the
14 contract, arrangement or matter.

Committees

15 **15.** -(1) The Commission may appoint one or more committees to
16 carry out, on behalf of the Commission, such functions as the Commission may
17 determine.

18 (2) A committee appointed under subsection (1) of this section shall
19 consist of such number of persons as the Commission may determine.

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

The Seal of the
Commission

22 **16.**-(1) The fixing of the seal of the Commission shall be authenticated
23 by the signatures of the Executive Chairman or any person generally or
24 specifically authorized by the Commission to act for that purpose.

25 (2) Any contract or instrument which, if made or executed by a person
26 not being a body corporate, would not be required to be under seal, may be
27 made or executed on behalf of the Commission by the Executive Chairman or
28 any person generally or specifically authorized by the Commission to act for
29 that purpose.

30 (3) Any document purporting to be a document duly executed under

1 the seal of the Commission shall be received in evidence and shall, unless
2 and until the contrary is proved, be presumed to be so executed.

3 PART III - FUNCTIONS AND POWERS OF THE COMMISSION

4 17. -(1) The Commission shall:

Functions of the
Commission

5 (a) be responsible for the administration and enforcement of the
6 provisions of this Act and rules and regulations made pursuant to this Act;

7 (a) initiate broad based policies and review economic activities in
8 Nigeria to identify anti-competition and restrictive practices which may
9 adversely affect the economic interest of consumers;

10 (b) advise the Federal Government generally on national policies
11 and matters pertaining to all goods and services and on the determination of
12 national norms and standards relating to competition and consumer
13 protection;

14 (c) report annually on market practices and the implications for
15 consumer choice and competition in the consumer market;

16 (d) carry out, either on its own initiative or at the request of any
17 person, investigations or inquiries pertaining to the conduct of business in
18 Nigeria and initiating actions to redress violations of the provisions of this
19 Act;

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

23 (f) advise the Federal Government on any matter relating to the
24 operations of this Act including making recommendations to the Federal
25 Government for the review of policies, legislations and subsidiary
26 legislations as considered appropriate or as may be requested by the
27 Government of the Federation or any of its Ministries, Departments or
28 Agencies for the eradication of anti-competition behaviours;

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

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

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

6 (j) create public awareness through seminars, workshops, studies and
7 make available information with regard to the exercise of its functions and
8 powers to the public;

9 (k) authorize, with or without conditions, prohibit or approve mergers
10 of which notice is received;

11 (l) protect and promote consumer interests;

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

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

18 (o) organize or undertake campaigns and other forms of activities
19 capable of promoting increased private and public consumer awareness;

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

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

25 (r) collaborate with consumer protection groups and associations for
26 consumer protection purposes;

27 (s) ensure that consumers' interests receive due consideration at
28 appropriate fora and provide redress to obnoxious practices or the
29 unscrupulous exploitation of consumers by companies, firms, trade
30 associations or individuals;

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

3 (u) collaborate with international organizations and agencies,
4 firms, organizations, group or persons for the purposes of exchange of
5 information to locate the source of substandard goods;

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

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

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

17 (y) ensure that all service providers comply with local and
18 international standards of quality and safe service delivery.

19 (2) The Commission shall regularly develop and issue appropriate
20 rules, guidelines and regulations to ensure the effective implementation of
21 the provisions of this Act.

22 **18. -(1) The Commission shall have power to:**

Powers of the
Commission

23 (a) establish specialized Departments and Units as are considered
24 necessary for the effective and efficient discharge of its functions under this
25 Act;

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

28 (c) compel manufacturers, suppliers, dealers, importers,
29 wholesalers, retailers, providers of services and other undertakings;

30 (d) cause quality tests to be conducted on consumer goods as it

1 deems necessary;

2 (e) demand the production of labels showing date and place of
3 manufacture of goods as well as certification of compliance;

4 (f) compel a manufacturer, supplier, dealer, importer, wholesaler,
5 retailer or other undertaking, where appropriate, to:

6 (a) certify that all standards are met in their goods and services; and

7 (b) give public notice of any health hazards associated with their
8 goods or services.

9 (g) seal up any premises on reasonable suspicion that such premises
10 contain, harbor or are being used to produce or disseminate goods or services
11 that are fake, substandard, hazardous or inimical to consumers' welfare; in
12 collaboration with relevant sector regulators;

13 (h) undertake studies and publish reports or provide information on
14 matters that affect the interest of consumers and co-operate with or assist any
15 association or body of persons in developing and promoting the observance of
16 standards of conduct for the purpose of ensuring compliance with the
17 provisions of this Act; and

18 (i) make regulations relating to the charging and collection of fees,
19 levies, fines and the imposition of administrative penalties.

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

23 (3) For the purpose of carrying out its functions under this Act, it shall
24 be lawful for the Commission to:

25 (a) prohibit the making or carrying out of an agreement or
26 arrangements to which this Act relates;

27 (b) order the termination of any agreement or arrangement pertaining
28 to the action envisaged under paragraph (c) of this subsection;

29 (c) prohibit the withholding of supplies or any threat relating thereto;

30 (d) declare any business practice as abuse of a dominant position of

1 market power and prohibit the same, after carrying out necessary
2 investigation;

3 (e) prohibit the attachment of extraneous conditions to any
4 transaction as it may deem appropriate;

5 (f) prohibit the discrimination or preferences in prices or other
6 related matters;

7 (g) require the publication of transparent price lists; and(h)
8 do such other things as it considers necessary for the effective performance
9 of its functions under this Act.

10 (4) The Commission shall have power to:

11 (a) summon and examine witnesses;

12 (b) call for and examine documents;

13 (c) administer oaths;

14 (d) require that any document submitted to it be verified by
15 affidavit;

16 (e) require the furnishing of returns or information as it may require
17 within such period as it may specify by notice; and

18 (f) adjourn any investigation or inquiry from time to time.

19 PART IV - MANAGEMENT AND STAFF OF THE COMMISSION

20 19.-(1) There shall be appointed by the Commission, a secretary
21 (hereinafter referred to as "the Secretary") who shall be a legal practitioner
22 with at least ten years post-call experience.

Secretary to the
Commission

23 (2) The Secretary shall be responsible for keeping the corporate
24 records of the Commission and performing such other duties as the
25 Executive Chairman or the Commission may, from time to time assign.

26 20.-(1) The Commission may appoint such other staff as is
27 necessary for the proper and efficient performance of the functions and
28 duties of the Commission under this Act with requisite professional
29 qualifications and cognate experience in competition and consumer
30 protection matters.

Other staff of
the Commission

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

4 (3) The Commission shall have power to pay to persons employed by
5 it such remuneration, including allowances, as the Commission may
6 determine, after consultation with the National Salaries and Wages
7 Commission in line with the guiding principles contained in subsection (2) of
8 section 9 of this Act.

Staff regulations

9 21.-(1) The Commission may, subject to the provisions of this Act,
10 make staff regulations relating generally to the conditions of service of the
11 employees of the Commission and without prejudice to the generality of the
12 foregoing, such regulations may provide for:

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

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

19 (2) Staff regulations made under subsection (1) of this section shall
20 have effect upon publication in the Federal Gazette or such other medium as the
21 Commission may determine as will enable the regulations to be brought to the
22 notice of all affected persons.

Application of
the Pension
Reform Act

23 22. Service in the Commission shall be approved service for the
24 purposes of pensions and accordingly, the officers, staff or employees of the
25 Commission shall be entitled to pensions and other retirement benefits in
26 accordance with the provisions of the Pension Reform Act, 2004.

27 PART V - FINANCIAL PROVISIONS

Fund of the
Commission

28 23.-(1) The Commission shall establish and maintain a fund
29 (hereinafter referred to as "the Fund") from which shall be defrayed all
30 expenditures incurred by the Commission and the Tribunal established under

1 section 39 of the Act.

2 (2) There shall be paid and credited into the Fund established under
3 subsection (1) of this section:

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

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

8 (c) such moneys as may, from time to time, be granted to the
9 Commission by a government of the Federation;

10 (d) all fees, levies and charges statutorily chargeable by the
11 Commission for approvals, testing, licences, certification or any services, as
12 may be provided by the Commission in the exercise of its functions under
13 this Act;

14 (e) all administrative fees and charges payable to the Tribunal
15 under this Act;

16 (f) all sums of monies accruing to the Commission by way of
17 grants-in-aid, gifts, testamentary dispositions and endowments and
18 contributions from any other sources whatsoever provided that the
19 condition for such grants are not inconsistent with the functions, duties and
20 responsibilities of the Commission under this Act;

21 (g) a percentage of all the fees chargeable for regulated industry
22 regulators application for license, processing and issuance of licenses as
23 may be determined by the President on the recommendations of the
24 Minister; and

25 (h) fees charged for the investigation into and resolution of all
26 disputes brought before the Commission either due from the regulated
27 industry regulators, individuals, corporate bodies or the government.

28 (3) The Fund shall be managed in accordance with the rules made
29 by the Commission and without prejudice to the generality of the power to
30 make rules under these subsections; the rules shall in particular contain

1 provisions:

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

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

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

Expenditures of
the Commission

7 24.-(1) The Commission shall apply the proceeds of the Fund
8 established pursuant to section 23 of this Act to:

9 (a) the cost of administration of the Commission and the Tribunal;
10 and

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

14 (c) the payment for all consultancies, contracts, including
15 mobilization, fluctuations, variations, legal fees and cost on contract
16 administration as may be permissible under applicable laws;

17 (e) the payment for all purchases; and

18 (f) undertake such other activities as are connected with all or any of
19 the functions of the Commission under this Act.

20 (2) Any excess of the Authority's revenue for any year over the
21 approved expenditure for that year shall be remitted to the Consolidated
22 Revenue Fund.

Annual estimates
and expenditure

23 25.-(1) The Commission shall not later than 30th September in each
24 year submit to the Minister an estimate of the expenditure and income of the
25 Commission during the succeeding year.

26 (2) The Commission shall cause to be kept proper accounts of the
27 Commission in respect of each year and proper records in relation thereto.

28 (3) The Commission shall cause the accounts to be audited not later
29 than six months after the end of each financial year by auditors appointed from
30 the list and in accordance with the guidelines supplied by the Auditor - General

1 for the Federation.

2 26. The Commission shall prepare and submit to the Minister, not Annual reports
3 later than 30th June in each year, a report in such form as the Minister may
4 direct on the activities of the Commission during the immediately preceding
5 year, and shall include in the report a copy of the audited accounts of the
6 Commission for that year and the auditors' report thereon.

7 PART VI - ENFORCEMENT WARRANTS AND REQUESTS FOR
8 INFORMATION

9 27. -(1) The Commission may for the purpose of ascertaining Enforcement
10 whether any undertaking has engaged, is engaging or is likely to engage in powers of the
11 conduct constituting or likely to constitute a contravention of this Act, Commission
12 require an authorized officer to:

13 (a) enter and search any premises; and

14 (b) inspect and remove from the premises any article, document or
15 extract there from, in the possession or under the control of any person.

16 (2) Except as otherwise directed by the Commission, an officer
17 authorized by the Commission shall only exercise the powers conferred by
18 subsection (1) of this section with a warrant issued pursuant to section 28 of
19 this Act.

20 (3) The Commission shall, if there are grounds to believe that a
21 violation, civil or criminal, of the provisions of this Act or regulations made
22 pursuant to this Act, was, is being or will be committed, take any interim
23 measures, including authorizing an authorized officer to exercise powers
24 contained in subsection (1) of the section pending the issuance of a warrant
25 to that effect.

26 28. -(1) Where a Judge is satisfied on information on oath that there Issuance of
27 is reasonable ground for believing that any undertaking has engaged or is Warrant
28 engaging or likely to engage in conduct constituting or likely to constitute
29 the contravention of this Act, the Judge may issue a warrant permitting an
30 authorized officer to exercise the powers conferred by subsection (1) of this

1 section in relation to any premises specified in the warrant.

2 (2) An authorized officer who applied for a warrant shall, having
3 made reasonable inquiries, disclose to the court:

4 (a) the details of every previous application for a warrant to search
5 the place that the officer knows has been made within the preceding twelve
6 months; and

7 (b) the result of the application.

8 (3) A warrant issued under subsection (1) of this section shall specify
9 a time-limit beyond which articles or documents removed shall not be
10 detained.

11 (4) The occupier or person in charge of any premises entered pursuant
12 to this section shall provide the authorized officer with all reasonable facilities
13 and assistance for the effective exercise of the officer's duty under this section.

14 (5) A person who obstructs or impedes an authorized officer in the
15 performance of his duties under this section commits an offence and liable on
16 conviction to imprisonment for a term not exceeding two years or to a fine not
17 exceeding Five Million Naira or to both fine and imprisonment.

Powers conferred
by warrant

18 29.-(1) A warrant issued under subsection (1) of section 28 of this Act
19 shall authorize the person named in the warrant to request any police officer or
20 public official to provide assistance to the person named in the warrant in the
21 execution of the warrant.

22 (2) The assistance to be provided pursuant to the provision of
23 subsection (1) of this section shall be at the written request of the person named
24 in the warrant.

25 (3) The warrant shall confer powers:

26 (a) to enter and search the place or premises specified in the warrant
27 on one occasion within thirty days of the date of issue of the warrant at a time
28 that is reasonable in the circumstances;

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

30 (c) to use such force for gaining entry and for breaking open any

1 article or thing as is reasonable in the circumstances;

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

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

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

11 (4) Any police officer or public officer assisting the person
12 executing the warrant also has the powers stated in paragraphs (c), (d) and
13 (e) of subsection (3) of this section.

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

16 **30. -(1) A person executing a warrant issued under subsection (1)**
17 **of section 28 of this Act shall:**

Duties of a
person executing
a Warrant

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

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

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

23 (2) A person executing a warrant issued under subsection (1) of
24 section 28 of this Act shall on entry into any premises pursuant to a warrant,
25 produce a valid identification document and the authority to enter.

26 (3) A person executing a warrant issued under subsection (1) of
27 section 28 of this Act shall before leaving the premises, leave in a
28 conspicuous place at the premises searched:

29 (a) in the case of a search carried out at a time when the owner or
30 occupier was not present, a written notice stating:

- 1 (i) the date and time when the warrant was executed; and
- 2 (ii) the name of the person who executed the warrant and the names of
- 3 the person or persons who rendered assistance in the course of executing the
- 4 warrant, and;
- 5 (b) upon the completion of the search authorized by a warrant, where
- 6 a document or article or thing was removed from the place being searched.
- 7 leave a schedule containing a list of articles, documents, extracts or things
- 8 removed from the premises during the search.
- 9 (4) Where it is not practicable to prepare a schedule before completing
- 10 the search, or if the owner or occupier of the place being searched consents, the
- 11 person executing the warrant:
- 12 (a) may, instead of leaving a schedule, leave a notice stating that
- 13 documents, articles or things have been removed during the search and that,
- 14 within seven days of the search, a schedule will be delivered, left, or sent
- 15 stating the documents, articles or things that have been removed; and
- 16 (b) must, within seven days of the search:
- 17 (i) deliver a schedule to the owner or occupier;
- 18 (ii) leave a schedule in a prominent position at the place searched; or
- 19 (iii) send a schedule by registered mail to the owner or occupier of the
- 20 place searched.
- 21 (5) Every schedule prepared pursuant to subsection (3) or (4) of this
- 22 section shall state:
- 23 (a) the documents, articles and things that were removed;
- 24 (b) the location from which they were removed; and
- 25 (c) the location where they are being held.
- 26 (6) The Commission, or any person authorized by the Commission
- 27 for that purpose, may inspect and make copies of any document or extract from
- 28 such document, obtained pursuant to a warrant issued under subsection (1) of
- 29 section 28 of this Act.

1 **31.** The occupier or person in charge of the place that an authorized
2 officer, pursuant to a warrant issued under subsection (1) section 28 of this
3 Act, enters for the purpose of a search shall provide that authorized officer
4 with all reasonable facilities and cooperation in executing the warrant.

Duties of
Occupiers

5 **32.**-(1) Where the Commission considers it necessary, desirable
6 or 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 or
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 to 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 (3) Where the information provided for in subsection (1) of this
24 section is not furnished to the satisfaction of the Commission, the
25 Commission may make findings on the basis of information available to it.

26 **33.**-(1) A summons to attend and give evidence or to produce
27 documents before the Commission issued under the hand of the Secretary or
28 any member of the Commission shall be served on the person concerned.

Summons to
attend and give
evidence or to
produce documents

29 (2) Hearings of the Commission shall take place in public, but the
30 Commission may, whenever the circumstances warrant, particularly in

1 order to preserve the business secrets of the undertaking concerned, conduct
2 hearing in camera.

3 (3) A person who without sufficient cause fails or refuses to:

4 (a) appear before the Commission in compliance with a summons, or

5 (b) produce a document which the person is required by such
6 summons to produce,

7 commits an offence and liable on conviction to imprisonment for a term not
8 exceeding three years or to a fine not exceeding Twenty Million Naira or to
9 both fine and imprisonment.

10 (4) A person who willfully obstructs or interrupts the proceedings of
11 the Commission commits an offence and liable on conviction to imprisonment
12 for a term not exceeding three years or to a fine not exceeding Twenty Million
13 Naira or to both fine and imprisonment.

Procedures for
handling of
evidence by the
Commission

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

19 (2) The Commission may take evidence on oath and for that purpose a
20 member of the Commission, any employee or agent of the Commission duly
21 authorized for that purpose may administer an oath.

22 (3) The Commission may require the evidence to be furnished to be
23 given on oath and for that purpose a member of the Commission or any officer
24 of the Commission duly authorized for that purpose may administer an oath.

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

28 (5) Where a person has appeared as a witness before the Commission
29 pursuant to a notice issued in that behalf or has given evidence before the
30 Commission, whether pursuant to a notice or not, the Commission may, if it

1 deems fit, order any sum to be paid to that witness on account of his or her
2 traveling expenses.

3 (6) The Commission shall ensure that business secrets of all parties
4 concerned in investigation conducted by it are adequately protected during
5 all stages of an investigation or inquiry.

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

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

Prohibition of
disclosure of
information,
documents, etc.

13 (2) An order made by the Commission under subsection (1) of this
14 section may be expressed to have effect for such period as is specified in the
15 order, which shall not be less than two years, but no such order shall have
16 effect where that order was made in connection with an investigation or
17 inquiry conducted by the Commission, after the conclusion of that
18 investigation or inquiry.

19 (3) A person who, contrary to an order made by the Commission
20 under subsection (1) of this section, publishes or communicates any
21 information, document or evidence commits an offence and is liable on
22 conviction to a fine not exceeding One Million Naira in the case of a person
23 not being a body corporate, and Fifty Million Naira in the case of a body
24 corporate.

25 36. A person who destroys any record which may be required by
26 the Commission for the discharge of any of its functions under this Act, with
27 intent to mislead the Commission or to prevent or impede any investigation
28 or inquiry under this Act, commits an offence and liable on conviction to a
29 term of three years imprisonment or to a fine not exceeding Fifty Million
30 Naira or to both fine and imprisonment.

Destruction of
records

Discontinuance
of inquiry or
investigation

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

5 (2) Where the Commission discontinues an investigation or inquiry, it
6 shall, within fourteen days thereafter, give written notice to the parties
7 concerned in the investigation or inquiry, stating the reasons for discontinuing
8 the investigation or inquiry.

Appeals

9 38. -(1) Subject to regulations to be made by the Commission under
10 subsection (2) of this section, appeals from any decision of the Commission
11 shall lie to the Tribunal established under section 39 of this Act.

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

15 PART VII - THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL

Establishment
of the Competition
and Consumer
Protection
Tribunal

16 39.-(1) There is established under this Act, the Competition and
17 Consumer Protection Tribunal ("the Tribunal").

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

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

Composition of
the Tribunal

23 40.-(1) The Tribunal shall consist of the following members:

24 (a) a Chairman, who shall be a legal practitioner with ten years post
25 call and cognate experience in the field of competition, consumer protection or
26 commercial and industrial law;

27 (b) six other members, with not less than twelve years professional
28 experience in any one or more of the following educational fields:

29 (i) competition and consumer protection law;

30 (ii) commerce and industry;

- 1 (iii) public affairs;
2 (iv) economics;
3 (v) finance; or
4 (vi) business administration or management.

5 (2) The Chairman and other members of the Tribunal shall be
6 appointed by the President on the recommendation of the Minister subject
7 to confirmation by the Senate.

8 **41.** -(1) A member of the Tribunal shall hold office for a term of Terms of office
9 four years renewable for another term of five years and no more from the
10 date of assumption of office or upon the attainment of sixty years of age,
11 whichever is earlier.

12 (2) Each member of the Tribunal shall satisfactorily complete at
13 least one certified competition and consumer protection law course at an
14 accredited institution within the first two years of appointment.

15 **42.** A person shall not be qualified to serve on the Tribunal if the Disqualification
16 person is: from membership
of the Tribunal

- 17 (a) an undischarged bankrupt;
18 (b) under any order of a competent court, declared mentally unfit;
19 (c) a convicted felon under the laws of Nigeria;
20 (d) found guilty of serious misconduct incapacitating the person
21 from carrying out the functions of the office; or

22 (e) found to have been engaging in any activity that may undermine
23 the integrity of the Tribunal.

24 **43.**-(1) A member of the Tribunal may by a written notice, Resignation and
25 addressed to the Minister, resign from office, provided that the member removal
26 shall, unless permitted by the Minister to relinquish office sooner, continue
27 to hold office until the expiry of three months from the date of receipt of the
28 notice conveying the resignation or until a person duly appointed as
29 successor assumes office or until the expiry of the term of office, whichever
30 is earlier.

1 (2) A member of the Tribunal may be removed from office by the
2 President:

3 (a) on grounds of gross misconduct, after due inquiry has been made
4 and the member concerned informed of the reasons for the removal and given
5 an opportunity of being heard in respect of the reasons;

6 (b) on grounds of incapacity on account of ill health; or

7 (c) for failure to satisfy the requirements of subsection (2) of section
8 41 of this Act.

9 (3) Any exercise of the powers of the President under this section shall
10 be subject to the approval of the National Judicial Council.

Filling of
vacancies

11 44. Where for reason other than temporary absence, any vacancy
12 occurs in the Tribunal, a replacement may be appointed in accordance with the
13 provisions of subsection (2) of section 40 of this Act to fill the vacancy.

Order constituting
the tribunal to
be final

14 45. The question as to the validity of the appointment of any person as
15 a member of the Tribunal shall not be the cause of any litigation in any court or
16 tribunal and no act or proceedings before the Tribunal shall be called into
17 question in any manner on the ground merely of any defect in the constitution
18 of the Tribunal.

Secretary to the
Tribunal

19 46. The Minister shall appoint for the Tribunal, a Secretary who shall:

20 (a) subject to the general control of the Chairman, be responsible for
21 keeping records of the proceedings of the Tribunal;

22 (b) be the head of the secretariat and responsible for:

23 (i) the day to day administration of the Tribunal; and

24 (ii) the direction and control of all other employees of the Tribunal.

Other staff of
the Tribunal

25 47. -(1) The Tribunal shall appoint such other employees as deemed
26 necessary for the efficient performance of the functions of the Tribunal and the
27 remuneration of persons so employed shall be determined by the National
28 Salaries, Incomes and Wages Commission.

29 (2) Employment in the Tribunal shall be subject to the provisions of
30 the Pension Reform Act and, accordingly, officers and employees of the

1 Tribunal shall be entitled to pensions and other retirement benefits as are
2 prescribed under the Pension Reform Act.

3 48. -(1) The Tribunal shall have power to:

Jurisdiction of
the Tribunal

4 (a) hear appeals from or review any decision of the Commission
5 taken in the course of the implementation of any of the provisions of this Act
6 as may be referred to it;

7 (b) hear appeals from or review any decision from the exercise of
8 the powers of the any sector specific regulatory authority in a regulated
9 industry in respect of competition and consumer protection matters;

10 (c) issue such orders as may be required of it under this Act; and

11 (d) make any ruling or such other orders as may be necessary or
12 incidental to the performance of its functions under this Act.

13 (2) Notwithstanding the provisions of paragraph (b) of subsection
14 (1) of this section, all appeals or request for review of the exercise of the
15 power of a sector specific authority shall first be heard and determined by
16 the Commission before such appeals can lie before or be determined by the
17 Tribunal.

18 49.-(1) The Chairman of the Tribunal shall be responsible for the
19 management and assignment of cases before the Tribunal to the other
20 members of the Tribunal.

Management of
the work of the
Tribunal

21 (2) For the purpose of subsection (1) of this section, members of the
22 Tribunal shall be constituted into Panels of at least three members.

23 (3) Further to the provision of subsection (2) of this section, the
24 Chairman shall ensure that at least one member of each Panel has requisite
25 legal training, experience and good knowledge of competition matters.

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

28 (5) Where as a result of withdrawal from a hearing for the reason
29 stated in section 50 of this Act, or for any other reason, a member of a Panel
30 is unable to complete the proceedings in a matter assigned to that Panel, the

1 Chairman shall:

2 (a) direct that the hearing of that matter proceed before the remaining
3 members of the Panel, subject to the requirements of subsection (4) of this
4 section; or

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

8 (6) The decision of a Panel on a matter referred to it must be in writing
9 and include reasons for that decision.

10 (7) The Tribunal may extend or reduce a period prescribed for the
11 taken or doing of any action required to be done under this Part ("the prescribed
12 period").

13 (8) A decision of a Panel contemplated in subsection (6) of this section
14 or of a majority of the members of a Panel shall be the decision of the Tribunal.

Disclosure of
interest by
members of a
panel

15 **50.**-(1) A member of the Tribunal shall not be entitled to sit on a Panel
16 if during the hearing; it appears to the Tribunal that the matter concerns a
17 financial or other interest of that member.

18 (2) A member affected by the provision of subsection (1) of this
19 section shall:

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

22 (a) withdraw from any further involvement in that hearing.

Procedural Rules
of the Tribunal

23 **51.**-(1) The Tribunal may make rules regulating its procedures.

24 (2) The Tribunal shall, for the purpose of discharging its function
25 under this Act, have power to:

26 (a) summon and enforce the attendance of any person including the
27 power to examine a person under oath;

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

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

30 (d) receive evidence on affidavits; and

1 (e) do anything which, in the opinion of the Tribunal, shall be
2 deemed necessary to issue a final and reasoned decision on the merits of the
3 matter before it.

4 **52. -(1) The Tribunal may impose administrative penalties only:**

Powers of the
Tribunal to
impose penalties

5 (a) for a prohibited practice under this Act; or

6 (b) for the contravention of, or failure to comply with, an interim
7 order of the Tribunal.

8 (2) An administrative penalty imposed under subsection (1) of this
9 section shall not exceed ten per cent of the undertaking's annual turnover in
10 Nigeria and its exports from Nigeria during the preceding financial year.

11 (3) When determining an appropriate penalty under subsection (1)
12 of this section, the Tribunal shall consider the:

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

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

15 (c) the behaviour of the defaulting party;

16 (d) the market circumstances in which the contravention took
17 place;

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

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

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

23 **53. -(1) The Tribunal may make an order directing any undertaking**
24 **to sell any portion or all of its shares, interest or assets if the practice**
25 **prohibited under this Act:**

Powers of the
Tribunal to
order sale of
assets

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

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

30 (2) An order made under subsection (1) of this section may provide

	1	for time-frame for compliance and any other terms that the Tribunal considers
	2	appropriate, having regard to the commercial interests of the parties concerned.
Access to records of the Tribunal	3	54. The Tribunal shall provide the parties to the proceedings before it
	4	and other members of the public reasonable access to the record of its
	5	proceedings, subject to any requirement to protect confidential information as
	6	required under the provisions of this Act and regulations made under this Act or
	7	any other enactment.
Registration and enforcement of the decisions of the Tribunal	8	55. -(1) An order, ruling, award or judgment of the Tribunal shall be
	9	binding on the parties before the Tribunal.
	10	(2) A ruling, award or judgment of the Tribunal shall be registered
	11	with the Federal High Court for the purpose of enforcement only.
Judicial review by the Federal High Court	12	56. -(1) Any party to a proceeding dissatisfied with a ruling, award or
	13	judgment of the Tribunal may apply for judicial review to the Federal High
	14	Court upon giving notice in writing to the Secretary to the Tribunal within
	15	thirty days after the date on which the ruling, award or judgment was given.
	16	(2) A notice of judicial review filed pursuant to subsection (1) of this
	17	section shall set out all the grounds on which the review is sought.
	18	(3) Upon the receipt of a notice of judicial review under subsections
	19	(1) and (2) of this section, the Secretary to the Tribunal shall cause the notice to
	20	be given to the Chief Registrar of the Federal High Court along with the record
	21	of proceedings and exhibits tendered at the hearing before the Tribunal.
Right to legal representation	22	57.-(1) Any party to a proceeding before the Tribunal may either
	23	appear in person or authorize one or more legal practitioners or any of its
	24	officers to represent the party before the Tribunal.
	25	(2) Where a party or its representative is unable for good cause to
	26	attend a hearing before the Tribunal, the Tribunal may adjourn the hearing for
	27	such reasonable time as it deems fit, or admit the matter to be made by some
Payment of allowances and other conditions of employment of the members of the Tribunal	28	other person or by way of a written address.
	29	58. -(1) The Chairman and other members of the Tribunal shall be
	30	paid such allowances, emoluments and benefits as the Federal Government

1 may from time to time approve.

2 (2) Staff of the Tribunal shall be entitled to pension and other
3 retirement benefits in accordance with the provisions of the Pension Reform
4 Act.

5 **59.** -(1) Subject to the provision of section 21 of this Act, the
6 Tribunal shall be funded from such sums of money as may be appropriated
7 through annual budgetary provisions.

Funding of the
Tribunal

8 (2) The Tribunal shall at the end of each accounting year submit its
9 budget for the following year to the Minister.

10 (3) The Minister shall ensure that adequate budgetary provision is
11 made for the payment of emoluments and allowances of members and staff
12 of the Tribunal including all other expenditures of the Tribunal for the
13 efficient performance of the duties and responsibilities of the Tribunal under
14 this Act.

15 PART VIII - RESTRICTIVE AGREEMENTS

16 **60.** -(1) Any agreement among undertakings or a decision of an
17 association of undertakings that has the purpose of actual or likely effect of
18 preventing, restricting or distorting competition in any market shall be
19 unlawful and, subject to section 61 of this Act, void and of no legal effect
20 whatsoever.

Prohibition of
agreements in
restraint of
competition

21 (2) The prohibited acts under subsection (1) of this section include
22 in particular:

23 (a) directly or indirectly fixing a purchase or selling price of goods
24 or services, subject to section 108 of this Act;

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

27 (c) limiting or controlling production or distribution of any goods
28 or services, markets, technical development or investment, subject to
29 section 109 of this Act;

1 (d) engaging in collusive tendering, subject to section 110 of this Act;

2 (e) making the conclusion of an agreement subject to acceptance by
3 the other parties of supplementary obligations which, by their nature or
4 according to commercial usage, have no connection with the subject of such
5 agreement.

Agreements
authorized by
the Commission

6 **61.** The provision of section 60 of this Act shall not apply to an
7 agreement among undertakings, or a decision of an association of
8 undertakings, or a category of agreements or decisions of associations of
9 undertakings, the entry into which is authorized by the Commission, provided
10 that the Commission is satisfied that the agreement or decision:

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

14 (b) imposes on the undertakings concerned only such restrictions as
15 are indispensable to the attainment of the objectives referred to in paragraph (a)
16 of this section; and

17 (c) does not afford the undertakings concerned the possibility of
18 eliminating competition in respect of a substantial part of the goods or services
19 concerned.

Prohibition of
agreements
containing
exclusionary
provisions

20 **62.** An undertaking or association of undertakings shall not request
21 another undertaking or association of undertakings to refuse to sell or purchase
22 any goods or services with the intention of harming certain undertakings.

Agreements by
suppliers

23 **63.-(1)** It is unlawful for any two or more undertakings to enter into
24 any agreement whereby they undertake to:

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

29 (b) refuse to supply goods or services to the dealers referred to in
30 paragraph (a) of this subsection except on terms and conditions that are less

1 favourable than those applicable to other dealers carrying on business in
2 similar circumstances.

3 (2) It is unlawful for any two or more undertakings to enter into, or
4 carry out, any agreement authorizing the recovery of penalties, however
5 described, by or on behalf of the parties to the agreement from dealers who
6 resell or have resold goods or services in breach of any condition described
7 in paragraph (a) of subsection (1) of this section.

8 **64.** -(1) Any term or condition of an agreement for the sale of any
9 goods or services is void to the extent that it purports to establish or provide
10 for the establishment of minimum prices to be charged on the resale of the
11 goods or services in Nigeria.

Prohibition of
minimum resale
price maintenance

12 (2) Subject to the provisions of subsections (3) and (4) of this
13 section, it is unlawful for an undertaking or its agent to:

14 (a) include in an agreement for the sale of goods or services, a term
15 or condition which is void by virtue of this Act; or

16 (b) notify dealers or otherwise publish on or in relation to any
17 goods or services, price stated or calculated to be understood as the
18 minimum price which may be charged on the resale of the goods or services
19 in Nigeria.

20 (3) The provisions of paragraph (a) of subsection (2) of this section
21 does not affect the enforceability of an agreement except in respect of the
22 term or condition which is void by virtue of this Act.

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

28 **65.** -(1) The provisions of section 64 of this Act shall apply to
29 patented goods, including goods made by a patented process.

Patented
products

30 (2) Notice of any term or condition which is void by virtue of the

1 provisions of section 64 of this Act, or which would be so void if included in an
2 agreement relating to the sale of patented goods, is of no effect for the purpose
3 of limiting the right of a dealer to dispose of those goods without infringement
4 of the patent.

5 (3) Nothing contained in this Act or this section shall affect the
6 validity, as between the parties to an agreement and their successors, of any
7 term or condition of:

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

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

Maintenance of
minimum resale
prices

12 66. -(1) It is unlawful for an undertaking to withhold supplies of any
13 goods or services from a dealer seeking to obtain them for resale on the ground
14 that the dealer:

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

18 (b) is likely, if the goods or services are supplied to that dealer, to sell
19 them at a price below the resale price, or supply them either directly or
20 indirectly to a third party who would be likely to do so.

21 (2) In this section, "the resale price" in relation to a sale of any
22 description, means the price:

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

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

29 (3) Where, under this section, it would be unlawful for an undertaking
30 to withhold supplies of goods or services, it is also unlawful for the undertaking

1 to cause or procure any other undertaking to do so.

2 67.-(1) For the purposes of this Part, an undertaking shall be treated
3 as withholding goods or services from a dealer if:

Withholding of
products from a
dealer by a
supplier

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

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

11 (c) although the undertaking enters into an agreement to supply
12 goods or services to the dealer, the undertaking treats the dealer in a manner
13 significantly less favourable than that in which it normally treats other such
14 dealers in respect of times or methods of delivery or other matters arising in
15 the execution of the agreement.

16 (2) An undertaking shall not be treated as withholding goods or
17 services on any ground mentioned in this Part if, in addition to that ground,
18 the undertaking has other grounds which, standing alone, would have led the
19 undertaking to withhold those goods or services.

20 (3) Subject to subsection (5) of this section, where in proceedings
21 brought against an undertaking in respect of a contravention of the
22 provisions of subsection (1) of section 66 of this Act, the matters specified in
23 subsection (4) of this section are proved, it shall be presumed, unless the
24 contrary is proved, that the goods or services concerned were withheld on
25 the ground that the dealer had acted or was likely to act as described in
26 subsection (1) of section 66 of this Act.

27 (4) The matters referred to in subsection (3) are as follows:

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

29 (b) during a period ending immediately before the supplies were so
30 withheld, the undertaking was doing business with the dealer or was

1 supplying goods or services of the same description to other dealers carrying
2 on business in similar circumstances; and

3 (c) the dealer, to the undertaking's knowledge, had within the
4 preceding six months, acted as described in paragraph (a) of subsection (1) of
5 section 9 of this Act or had indicated its intention to act in relation to the goods
6 or services in question.

7 (5) The provisions of subsections (3) and (4) of this section shall not
8 apply where the proof that goods or services were withheld consists only of
9 evidence of requirements imposed by the undertaking in respect of the time at
10 which or the form in which payment was to be made for goods or services
11 supplied or to be supplied.

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

12 **68.**-(1) Where the Commission determines that an agreement or
13 decision contravenes the provisions of this Act, it shall serve an order on the
14 parties concerned stating the reasons for its decision and requiring the parties to
15 cease their anti-competition practices.

16 (2) Any person who has suffered a loss as a result of any restrictive
17 agreement or decision may make a complaint to the Commission and the
18 Commission may, if it is satisfied that the circumstances of the case so warrant,
19 exercise any of the powers granted to it under this Act as it deems fit, provided
20 that an aggrieved person may apply to the Tribunal for an order against the
21 parties whose agreement or decision is anti-competitive and the Tribunal may
22 by order determine the amount of compensation to be paid to the aggrieved
23 person.

Exceptions

24 **69.**-(1) Nothing in this Act prohibits:

25 (a) combinations or activities of employees for the reasonable
26 protection of employees.

27 (b) arrangements for collective bargaining on behalf of employers
28 and employees for the purpose of fixing minimum terms and conditions of
29 employment;

30 (c) activities of professional associations designed to develop or

1 enforce standards of professional qualifications.

2 (d) a contract or an arrangement among partners, none of whom is a
3 body corporate, in so far as it contains provisions in relation to the terms of
4 the partnership or the conduct of the partnership business or in relation to
5 competition between the partnership and a party to the contract,
6 arrangement or understanding while that party is, or after that party ceases to
7 be a partner;

8 (e) a contract of service or a contract for the provision of services in
9 so far as it contains provisions by which a person, not being a body
10 corporate, agrees to accept restrictions as to the work, whether as an
11 employee or otherwise, in which that person may engage during or after the
12 termination of the contract. This period shall be no longer than two (2) years;

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

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

19 (2) With respect to professional services provided by professional
20 associations listed in Schedule I to this Act, the Commission may issue
21 guidelines for the application of certain provisions of this Act to the supply
22 of services or conduct of business by members of such professional
23 associations; and

24 (i) for the purposes of this subsection, the Commission shall from
25 time to time review professional associations to be included in the list in
26 Schedule I to this Act with a view to determining which associations are
27 eligible to be accorded privileges and exemptions with respect to the
28 application of any of the provisions of this Act; and

29 (ii) any privileges or exemptions granted by the Commission under
30 this subsection shall be consistent with the provisions of this Act.

1 (3) The Commission shall as considered appropriate develop and
2 publish procedural rules to be applied to group inquiries.

Officers and
penalties under
this Part

3 70.-(1) An undertaking that makes or enters into an agreement or
4 decision declared unlawful under this Part commits an offence and liable on
5 conviction:

6 (a) where the undertaking is a natural person, to imprisonment not
7 exceeding a term of five years, or to a fine not exceeding Fifty Million Naira or
8 to both fine and imprisonment;

9 (b) where the undertaking is a body corporate, it shall be liable on
10 conviction to a fine not exceeding ten *per cent* of its turnover in the preceding
11 business year.

12 (2) Where the offence is committed by a body corporate, each director
13 of the body corporate shall be liable to be proceeded against and on conviction
14 dealt with as specified in paragraph (a) of subsection (1) of this section.

15 (3) An undertaking that fails to obey an order served by the
16 Commission under subsection (1) of section 68 of this Act commits an offence:

17 (a) where the undertaking is a natural person, it shall be liable on
18 conviction to imprisonment for a term not exceeding three years, or to payment
19 of a fine not exceeding fifty million Naira or to both fine and imprisonment;
20 and

21 (b) where the undertaking is a body corporate, liable on conviction to
22 a fine not exceeding ten *per cent* of its turnover in the preceding business year.

23 (4) Where the offence is committed by a body corporate, each director
24 of the body corporate shall be liable to be proceeded against and on conviction
25 dealt with as specified in paragraph (a) of subsection (1) of this section.

Dominant position
and abuse of
dominant position
in the relevant
market

26 PART IX - ABUSE OF A DOMINANT POSITION

27 71. -(1) For the purpose of this Act, an undertaking will be generally
28 considered to be in a dominant position if it is able to act without taking account
29 of the reaction of its customers, consumers or competitors.

30 (2) Abuse of dominant position in a relevant market occurs where an

1 undertaking enjoys a position of economic strength enabling it to prevent
2 effective competition being maintained on the relevant market and having
3 the power to behave to an appreciable extent independently of its
4 competitors, customers and ultimately of the consumers.

5 72. For the purpose of delineating the relevant market under this
6 Act, the criteria that shall be taken into account include:

Criteria for
identifying the
relevant market

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

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

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

16 73. -(1) Subject to the provisions of subsection (3) of this section,
17 any abuse by one or more undertakings of a dominant position in a market is
18 prohibited.

Abuse of a
dominant position
prohibited

19 (2) For the purpose of assessing market dominance, account shall
20 be taken in particular of:

21 (a) the market share of the undertaking or undertakings concerned
22 in the relevant market;

23 (b) its or their financial power;

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

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

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

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

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

1 (h) as well as the ability of the opposite market side to resort to other
2 undertakings.

3 (3) An undertaking shall not be treated as abusing a dominant
4 position if its conduct:

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

8 (b) is indispensable to the attainment of the objectives referred to in
9 paragraph (a) of this subsection; and

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

12 (4) An undertaking may be considered as abusing its dominant
13 position with regard to paragraph (c) of subsection (3) of this section if the
14 Commission is satisfied that its activities:

15 (a) have the effect of unreasonably lessening competition in a
16 market; and

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

18 (5) For the purposes of this Act:

19 (a) “exclusive dealing” means any practice whereby an undertaking:

20 (i) as a condition of supplying goods or services to a customer,
21 requires the customer:

22 (a) to deal only or primarily in goods or services supplied or designed
23 by the undertaking or its nominee; or

24 (b) to refrain from dealing in a specified class or kind of goods or
25 services, except as supplied by the undertaking or its nominee; or

26 (ii) induces a customer to meet a condition referred to in subparagraph
27 (i) of paragraph (a) of this subsection by offering to supply goods or services to
28 the customer on more favourable terms or conditions if the customer agrees to
29 meet that condition;

30 (b) “exclusive dealing” also means any practice whereby an

1 undertaking, as a condition of purchasing a specified class or kind of goods
2 or services from a supplier, requires the supplier to refrain from supplying
3 the same class or kind of goods or services to other undertakings; and

4 (c) “market restriction” means any practice whereby an
5 undertaking, as a condition of supplying goods or services to a customer,
6 requires that customer to distribute the goods or services only in a defined
7 market or exacts a penalty of any kind from the customer if the customer
8 distributes the goods or services outside a defined market.

9 74. -(1) Where the Commission finds that an undertaking has
10 abused or is abusing its dominant position in a market, the Commission shall
11 prepare a report indicating the practices that constitutes the abuse and shall:

Consequences of
abuse of a
dominant
position

12 (a) notify the undertaking of its findings accompanied by a copy of
13 the report; and

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

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

19 (3) An undertaking that abuses its dominant position in a market
20 commits an offence under this Act and shall on conviction be liable to a fine
21 of not less than ten *per cent* of its turnover in the preceding business year or
22 such higher percentage as the court may determine under the circumstances
23 of the particular case.

24 75. -(1) An undertaking that fails to cease an abusive practice after
25 receiving an order of the Commission to that effect commits an offence and
26 on conviction liable to a fine not exceeding ten per cent of its turnover in the
27 preceding business year or to such higher percentage as the court may
28 determine given the circumstances of the particular case.

Penalties for
failure to comply
with a cease order

29 (2) Any director of an undertaking found liable for an offence
30 under subsection (1) of this section shall on conviction be liable to

1 imprisonment for a term not exceeding three years, or to payment of a fine not
2 exceeding Fifty Million Naira or to both fine and imprisonment.

Suspension of
punishment

3 76. Where upon receipt of the directive under subsection (1) of
4 section 74 of this Act, the undertaking or undertakings concerned submits or
5 submit to the Commission the measures it or they propose to take to cease the
6 abusive practice and a timetable for giving effect to the measures, and the
7 Commission is satisfied as to the measures, the Commission may decide not to
8 proceed with the institution of necessary action that will lead to the punishment
9 and penalties prescribed in section 75 of this Act against the undertaking or
10 undertakings.

11 PART X - MONOPOLY

Power of the
Commission to
investigate a
monopoly
situation

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

Determination
of a monopoly
situation by the
Commission

19 78. For the purposes of this Part, a monopoly situation shall be taken
20 to exist in relation to:

21 (a) the supply of goods of any description;

22 (b) the supply of services of any description; or

23 (c) the exports of goods of any description from Nigeria, to the extent

24 it has an effect on competition in a market in Nigeria,

25 as may be prescribed in regulations made from time to time by the
26 Commission.

General powers
of the Commission
to obtain
information

27 79. When conducting a monopoly investigation under section 77 of
28 this Act, the Commission may:

29 (a) exercise any of its powers, as contained under section 30 of this

30 Act.

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

4 80. -(1) Any power conferred on the Commission under the
5 provisions of this Act to require a person or body corporate to furnish
6 information shall be exercisable by notice in writing served on that person or
7 body corporate.

Supplementary
provisions as to
the requirement
to furnish
information

8 81.-(1) A person or body corporate who refuses or willfully
9 neglects to furnish to the Commission information required under this Act
10 commits an offence and is liable on conviction to a fine not exceeding ten
11 million Naira.

Penalties for
refusal to furnish
information to
the Commission

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

18 82. An order for a monopoly investigation under section 77 of this
19 Act shall:

Order for
monopoly
investigation

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

22 (b) state whether it relates to the supply of goods or to export of
23 goods from Nigeria or both where it relates to goods; and

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

26 83. -(1) Any person or body corporate may make a request for a
27 monopoly investigation to the Commission.

Request for a
monopoly
investigation

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

1 (3) In responding to a request or referral referred to in subsections (1)
2 and (2) of this section, the Commission may limit its report to:

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

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

7 (c) the undertaking or undertakings in whose favour the monopoly
8 situation exists;

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

12 (e) any action or omission on the part of the undertaking or
13 undertakings concerned attributable to the existence of the monopoly situation
14 and, if so, by what manner it is so attributable.

Notification of
a request for a
monopoly
investigation

15 84. Where the Commission gives a direction under this Act with
16 respect to a request for or a referral of a monopoly investigation, the
17 Commission shall notify all relevant parties in writing and shall place a notice
18 of such direction on the website of the Commission.

Report on a
monopoly
investigation

19 85. -(1) The Commission shall furnish to the Tribunal reports on
20 completed monopoly investigations at such times or intervals as may be agreed
21 from time to time between the Tribunal and the Commission.

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

26 (3) Where the Commission finds that a monopoly situation exists and
27 that facts found by the Commission in pursuance of its investigation operate or
28 may be expected to operate against the public interest, its report shall specify
29 those facts and the particular effects which in the Commission's opinion, those
30 facts have or may be expected to have.

1 (4) The Commission:

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

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

7 (5) The phrase "action to be taken" in paragraphs (a) and (b) of
8 subsection (4) of this section means the action to be taken:

9 (a) by the Minister or any other Minister of the Government of the
10 Federation or any department or agency of Government where the resulting
11 adverse effects affects the sphere of responsibility or the statutory function
12 of any Minister or of any of the departments or agencies of Government; or

13 (b) by the undertaking or undertakings in whose favour the
14 monopoly situation in question exists.

15 **86. -(1)** Upon the commencement of a monopoly investigation
16 under this Part, the Commission shall specify a period within which the
17 Commission is to report on the monopoly investigation.

Time frame for a
report on a
monopoly
investigation

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

25 (3) Where a monopoly investigation cuts across the sphere of
26 responsibilities of more than one Minister and the period of reporting on an
27 investigation has already been extended once or more than once under any
28 direction issued under this subsection, a joint directive of all the Ministers
29 concerned may be issued allowing the Commission such extended period to
30 report on the reference as may be specified in the direction.

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

1 **87. -(1)**The provisions of this section shall have effect where a report
2 of the Commission on a monopoly investigation is referred to the Tribunal with
3 the conclusions of the Commission that:

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

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

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

13 (3) An order of the Tribunal made under subsection (2) of this section
14 may, in particular:

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

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

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

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

26 (e) provide for the division of any undertaking by the sale of any part
27 of its shares, assets or otherwise for which purpose all the activities carried on
28 by way of business by any one undertaking or by any two or more
29 interconnected undertakings may be treated as a single business or for the
30 division of any group of interconnected undertakings and for all such matters

- 1 as may be necessary to effect or take account of the division, including:
- 2 (i) the transfer or vesting of property rights, liabilities or
3 obligation;
- 4 (ii) the adjustment of contracts, whether by discharge or reduction
5 of any liability or obligation or otherwise;
- 6 (iii) the creation, allotment, surrender or cancellation of shares,
7 stock or securities;
- 8 (iv) the formation or winding up of an undertaking or association,
9 corporate or unincorporated, or the amendment of the memorandum and
10 articles or other instruments regulating any undertaking or association;
- 11 (v) the extent to which and the circumstances in which provisions
12 of the order affecting an undertaking or association in its share capital,
13 constitution or other matters may be altered by the undertaking or
14 association and the registration under any enactment of the order by
15 undertakings or associations so affected; or
- 16 (vi) the continuation with any necessary change of parties of any
17 legal proceedings.
- 18 (4) The reference in paragraph (e) of subsection (3) of this section
19 to the division of an undertaking shall be construed as including a reference
20 to the separation by the sale of any part of any shares or assets concerned of
21 undertakings which are under joint control.
- 22 (5) In determining whether or not and to what extent or in what
23 manner to exercise any of the powers referred to in subsection (2) of this
24 section, the Tribunal shall take into account the objectives of this Act.
- 25 (6) Where a report made pursuant to subsection (1) of this section
26 specifies that the undertaking in whose favour the monopoly situation exists
27 is a body corporate fulfilling the following conditions, that is:
- 28 (a) that the affairs of the body corporate are managed by its
29 members; and
- 30 (b) that by virtue of any enactment, those members are appointed

1 by a supervising Minister of that body corporate,
2 the Tribunal shall, if requested, receive representations from the Minister who
3 appointed members of that body corporate and shall consider such
4 representations before making any orders or exercising any powers.

5 (7) In relation to any such undertaking as is mentioned in subsection
6 (6) of this section, the powers exercisable by virtue of subsection (2) of this
7 section shall not include the powers specified in paragraph (e) of subsection (3)
8 of this section.

General provisions
relating to orders
made under this
Part

9 **88.-(1)** The provisions of this section shall apply to an order made
10 under section 87 of this Act.

11 (2) An order made under section 87 of this Act declaring anything to
12 be unlawful shall apply to all undertakings or to such undertakings as may be
13 specified or described in the order.

14 (3) Nothing in any order made under section 87 of this Act shall have
15 effect so as to apply to any undertaking in relation to its conduct outside
16 Nigeria, unless that undertaking is:

17 (a) a citizen of Nigeria; or

18 (b) a body corporate incorporated under the Companies and Allied
19 Matters Act, CAPC20 Laws of the Federation of Nigeria, 2004 and carrying on
20 business in Nigeria, either alone or in partnership with one or more other
21 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 on
24 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 which it
28 attaches to a licence to do anything the doing of which would, but for the
29 licence, be an infringement of a Nigerian patent.

30 (6) The Tribunal shall include in an order made under section 87 of

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

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

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

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

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

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

20 PART XI - PRICE REGULATION

21 **89.-(1)** For the purpose of regulating and facilitating competition
22 only, the President may, from time to time, by order published in the Federal
23 Gazette, declare that the prices for goods or services specified in the order
24 shall be controlled in accordance with the provisions of this Act.

Declaration of
price regulation

25 (2) The President shall not make an order under subsection (1) of
26 this section unless the President is satisfied that:

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

30 (b) it is necessary or desirable for the prices of those goods or

1 services to be controlled in accordance with this Act in the interest of users,
2 consumers, or, as the case may be, suppliers; and

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

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

12 (4) Any order made under subsection (1) of this section shall identify
13 the goods or services to which it pertains by:

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

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

16 (c) a description of the market to which the goods or services belong;

17 and

18 (d) the specification of the sector of the economy affected or likely to
19 be affected.

20 (5) Any order made under subsection (1) of this section shall specify
21 the date on which it shall expire.

Commission to
report to the
President on
price regulation

22 90.-(1) The President may, by notice in writing, require the
23 Commission to report by such date as the President shall specify in the notice,
24 on the need to amend, vary or revoke an order made under section 89 of this
25 Act.

26 (2) Upon the issuance of a notice to the Commission under subsection
27 (1) of this section:

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

30 (i) stating that the requirement has been made and specifying the

1 matter to which it pertains; and

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

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

9 (3) The Commission may at its discretion recommend to the
10 President to amend, vary or revoke an order made under section 89 of this
11 Act.

12 (4) The President shall cause a copy of every report submitted by
13 the Commission under this section to be published in such manner as
14 considered appropriate.

15 **91.-(1)** For the purpose of this Part, “regulated goods” or
16 “regulated services” mean goods or services in respect of which there is for
17 the time being in force an order made under section 89 of this Act.

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

18 (2) Within a reasonable period after an order under section 89 of
19 this Act is made, the Commission shall set and cause to be published an
20 authorized price of the regulated goods or services that are the subject of the
21 order.

22 (3) Following the publication of an authorized price by the
23 Commission pursuant to subsection (2) of this section, an undertaking shall
24 not supply the regulated goods or services in Nigeria other than for the
25 authorized price.

26 (4) Any provision of an agreement in violation of the provisions
27 subsection (3) of this section is unenforceable.

28 (5) A person who violates any of the provisions of this Part
29 commits an offence and liable on conviction to a fine not exceeding Fifty
30 Million Naira.

1 (6) A body corporate that violates any of the provisions of this Part
2 commits an offence and liable on conviction to a fine not exceeding ten *per cent*
3 of the turnover of the body corporate in the business year preceding the date of
4 the commission of the offence.

5 (7) Each director of the body corporate referred to in subsection (6) of
6 this section shall be liable to be proceeded against and on conviction dealt with
7 as specified in subsection (5) of this section.

Retention of
accounting and
costing records
by suppliers of
distributors

8 92.-(1) Any undertaking that supplies or distributes regulated goods
9 or services shall retain all accounting and costing records on the regulated
10 goods or services as the Commission may from time to time specify either in
11 relation to suppliers or distributors of those goods or services generally or in
12 relation to a particular supplier or distributor of the goods or services.

13 (2) Any undertaking that supplies or distributes regulated goods or
14 services shall retain the records referred to in subsection (1) of this section for a
15 period of three years from the date of the revocation or expiry of the order in
16 respect of the regulated goods or services to which they relate.

17 PART XII - MERGERS

Merger defined

18 93.-(1) For the purposes of this Act:

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

22 (b) a merger contemplated in paragraph (a) of this subsection may be
23 achieved in any manner, including through:

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

26 (ii) the amalgamation or other combination with the other
27 undertaking in question; or

28 (iii) a joint venture.

29 (2) For the purposes of subsection (1) of this section, an undertaking
30 has control over the business of another undertaking if it:

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

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

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

9 (d) is a holding company, and the undertaking is a subsidiary of that
10 company as contemplated under the Companies and Allied Matters Act,
11 CAPC20, LFN, 2004;

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

15 (f) in the case of an undertaking that is a close corporation, owns
16 the majority of members' interest or controls directly or has the right to
17 control the majority of members' votes in the close corporation; or

18 (g) has the ability to materially influence the policy of the
19 undertaking in a manner comparable to a person who, in ordinary
20 commercial practice, can exercise an element of control referred to in
21 paragraphs (a) to (f) of this subsection.

22 (3) For the purposes of subsection (1) of this section, an
23 undertaking shall not be deemed to exercise control over the business of
24 another undertaking where:

25 (a) credit institutions or other financial institutions or insurance
26 companies, the normal activities of which include transactions and dealing
27 in securities for their own account or for the account of others, hold on a
28 temporary basis securities which they have acquired in an undertaking with
29 a view to reselling them, provided that they do not exercise voting rights in
30 respect of those securities with a view to determining the competitive

1 behaviour of that undertaking or provided that they exercise such voting rights
2 only with a view to preparing the disposal of all or part of that undertaking or of
3 its assets or the disposal of those securities and that any such disposal takes
4 place within one year of the date of acquisition; that period may be extended by
5 the Commission on request where such institutions or companies can show that
6 the disposal was not reasonably possible within the period set;

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

10 (4) For the purposes of this Act:

11 (a) a "small merger" means a merger with a value at or below the
12 threshold stipulated by the Commission by regulations;

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

Commission to
approve mergers

15 ~~94~~-(1) Subject to the notification threshold to be determined from
16 time to time as set out in this Part, a proposed merger shall not be implemented
17 unless it has first been notified to and approved by the Commission.

18 (2) The Commission shall by regulations determine:

19 (a) a threshold of annual turnover for purposes of determining the
20 categories of mergers contemplated in subsection (4) of section 93 of this Act;
21 and

22 (b) a method for the calculation of annual turnover to be applied in
23 relation to the threshold determined under paragraph (a) of this subsection.

24 (3) Prior to making a determination contemplated in subsection (2) of
25 this section, the Commission shall publish in the Federal Gazette a notice:

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

28 (b) inviting written submissions on that proposal.

29 (4) Within 30 days after publishing a notice as required under
30 subsection (3) of this section, the Commission shall publish in the Federal

1 Gazette a notice:

2 (a) setting out the threshold and method of calculation for purposes
3 of this section; and

4 (b) the effective date of the threshold.

5 95-(1) When considering a merger or a proposed merger, the
6 Commission shall determine whether or not the merger is likely to
7 substantially prevent or lessen competition, by assessing the factors set out
8 in subsection (2) of this section.

Consideration by
the Commission
of effect of a
merger on
competition

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

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

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

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

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

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

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

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

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

29 (3) Where it appears that a merger or proposed merger is likely to

1 substantially prevent or lessen competition, the Commission shall determine:

2 (a) whether or not the merger or proposed merger is likely to result in
3 any technological efficiency or other pro-competitive advantage which will be
4 greater than, and offset, the effects of any prevention or lessening of
5 competition, while allowing consumers a fair share of the resulting benefit; and

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

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

12 (a) a particular industrial sector or region;

13 (b) employment; and

14 (c) the ability of national industries to compete in international
15 markets.

Notification
requirements
for a small merger

16 96. -(1) A party to a small merger:

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

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

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

25 (3) Within six months after a small merger is implemented, the
26 Commission may require the parties to that merger to notify it of the merger in
27 the prescribed manner and form if, in the opinion of the Commission, having
28 regard to the provisions of section 95 of this Act, the merger may substantially
29 prevent or lessen competition.

30 (4) The notification of the merger referred to in subsection (3) of this

1 section shall be published within five business days after receipt by the
2 Commission.

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

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

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

13 (b) after having considered the merger as required under section
14 95 of this Act, issue a report in the prescribed form:

15 (i) approving the merger;

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

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

19 (iv) declaring the merger to be prohibited.

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

26 (8) The Commission shall:

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

29 (b) issue written reasons for the decision if:

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

Notification of
a larger merger

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

2 97.-(1) A party to a large merger shall notify the Commission of the
3 merger in the prescribed manner and form.

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

7 (3) The primary acquiring undertaking and the primary target
8 undertaking shall each provide a copy of the notice contemplated in subsection
9 (1) of this section to:

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

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

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

17 (5) Any action undertaken by any party in violation of the provisions
18 of subsection (3) of this section shall be void and of no legal effect.

19 (6) The Commission may exercise any of the powers available to it
20 under this Act to render null and void any violation of the provisions of
21 subsection (3) of this section.

22 (7) An undertaking that violates the provision of subsection (3) of this
23 section commits an offence and liable on conviction to a fine not exceeding ten
24 percent of turnover of the undertaking in the business year preceding the date of
25 the commission of the offence or to such other percentage as the court may
26 determine having regard to the circumstances of the case.

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

27 98.-(1) Within sixty business days after the parties to a large merger
28 have fulfilled all notification requirements referred to in section 97 of this Act,
29 the Commission:

30 (a) may extend the period in which it has to consider the proposed

1 merger to one hundred and twenty business days and issue an extension
2 notice to all parties to the merger; or

3 (b) after having considered the merger in accordance with the
4 provisions of this Act, issue a report in the prescribed form:

5 (i) approving the merger;

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

7 (iii) prohibiting implementation of the merger.

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

15 (3) Subject to the provisions of this Part, the Commission shall:

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

19 (b) issue written reasons for its decision where:

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

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

22 **99.** The Commission may direct any of its officers to investigate a
23 merger, and may require any person or undertaking to provide information
24 in respect of the merger.

Investigation of
a proposed merger

25 **100.-(1)** The Commission may revoke its own decision to approve
26 or conditionally approve a small or large merger if-(a) the decision was
27 based on incorrect information for which a party to the merger is
28 responsible;

Revocation of
merger approval

29 (b) the approval was obtained by deceit;

30 (c) the parties fail to implement the merger within twelve months

1 after the approval was granted; or

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

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

Powers of the
Minister

9 101.-(1) The Minister shall be entitled to make representations to the
10 Commission with respect to any merger which is under consideration by the
11 Commission.

12 (2) Subject to the overriding objectives of this Act, the Commission
13 shall have special regard to the representations made by the Minister in arriving
14 at the decision on a merger notification.

15 (3) Further to the provisions of subsections (1) and (2) of this section,
16 the Minister may participate as a party in any merger proceedings before the
17 Commission in the prescribed manner.

Power to hear
persons in merger
proceedings

18 102.-(1) In making a determination in respect of a merger
19 notification, the Commission may hear any person, other than parties to the
20 merger, who in the opinion of the Commission is able to assist in making a
21 determination on the merger notification.

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

Provisions of
documents on
proposed merger
to the Commission

27 103.-(1) Any undertaking making a merger notification shall furnish
28 to the Commission such documents and information as may be required in the
29 consideration of the merger or proposed merger to enable the Commission
30 exercise their functions under this Act.

1 of this section unless it is satisfied that:

2 (a) the industries to which the ruling relates are or will be subject to
3 regulations made by a government agency with authority to regulate the
4 activities of undertakings operating in such industries or the terms under which
5 goods or services are supplied in such industries;

6 (b) it is necessary or desirable for such industries to be designated as
7 regulated industries in the interests of users, consumers, or, as the case may be,
8 suppliers; or

9 (c) the ruling is designed in a manner necessary to minimize
10 confusion as to the powers of the Commission and those of other regulatory
11 agencies.

12 (5) Any ruling made by the Commission pursuant to this Part may be
13 published in any manner the Commission may deem fit, including publication
14 in the Federal Gazette and two national dailies.

15 (6) The Commission shall negotiate agreements with any government
16 agencies identified in its ruling to coordinate and harmonize the exercise of
17 jurisdiction over competition matters within the relevant industry or sector, and
18 to ensure the consistent application of the provisions of this Act.

19 (7) A government agency or regulatory authority, which in
20 accordance with the provision of an existing law or regulation has jurisdiction
21 in respect of an industry or sector, shall commence negotiation of agreements
22 with the Commission as anticipated in subsection (5) of this section and shall
23 conclude such negotiations within one year thereof, and in respect of matters
24 within its jurisdiction, may exercise its jurisdiction by way of such an
25 agreement.

26 (8) Where the negotiations contemplated by subsection (6) above are
27 inconclusive, the areas of disagreement shall be referred to the Tribunal for
28 resolution, and such resolution by the Tribunal shall be binding on the parties.

29 107.-(1) Whenever it is alleged that a provision of this Act has been
30 contravened by an undertaking acting or operating within any regulated

1 industry designated pursuant to section 106 of this Act, the undertaking
2 against whom such allegation is made must demonstrate that the conduct in
3 question was ordered or required by a regulatory agency possessing
4 jurisdiction over that regulated industry.

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

11 PART XIV - SPECIFIC OFFENCES AGAINST COMPETITION

12 **108.** -(1) An undertaking shall not directly or indirectly:

Price-fixing

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

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

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

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

30 (4) An undertaking that violates any of the provisions of this

1 section commits of an offence and:

2 (a) where the undertaking is a natural person, liable on conviction to
3 imprisonment for a term not exceeding three years or to payment of a fine not
4 exceeding ten million Naira or to both fine and imprisonment;

5 (b) where the undertaking is a body corporate, liable on conviction to
6 a fine not exceeding ten per cent of its turnover in the preceding business year;
7 and

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

Conspiracy

11 109.-(1) An undertaking shall not conspire, combine, agree or
12 arrange with another undertaking to:

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

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

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

21 (d) otherwise unduly restrain or injure competition.

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

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

27 (b) in the collection and dissemination of information relating to the
28 service.

29 (3) An undertaking that violates any provision of this section commits
30 an offence and:

1 (a) where the undertaking is a natural person, liable on conviction
2 to imprisonment for a term not exceeding three years, or to payment of a fine
3 not exceeding ten million Naira or to both fine and imprisonment;

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

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

10 **110. -(1) Subject to subsection (2) of this section, it is unlawful for** Bid-rigging
11 **two or more undertakings to enter into an agreement whereby:**

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

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

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

20 (3) An undertaking that violates any provision of this section
21 commits an offence and:

22 (a) where the undertaking is a natural person, liable on conviction
23 to imprisonment for a term not exceeding three years, or to payment of a fine
24 not exceeding ten million Naira or to both fine and imprisonment;

25 (b) where the undertaking is a body corporate, liable on conviction
26 to a fine not exceeding ten per cent of its turnover in the preceding business
27 year; and

28 (c) in the case of a body corporate referred to in paragraph (b) of
29 this subsection, each director of the body corporate is liable to be proceeded

1 against and on conviction dealt with as specified in paragraph (a) of this
2 subsection.

Obstruction of
investigation or
inquiry

3 111. Any person, who, in any manner, impedes, prevents or obstructs
4 any investigation or inquiry by the Commission under this Act commits an
5 offence and is liable, on summary conviction, to imprisonment for a term of not
6 less than two years or to a fine of not less than two million Naira or to both fine
7 and imprisonment.

Offence against
records

8 112. -(1) An undertaking that:

9 (a) refuses to produce any document or to supply any information
10 when required to do so by the Commission under this Act,

11 (b) destroys or alters any document or causes a document to be
12 destroyed or altered; or

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

15 (2) An undertaking that commits an offence under subsection (1) of
16 this section is:

17 (a) where the undertaking is a natural person, liable on conviction to
18 imprisonment for a term not exceeding three years, or to payment of a fine not
19 exceeding ten million Naira or to both fine and imprisonment;

20 (b) where the undertaking is a body corporate, it shall be liable on
21 conviction to a fine not exceeding ten per cent of its turnover in the preceding
22 business year; and

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

Giving of false
or misleading
information

26 113. An undertaking that gives to the Commission or an authorized
27 officer of the Commission, any information which the undertaking knows to be
28 false or misleading commits an offence and:

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

1 exceeding ten million Naira or to both fine and imprisonment; (b)
2 where the undertaking is a body corporate, liable on conviction to a fine not
3 exceeding ten per cent of its turnover in the preceding business year; and

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

8 114. A person who has been required to appear before the
9 Commission and:

Failure to attend
or give evidence

10 (i) without reasonable excuse, refuses or fails to appear; or

11 (ii) refuses to take an oath or to make an affirmation as a witness or
12 to answer a question put to him or her,

13 commits an offence and is liable on summary conviction to imprisonment
14 for a term not exceeding three years, or to a fine not exceeding ten million
15 Naira or to both fine and imprisonment.

16 PART XV - CONSUMERS' RIGHTS

17 115.-(1) The producer of a notice, document or visual
18 representation that is required under this Act or any other law, to be
19 produced, provided or displayed to a consumer must produce, provide or
20 display that notice, document or visual representation:

Right to
information in
plain and
understandable
language

21 (a) in the prescribed form, if any, for that notice, document or visual
22 representation; or

23 (b) in plain language, if no form has been prescribed for that notice,
24 document or visual representation.

25 (2) For the purposes of this Act, a notice, document or visual
26 representation is in plain language if it is reasonable to conclude that an
27 ordinary consumer of the class of persons for whom the notice, document or
28 visual representation is intended, with average literacy skills and minimal
29 experience as a consumer of the relevant goods or services, could be

1 expected to understand the content, significance, and import of the notice,
2 document or visual representation without undue effort, having regard to:

3 (a) the context, comprehensiveness and consistency of the notice,
4 document or visual representation;

5 (b) the organization, form and style of the notice, document or visual
6 representation;

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

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

11 (3) The Commission may publish guidelines on methods for
12 assessing whether a notice, document or visual representation satisfies the
13 requirements of subsection (1) and (2) of this section.

Disclosure of
price of goods
or services

14 116.-(1) An undertaking shall not display any goods or services for
15 sale without adequately displaying to the consumer a price of those goods or
16 services.

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

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

- 1 **117. -(1)** For the purposes of this section, a trade description is Product labelling
2 **applied to goods if it is:** and trade
3 **(i)** applied to the goods, or to any covering, label or reel in or on description
4 **which the goods are packaged, or attached to the goods;**
5 **(ii)** displayed together with, or in proximity to, the goods in a
6 **manner that is likely to lead to the belief that the goods are designated or**
7 **described by that description; or**
8 **(iii)** is contained in any sign, advertisement, catalogue, brochure,
9 **circular, wine list, invoice, business letter, business paper, or other**
10 **commercial communication on the basis of which a consumer may request**
11 **or order the goods.**
12 **(2)** An undertaking shall not knowingly apply to any goods a trade
13 **description that is likely to mislead consumers as to any matter implied or**
14 **expressed in that trade description or alter, deface, cover, remove or obscure**
15 **a trade description or trade mark applied to any goods in a manner calculated**
16 **to mislead consumers.**
17 **(3)** An undertaking shall not supply, offer to supply or display any
18 **goods if the undertaking knows, reasonably could determine, or has reason**
19 **to suspect, that:**
20 **(i)** a trade description applied to those goods is likely to mislead
21 **consumers as to any matter implied or expressed in that trade description; or**
22 **(ii)** a trade description or trade mark applied to those goods has
23 **been altered.**
24 **118.** An undertaking that offers or agrees to supply, or supplies, Disclosure of
25 **any goods that have been used or are second-hand or have been re-** re-conditioned
26 **conditioned, re-built or re-made, must apply a conspicuous notice to those** or second-hand
27 **goods stating clearly that they have been used or are second-hand or have** goods
28 **been re-conditioned, re-built or re-made.**
29 **119.** An undertaking shall provide a written record of each Sales records
30 **transaction to any consumer to whom any goods or services are sold or**

1 supplied, including in that record at least the following information:

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

3 (b) the address of the premises at which, or from which, the goods or
4 services were sold or supplied;

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

6 (d) a name or description of any goods or services supplied or to be
7 supplied;

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

10 (f) the quantity of any particular goods or services supplied or to be
11 supplied;

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

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

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

Consumer's right
to select suppliers

15 120. An undertaking shall not require, as a condition of offering to
16 supply or supplying any goods or services, or as a condition of entering into an
17 agreement or transaction, that a consumer must:

18 (a) purchase any other particular goods or services from that
19 undertaking;

20 (b) enter into an additional agreement or transaction with the same
21 undertaking or a designated third party; or

22 (c) agree to purchase any particular goods or services from a
23 designated third party,

24 unless the undertaking can demonstrate that the convenience to the consumer
25 in having those goods or services bundled outweighs the limitation of the
26 consumer's right to choice, or that the bundling of those goods or services
27 results in economic benefit for the consumer.

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

28 121. -(1) A consumer shall have the right to cancel any advance
29 booking, reservation or order for any goods or services, subject to a reasonable

1 charge for cancellation of the order or reservation by the supplier or services
2 provider.

3 (2) For the purposes of this section, a charge is unreasonable if it
4 exceeds a fair amount in the circumstances, having regard to:

5 (i) the nature of the goods or services that were reserved, booked or
6 ordered;

7 (ii) the length of notice of cancellation provided by the consumer;

8 (iii) the reasonable potential for the supplier or service provider,
9 acting diligently, to find an alternative consumer between the time of
10 receiving the cancellation notice, and the time of the cancelled reservation,
11 booking or order; and

12 (iv) the general practice of the relevant industry.

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

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

23 (b) Where goods are displayed in or sold from open stock, a
24 consumer has the right to select or reject any particular item from that stock
25 before completing the transaction.

26 (c) Where a consumer has agreed to purchase goods solely on the
27 basis of a description or sample, or both, provided by the supplier, the goods
28 delivered to the consumer must in all material respects and characteristics
29 correspond to that which an ordinary alert consumer would have been
30 entitled to expect based on the description, or on a reasonable examination

Consumer's
right to choose
or examine goods

1 of the sample, as the case may be.

2 (d) Where the supply of goods is by sample, as well as by description,
3 it is not sufficient that any of the goods correspond with the sample, if the goods
4 do not also correspond with the description.

Consumer's right
to return goods

5 123. In addition to the consumer's right to return unsafe or defective
6 goods under any law or enactment, the consumer may return goods to the
7 supplier and receive a full refund of any consideration paid for those goods, if
8 the supplier has delivered:

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

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

General standards
for the marketing
of goods and
services

17 124. -(1) A producer, importer, distributor, retailer, trader or service
18 provider shall not, in pursuance of trade and for the purpose of promoting or
19 marketing, directly or indirectly, goods or services:

20 (a) make any representation to a consumer:

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

23 (ii) that is reasonably misleading or likely to be misleading in any
24 material respect concerning those goods and services;

25 (iii) in a manner that is erroneous, fraudulent or deceptive in any way,
26 including in respect of:

27 (1) the nature, properties, advantages or uses of the goods or services;

28 (2) the manner in, or conditions on, which those goods or services
29 may be supplied;

30 (3) the price at which the goods or services may be supplied, or the

1 existence of, or relationship of the price to, any previous price, or
2 competitor's price for comparable or similar goods or services; or

3 (4) the sponsoring of any event; or

4 (5) any other material aspect of the goods or services;

5 (iv) in the form of a statement, warranty or guarantee of
6 performance, efficacy or length of life of products that is not based on an
7 adequate and proper test of the goods or services, the proof of which lies on
8 the person making the representation;

9 (v) in a form that purports to be a warranty or a guarantee of any
10 goods or services, or a promise to replace, maintain or repeat an article or
11 any part thereof or to repeat or continue service until it has achieved a
12 specified result, if the form of purported warranty, guarantee or promise is
13 materially misleading or there is no reasonable prospect that it will be
14 carried out;

15 (b) falsely represent to the public in the form of a statement,
16 warranty or guarantee that services are of a particular kind, standard, quality
17 or quantity, or are supplied by any particular undertaking or any undertaking
18 of a particular trade, qualification or skill;

19 (c) make a materially misleading representation to the public
20 concerning the price at which particular goods or services or like goods or
21 services have been, are or will be ordinarily supplied.

22 (2) For the purposes of this Act, the following types of
23 representations shall be deemed to be made to the public by and only by the
24 undertaking who caused it to be expressed, made or contained, that is to say,
25 a representation that is:

26 (a) expressed on goods or services offered or displayed for sale;

27 (b) expressed on anything attached to, inserted in or accompanying
28 goods offered or displayed for sale, their wrapper or container, or anything
29 on which the goods are mounted for display or sale;

1 (c) expressed on a display in the place where the goods or services are
2 sold;

3 (d) made in the course of selling goods or services to the ultimate
4 consumer;

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

7 (3) Where the undertaking referred to in subsection (2) of this section
8 is outside of Nigeria, the representation shall be deemed to be made.

9 (a) in a case described in paragraphs (a), (b) or (e) of subsection (2) of
10 this section, by the undertaking that imported the goods or services; and

11 (b) in the case described in paragraph (c) of subsection (2) of this
12 section, by the undertaking that imported the display into Nigeria.

Right to fair
dealings

13 **125.-(1)** An undertaking or any person acting on its behalf shall not
14 use physical force, coercion, undue influence or pressure, harassment, unfair
15 tactics or any other similar conduct against any person in connection with:

16 (i) marketing of any goods or services;

17 (ii) supply of goods or services to a consumer;

18 (iii) negotiation, conclusion, execution or enforcement of an
19 agreement to supply any goods or services to a consumer;

20 (iv) demand for, or collection of, payment for goods or services by a
21 consumer; or

22 (v) the conduct of a legitimate business transaction.

23 (2) In addition to any conduct contemplated in subsection (1) of this
24 section, it shall be unlawful for an undertaking or any person acting on its
25 behalf knowingly to take advantage of the fact that a potential consumer was
26 substantially unable to protect the consumer's own interests because of
27 physical or mental disability, illiteracy, ignorance, inability to understand the
28 language of an agreement, or any other similar factor.

False, misleading
or deceptive
representation

29 **126. -(1)** Where in the marketing of any goods or services an
30 undertaking or any person acting on its behalf by words or conduct:

1 (a) directly or indirectly expresses or implies a false, misleading or
2 deceptive representation concerning a material fact to a consumer or
3 prospective consumer; or

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

9 (2) A person acting on behalf of a supplier of any goods or services
10 must not:

11 (a) falsely represent that the person has any sponsorship, approval
12 or affiliation; or

13 (b) engage in any conduct that the supplier is prohibited from
14 engaging in under subsection (1) of this section.

15 **127. -(1)** An undertaking shall not, for the purpose of promoting,
16 directly or indirectly, the supply or use of any goods or services or any
17 business interest, make a representation to the public that a test as to the
18 performance, efficacy or length of life of the goods or services has been
19 made by any person or publish a testimonial with respect to the products,
20 unless it can establish the matters specified in subsection (2) of this section.

Representation
test and publication
testimonials

21 (2) The matters referred to in subsection (1) of this section are:

22 (a) that the representation or testimonial was previously made or
23 published by the person by whom the test was made or the testimonial was
24 given, as the case may be; or

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

Unfair,
unreasonable or
unjust contract
terms

1 made, published or approved.

2 **128.-(1) An undertaking shall not:**

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

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

9 (c) require a consumer, or other person to whom any goods or services
10 are supplied at the direction of the consumer, to waive any rights, assume any
11 obligation, or waive any liability of the undertaking, on terms that are unfair,
12 unreasonable or unjust, or impose any such terms as a condition of entering into
13 a transaction.

14 (2) Without limiting the generality of the provision of subsection (1)
15 of this section, a transaction or agreement, a term or condition of a transaction
16 or agreement, or a notice to which a term or condition is purportedly subject, is
17 unfair, unreasonable or unjust if:

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

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

22 (c) the consumer relied upon a false, misleading or deceptive
23 representation or a statement of opinion provided by or on behalf of the
24 undertaking that supplied the goods or services concerned, to the detriment of
25 the consumer; or

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

Notice required
for certain terms
and conditions

28 **129. Any notice to consumers or potential consumers, or provision of**
29 a consumer agreement, which purports to:

30 (a) limit in any way the risk or liability of an undertaking supplying

1 goods or services or any other person;
2 (b) constitute an assumption of risk or liability by the consumer,
3 (c) impose an obligation on the consumer to indemnify an
4 undertaking supplying goods or services or any other person for any cause;
5 (d) be an acknowledgement of any fact by the consumer,
6 must be drawn to the attention of the consumer in a conspicuous manner and
7 form that is likely to attract the attention of an ordinarily alert consumer
8 having regard to the circumstances. Before the consumer enters into the
9 transaction, or is required or expected to offer consideration for the
10 transaction or agreement, the consumer shall be given adequate opportunity
11 in the circumstances to receive and comprehend the provision or notice.

12 130. -(1) An undertaking shall not make a transaction or agreement
13 subject to any term or condition if:

Prohibited
transactions,
agreements, terms
or conditions

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

17 (b) it directly or indirectly purports to waive or deprive a consumer
18 of a right to return defective goods or any right set out in this Act, avoid the
19 undertaking's obligation or duty in terms of this Act, set aside or override the
20 effect of any provision of this Act; authorize the undertaking to do anything
21 that is unlawful in terms of this Act, or fail to do anything that is required
22 under this Act;

23 (c) it purports to limit or exempt the undertaking from liability for
24 any loss directly or indirectly attributable to the gross negligence of the
25 undertaking or any person acting for or controlled by the undertaking; or
26 constitute an assumption of risk or liability by a consumer for the said loss;
27 or impose an obligation on a consumer to pay for damage to, or otherwise
28 assume the risk of handling any goods displayed by the supplier;

29 (d) it falsely expresses an acknowledgement by the consumer that
30 before an agreement was made, no representations or warranties were made

1 in connection with the agreement by the undertaking or a person acting on
2 behalf of the undertaking; or the consumer has received goods or services, or a
3 document that is required by this Act to be delivered to the consumer; and

4 (e) it expresses an agreement by the consumer to deposit with the
5 undertaking, or with any other person at the direction of the undertaking, an
6 identity document, credit or debit card, bank account or automatic teller
7 machine access card, or any similar identifying document or device; or provide
8 a personal identification code or number to be used to access an account.

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

Rights pertaining
to the quality and
safety of goods
and services

13 131.-(1) When an undertaking agrees to perform any services for or
14 on behalf of a consumer, the consumer has a right to:

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

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

19 (c) the use, delivery or installation of goods that are free of defects and
20 of a quality that persons are generally entitled to expect, if any such goods are
21 required for performance of the services; and

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

28 (2) Where an undertaking fails to perform a service to the standards
29 contemplated in subsection (1) of this subsection, the consumer may require
30 the undertaking to either:

1 (i) remedy any defect in the quality of the services performed or
2 goods supplied; or

3 (ii) refund to the consumer a reasonable portion of the price paid
4 for the services performed and goods supplied, having regard to the extent of
5 the failure.

6 **132.** -(1) Every consumer has a right to receive goods that:

7 (a) are reasonably suitable for the purposes for which they are
8 generally intended;

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

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

13 (d) comply with any applicable standards set by industry sector
14 regulators.

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

23 **133.** -(1) In any transaction or agreement pertaining to the supply
24 of goods to a consumer there is an implied warranty that the goods comply
25 with the requirements and standards contemplated in subsections (1) and
26 (2) of section 132 of this Act.

27 (2) Within three months after the delivery of any goods to a
28 consumer, the consumer may return the goods to the undertaking that
29 supplied those goods, without penalty and at the undertaking's risk and
30 expense, if the goods fail to satisfy the requirements and standards

Consumer's
rights to safe,
good quality
goods

Implied warranty
of quality

1 contemplated in subsection (1) of section 132 of this Act and the undertaking
2 must either repair or replace the failed, unsafe or defective goods or refund to
3 the consumer the price paid by the consumer for the goods.

Safety monitoring
and recall

4 134.-(1) The Commission shall promote the development, adoption
5 and application of industry-wide codes of practice providing for effective and
6 efficient systems to:

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

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

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

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

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

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

1 PART XVI -DUTIES OF MANUFACTURERS, IMPORTERS, DISTRIBUTORS
2 AND SUPPLIERS OF GOODS AND SERVICES

3 **135.** A manufacturer, importer or distributor of goods shall label or
4 describe the goods in a manner that will be easily traceable to the
5 manufacturer, importer or distributor. Duty to label
goods properly

6 **136.** -(1) Upon becoming aware of any unforeseen hazard arising
7 from the use of goods already placed on the market, the manufacturer or
8 distributor of such goods shall notify the general public immediately of such
9 risk or danger and cause such goods to be withdrawn from the market. Duty to withdraw
hazardous goods
from the market

10 (2) An undertaking that violates the provisions of section 135 of
11 this Act or subsection (1) this section commits an offence and:

12 (a) where the undertaking is a natural person, is liable on
13 conviction to imprisonment for a term not exceeding three years or to
14 payment of a fine not exceeding Ten Million Naira or to both fine and
15 imprisonment; and

16 (b) where the undertaking is a body corporate, is liable on
17 conviction to a fine not exceeding ten per cent of its turnover in the
18 preceding business year;

19 (3) In the case of a body corporate referred to in paragraph (b) of
20 subsection (2) of this section, each director of the body corporate is liable to
21 be proceeded against and on conviction dealt with as specified in paragraph
22 (a) of subsection (2) this subsection.

23 (1) Where a consumer suffers loss or injury by the violation of any
24 person of provisions of section 135 of this Act or subsection (1) of this
25 section, the consumer shall have a right to be awarded compensation by the
26 Commission.

27 **137.** -(1) Where any damage is caused wholly or partly by
28 defective goods or the supply of a service, the undertaking that supplied the
29 goods or service shall be liable for the damage. Liability for
defective goods

30 (2) For the purpose of this Act, damage includes personal injury

1 and damage to the consumer's property.

2 (3) An undertaking that supplied the defective goods or service shall
3 be liable whether or not the user or consumer bought the goods or service from
4 or entered into any contractual agreement with the undertaking.

5 (4) A person affected by the defective goods or service has with the
6 right to sue under this section.

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

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

9 **138.**-(1) In the case of goods of a type ordinarily supplied for private
10 use or consumption, where loss or damage arises from the goods proving
11 defective while in consumer use or results from the negligence of an undertaking
12 concerned in the manufacture or distribution of the goods, liability for the loss or
13 damage cannot be excluded or restricted by reference to any contract term or
14 notice contained in or operating by reference to a guarantee of the goods.

15 (2) For the purpose of this section:

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

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

Liability for
breach of implied
obligations by
law

23 **139.**-(1) Liability for breach of the obligations arising from a seller's
24 implied undertaking as to title not be excluded or restricted by reference to any
25 contract term.

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

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

1 liability specified in subsection (2) of this section may be excluded or
2 restricted by reference to a contract term only in so far as the term satisfies
3 the requirement of reasonableness.

4 **140.**-(1) Where the possession or ownership of goods pass under or
5 in pursuance of a contract, subsections (2), (3) and (4) of this section apply
6 as regards the effect, if any, to be given to contract terms excluding or
7 restricting liability for breach of obligation arising by implication of law
8 from the nature of the contract.

Miscellaneous
contracts under
which goods pass

9 (2) As against a person dealing as a consumer, liability in respect of
10 the goods' correspondence with description or sample or quality or fitness
11 for any particular purpose shall not be excluded or restricted by reference to
12 any contract term.

13 (3) As against a person dealing otherwise than as a consumer,
14 liability may be excluded or restricted by reference to a contract term only in
15 so far as the term satisfies the requirement of reasonableness.

16 (4) Liability in respect of:

17 (a) the right to transfer ownership of the goods or give possession;

18 (b) the assurance of quiet possession to a person taking goods
19 pursuant to a contract,

20 shall not be excluded or restricted by reference to any contract term, except
21 in so far as the term satisfies the requirement of reasonableness.

22 **141.** Where a contract contains a term which excludes or restricts
23 any liability to which a part of a contract may be subject by reason of any
24 misrepresentation made before the contract was made, or any remedy
25 available to another party to the contract by reason of such a
26 misrepresentation, that term shall have no effect.

Liability for
misrepresentation

27 **142.**-(1) A person is not bound by any contract term prejudicing or
28 taking away the person's rights arising under, or in connection with, the
29 performance of another contract, so far as those rights extend to the
30 enforcement of another's liability which this Act prevents that other from

Evasion by means
of secondary
contract

1 excluding or restricting.

2 (2) This Act prevents:

3 (a) the exclusion or restriction of any liability;

4 (b) making any liability or its enforcement subject to restrictive or
5 onerous conditions;

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

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

10 (3) An agreement in writing to submit present or future differences to
11 arbitration is not to be treated under this Act as excluding or restricting any
12 liability.

Supply of
services

13 **143. -(1) A contract is a contract for the supply of a service for the**
14 **purposes of this Act whether or not goods are also transferred or to be**
15 **transferred, or bailed or to be bailed by way of hire, under the contract and**
16 **whatever is the nature of the consideration for which the service is to be carried**
17 **out.**

18 (2) For the purposes of this Act, a contract for apprenticeship is not a
19 contract for the supply of a service.

20 (3) In a contract for the supply of a service where the supplier is acting
21 in the course of a business, there is an implied term that the supplier will carry
22 out the service with reasonable care and skill.

Implied term
about time for
execution of
contract

23 **144. Where under a contract for the supply of a service by a supplier**
24 **acting in the course of a business, the time for the service to be carried out is not**
25 **fixed by the contract, left to be fixed in a manner agreed by the contract or**
26 **determined by the course of dealing between the parties, it is implied that the**
27 **supplier will carry out the service within a reasonable time.**

Exclusion of
implied terms

28 **145. -(a) Where a right, duty or liability would arise under a contract**
29 **for the supply of a service, it may be negated or varied by express agreement or**
30 **by the course of dealing between the parties or by such usage as binds both**

1 parties to the contract provided that an express term does not negate a term
2 implied by this section unless inconsistent with it.

3 (b) A supplier of service shall not, where dealing with a consumer,
4 exclude or restrict its liability for breach of any term implied under sections
5 143 (3) and 144 of this Act.

6 (c) Nothing in this section shall prejudice any rule of law which
7 imposes on the supplier a duty stricter than that imposed by sections 143 and
8 144 of this Act.

9 **146.** Where it is alleged that goods or services are defective, the **Onus of proof**
10 onus of proof shall lie on the undertaking that supplied the goods or services.

11 **PART XVII - ENFORCEMENT OF CONSUMERS' RIGHTS**

12 **147.** A consumer may seek to enforce any right under this Act, a **Enforcement of**
13 transaction or agreement, or otherwise resolve any dispute with an **rights by a**
14 undertaking that supplied goods or services to the consumer by: **consumer**

15 (a) referring the matter directly to the undertaking that supplied the
16 goods or services;

17 (b) referring the matter to the applicable industry sector regulator
18 with jurisdiction, if the undertaking is subject to the jurisdiction of any such
19 sector regulator;

20 (c) filing a complaint directly with the Commission; or

21 (d) approaching a court with jurisdiction over the matter.

22 **148.** Where an industry sector regulator concludes that there is no **Conclusion by**
23 reasonable probability of the parties resolving their dispute through the **industry sector**
24 process provided for in the relevant industry code, the industry sector **regulator**
25 regulator may terminate the process by notice to the parties and the party
26 who referred the matter to the industry sector regulator may then file a
27 complaint with the Commission.

28 **149.-(1)** A consumer shall file a complaint with the Commission in **Enforcement of**
29 the prescribed manner and form, alleging that an undertaking has acted in a **rights by the**
30 manner inconsistent with the provisions of this Act. **Commission**

1 prescribed form to an undertaking or association of undertakings whom the
2 Commission on reasonable grounds believes has engaged in prohibited
3 conduct provided that before issuing a notice to a member of a regulated
4 industry, the Commission shall consult with the industry sector regulator
5 that issued a licence to that regulated entity.

6 (2) A compliance notice shall set out:

7 (a) the undertaking or association of undertakings to whom the
8 notice applies;

9 (b) the provisions of this Act that have not been complied with;

10 (c) details of the nature and extent of the non-compliance;

11 (d) any steps that are required to be taken and the period within
12 which those steps must be taken; and

13 (e) the penalty that may be imposed under this Act if those steps are
14 not taken.

15 (3) A compliance notice issued pursuant to the provisions of this
16 section remains in force until it is set aside by a court, or until the
17 Commission issues a compliance certificate upon being satisfied that there
18 has been sufficient compliance with the compliance notice.

19 (4) If an undertaking or association of undertakings to whom a
20 compliance notice has been issued fails to comply with the notice, the
21 Commission shall:

22 (a) shut down or close any premises from which the notice
23 continues to be breached until the breach or non-compliance is remedied;

24 (b) impose the appropriate administrative fine; or

25 (c) refer the matter to a court of competent jurisdiction for
26 prosecution.

27 152.-(1) The Commission may collaborate with, facilitate, or
28 otherwise support any of the following activities carried out by a consumer
29 protection group:

30 (a) consumer advice and education activities and publications;

Redress by civil
society groups

- 1 (b) research, market monitoring, surveillance and reporting;
- 2 (c) promotion of consumers' rights and advocacy of consumers'
- 3 interests;
- 4 (d) representation of consumers, either specifically or generally, in
- 5 court;
- 6 (c) alternative dispute resolution through mediation or conciliation;
- 7 (f) participation in national and international associations,
- 8 conferences or forums concerned with consumer protection matters.
- 9 (2) An accredited consumer protection group may:
- 10 (a) commence or undertake any act to protect the interests of a
- 11 consumer individually, or of consumers collectively, in any matter or before
- 12 any forum contemplated in this Act; and
- 13 (b) intervene in any matter before any forum contemplated in this Act,
- 14 if the interests of consumers represented by that group are not otherwise
- 15 adequately represented in that forum.
- 16 (3) In addition to any other authority set out in this Act, an accredited
- 17 consumer protection group may direct a generally stated concern or complaint
- 18 to the Commission in respect of any matter within the purpose of this Act.
- 19 (4) The Commission may accredit a consumer protection group if that
- 20 group:
- 21 (a) functions predominantly to promote or represent the interests of
- 22 all or a specific category of consumers generally;
- 23 (b) is committed to achieving the purposes of this Act; and
- 24 (c) engages in, or makes a realistic proposal to engage in, actions to
- 25 promote and advance the consumers' interests.
- 26 (5) The Commission may impose reasonable conditions for the
- 27 accreditation of a consumer protection group to provide the objectives of this
- 28 Act and shall monitor the effectiveness of any such accredited consumer
- 29 protection group and may reasonably require any accredited consumer
- 30 protection group to provide information necessary for monitoring purposes.

1 **153.** Where upon an investigation by the Commission of a Redress by the
2 complaint by a consumer, it is proved that: court

3 (a) the consumer's right has been violated, or

4 (b) that a wrong has been committed by the way of trade, provision
5 of services, supply of information or advertisement thereby causing injury
6 or loss to the consumer,

7 the consumer shall in addition to the redress which the Commission may
8 impose, have a right of civil action for compensation or restitution in a court
9 of competent jurisdiction.

10 **154.-(1)** Where it appears to the Commission that an undertaking Power to obtain
11 has in the course of business persisted in a course of conduct which is satisfactory
12 detrimental to the interests of consumers, the Commission shall use its best written assurance
13 endeavors to obtain from the undertaking concerned a satisfactory written
14 assurance that it will refrain from a continuation of that course of conduct.

15 (2) Where the Commission is unable to obtain from the
16 undertaking in question the assurance referred to in subsection (1) of this
17 section, or if that undertaking has given such assurance and it appears to the
18 Commission or the States office that the undertaking has failed to observe
19 the assurance, the Commission shall cause proceedings to be commenced
20 against such undertaking in a court of competent jurisdiction to refrain the
21 undertaking from continuing that course of conduct.

22 (3) The Commission shall have power to order a temporary closure
23 of any premises or facilities reasonably believed to be carrying on in a
24 manner detrimental to the interest of consumers until the Commission is
25 satisfied otherwise or pending the commencement of action.

26 **155.-(1)** A court by or before which an undertaking is convicted of Compensation
27 an offence under this Act may in addition to dealing with such undertaking order
28 in any other way make an order requiring the undertaking to pay
29 compensation for any personal injury, loss or damage resulting from that
30 offence of such amount as it may deem fit or as assessed by competent

1 professional authority.

2 (2) In determining whether to make a compensation order against any
3 undertaking, and in determining the amount to be paid by any undertaking
4 under such an order, the court shall have regard to the means of the undertaking
5 in so far as they appear or are known to the court.

Contravention
of consumer
rights

6 156. Except where otherwise provided for in this Act, any person who
7 contravenes any consumer rights commits an offence under this Act; and

8 (a) in the case of a natural person, liable on conviction to
9 imprisonment for a term not exceeding five years, or to payment of fine not
10 exceeding ten million Naira or to both fine and imprisonment;

11 (b) in the case of a body corporate, liable on conviction to a fine of not
12 less than One Hundred Million Naira or ten per cent of its turnover in the
13 preceding business year, whichever is higher; and

14 (c) in the case of a body corporate referred to in paragraph (b) of this
15 section, each director of the body corporate is liable to be proceeded against
16 and dealt with as specified in paragraph (a) of this section.

17 PART XVIII -MISCELLANEOUS PROVISIONS

Limitation of
suits against
the Commission
and the Tribunal

18 157.-(1) Subject to the provisions of this Act, the provisions of the
19 Public Officers Protection Act shall apply in relation to any suit instituted
20 against any member or employee of the Commission or the Tribunal.

21 (2) Further to the provisions of subsection (1) of this section, no suit
22 shall lie or be instituted in any court against any member of the Commission,
23 the Secretary or any other officer or employee of the Commission or the
24 Chairman, members, staff, officers or employees of the Tribunal for any act
25 done in pursuance or execution of the provisions of this Act or any other
26 enactment or law, or of any public duty or authority in respect of any alleged
27 neglect or default in the execution of the provision of this Act or such
28 enactment or law, duty or authority unless:

29 (a) it is commenced within three months next after the act, neglect or
30 default complained of; or

1 (b) in the case of a continuation of damage or injury, within six
2 months next after the cessation thereof.

3 (3) No suit shall be commenced against any member of the
4 Commission, the Secretary or any other officer or employee of the
5 Commission or the Chairman, members, staff, officers or employees of the
6 Tribunal before the expiration of a period of thirty days after written notice
7 of intention to commence suit shall have been served upon the Commission
8 or Tribunal by the intending plaintiff, or the agent or other lawful
9 representative of the plaintiff.

10 (4) The notice referred to in subsection (3) of this section shall
11 clearly and explicitly state, the:

- 12 (a) cause of action;
13 (b) particulars of the claim;
14 (c) name and address of the intending plaintiff; and
15 (d) relief sought by the plaintiff.

16 **158.** -(1) Any notice given by the Commission under or for the
17 purpose of this Act shall be:

Issuance of
Notices by or
on behalf of
Commission

18 (a) given in writing, under the seal of the Commission signed by the
19 Executive Chairman, or by one or more of the members of the Commission,
20 or by any person purporting to act under the direction of the Commission;
21 and

22 (b) served in accordance with section 159 of this Act on the person
23 or persons primarily concerned therewith or on any person or persons
24 deemed by the Commission to represent the person or persons primarily
25 concerned therewith.

26 (2) All documents purporting to be signed by or on behalf of the
27 Commission or to be sealed with the seal of the Commission shall, in all
28 courts and in all proceedings under this Act, be deemed to have been so
29 signed or sealed with due authority unless the contrary is established.

30 **159.** -(1) Any notice or other document required or authorized to be

Services of
notices

1 served on or given to any person for the purpose of this Act may be served or
2 given by delivering it to that person, or by leaving it at that persons usual or
3 last known place of residence or business or at the address specified by that
4 person in any notice, application, or other document made, given or tendered
5 to the Commission under this Act, or by posting it by registered mail to the
6 person at that place of residence or business or at that address.

7 (2) Where any notice or other document is sent to a person by
8 registered mail, then, unless the contrary is shown, it shall be deemed to have
9 been delivered to the person when it would have been delivered in the
10 ordinary course of posting a mail, unless the contrary is established.

11 (3) In proving the delivery contemplated under subsection (2) of
12 this section, it shall be sufficient to prove that there is return post office slip
13 showing actual delivery.

14 (4) Where, for any purpose under this Act, a notice or document is
15 required to be served on an undertaking, the notice or document may be
16 served on the secretary, executive officer, manager, or other officer holding a
17 similar position in the undertaking and for the purpose of this Act, service on
18 an association or body shall, unless otherwise directed by the Commission,
19 be deemed to be service on all persons or undertakings who are members of
20 the association or body or who are represented on the association or body by
21 those members.

Offences under
this Part

22 **160. -(1) Subject to the provisions of this Act, a person shall not:**

23 (a) without reasonable excuse, refuse or fail to comply with a notice
24 issued under section 158 and section 159 of this Act;

25 (b) in purported compliance with such a notice, furnish
26 information, or produce a document, or give evidence, knowing it to be false
27 or misleading; or

28 (c) resist, obstruct, or delay an employee of the Commission acting
29 pursuant to a warrant issued under subsection (3) of section 30 of this Act.

30 (2) A person shall not attempt to deceive or knowingly mislead the

1 Commission in relation to any matter before it.

2 (3) A person, having been required to appear before the
3 Commission pursuant to the provision of subsection (2) of section 29 of this
4 Act, shall not without reasonable excuse refuse:

5 (a) or fail to appear before the Commission to give evidence;

6 (b) to take an oath or make an affirmation as a witness; or

7 (c) to produce to the Commission any book or document that
8 required to be produced by the Commission.

9 (4) Subject to the provision of subsection (3) of this section, a
10 person who violates any of the provisions of this section commits an offence
11 and is liable on summary conviction:

12 (a) in the case of an natural person, to a fine not exceeding one
13 million Naira or to a term of imprisonment not exceeding three months, or to
14 both fine and imprisonment; and

15 (b) in the case of a body corporate, to a fine not exceeding Ten
16 Million Naira.

17 **161. -(1) Any finding or decision given by the Commission under**
18 **or for the purpose of this Act shall be sufficiently given if in writing under**
19 **the seal of the Commission or if signed by one or more members of the**
20 **Commission or by an officer or employee of the Commission authorized for**
21 **that purpose.**

Decisions of the
Commission to
be in writing

22 (2) A copy of a finding or decision of the Commission, certified to
23 be a true copy by an officer or employee of the Commission authorized in
24 that behalf to certify copies of determinations or decisions of the
25 Commission shall be received in all courts as evidence of the determination
26 or decision.

27 (3) A document purporting to be a copy of a determination or
28 decision of the Commission and certified to be a true copy in accordance
29 with subsection (2) of this section shall, unless the contrary is established, be
30 deemed to be such a copy and to be so certified.

Delegation by
the Commission

1 **162.** -(1) The Commission may delegate any of its powers subject to
2 such conditions and restrictions as it may think fit, and the delegation may be
3 made either generally or in relation to any particular matter or class of matters.

4 (2) A person to whom the Commission delegates its power shall be
5 either a member or an officer of the Commission.

6 (3) Subject to any general or special directions given or conditions or
7 restrictions imposed by the Commission, any person to whom any power or
8 function is delegated may exercise the power or function in the same manner
9 and with the same effect as if it had been conferred directly by this Act.

10 (4) Any person purporting to act pursuant to any delegation pursuant
11 to this section shall be presumed to be acting in accordance with the terms of
12 the delegation, in the absence of proof to the contrary.

13 (5) Delegation of any power or function pursuant to this section shall
14 not prevent the exercise of that power or function by the Commission.

15 (6) Until it is revoked or amended, every delegation shall continue in
16 force according to its terms.

Civil or criminal
proceedings in
respect of any of
the Commission

17 **163.** -(1) No proceedings, civil or criminal, shall lie against the
18 Commission for anything it may do or fail to do in the course of the exercise or
19 intended exercise of its functions, unless it is shown that the Commission acted
20 without reasonable care or in bad faith.

21 (2) No civil proceedings shall lie against any member of the
22 Commission, or any officer or employee of the Commission, for anything that
23 member, officer or employee may do or say or fail to do or say in the course of
24 carrying out of the functions of the Commission, unless it is shown that the
25 person acted without reasonable care or in bad faith.

26 (3) A person shall not be excused from:

27 (a) complying with any requirement to furnish information, produce
28 documents, or give evidence under this Act;

29 (b) appearing before the Commission;

30 (c) answering any question or producing any document, on the

1 ground that to do so might tend to incriminate that person or another person.

2 (4) Except as may be required under any law, rule or regulation, no
3 court or person shall be entitled to require any member of the Commission,
4 or any officer or employee of the Commission or any other person present at
5 any meeting of the Commission, to divulge or communicate any
6 information furnished or obtained, documents produced, obtained or
7 tendered, or evidence given, in connection with the functions of the
8 Commission.

9 (5) Anything said, or any information furnished, or any document
10 produced or tendered, or any evidence given by any person to the
11 Commission shall be privileged in the same manner as if that statement,
12 information, document, or evidence were made, furnished, produced, or
13 given in proceedings in a court.

14 **164. -(1)** The Commission may make regulations and issue
15 guidelines and notices for the effective implementation and operation of the
16 provisions of this Act, and in particular, prescribing:

Power to make
regulations

17 (a) the procedures to be followed under this Act with regard to
18 applications, notices to and proceedings of the Commission;

19 (b) the forms of applications and related documents required for
20 the purposes of this Act;

21 (c) fees, administrative penalties, charges or levies and such other
22 related matters; and

23 (d) how information required can be obtained or access to
24 confidential information.

25 (2) The regulations, guidelines and notices referred to in
26 subsection (1) of this section may include procedural and enforcement rules,
27 and regulations or guidelines:

28 (a) for the application of Part VIII of this Act prohibiting restrictive
29 agreements;

30 (b) for the application of Part IX of this Act prohibiting abuse of a

1 dominant position;
2 (c) on monopoly investigations under Part X of this Act;
3 (d) on the assessment of Mergers under Part XII of this Act;
4 (e) on the consumer protection regulation under Parts XV-XVII of
5 this Act;
6 (f) on market definition;
7 (g) on leniency programme; and
8 (h) any other regulations, guidelines and notices as may be needed for
9 the implementation of this Act.

Application of
other enactments

10 165. The provisions of any other enactment, including the Investment
11 and Securities Act, No. 29 of 2007 Laws of the Federation of Nigeria,
12 regulations or subsidiary laws in force relating to or connected with the subject
13 matter of this Act shall be read with such modifications as are necessary to
14 bring them in conformity with the provisions of this Act.

Repeals and
savings

15 166.-(1) The Consumer Protection Council Act, CAP C25, Laws of
16 the Federation of Nigeria, 2004 is repealed.

17 (2) Without prejudice to section 6 of the Interpretation Act, the repeal
18 of the Act specified in subsection (1) of this section, shall not affect anything
19 done under or pursuant to the Act.

20 (3) There shall be vested in the Commission established under section
21 3 of this Act and without further assurance other than this Act, all assets, funds,
22 resources and other immovable properties which before the commencement of
23 this Act were vested in the Consumer Protection Council established under the
24 repealed enactment.

25 (4) All rights, interest, obligations and liabilities of the Consumer
26 Protection Council under the repealed enactment in place before the
27 commencement of this Act under any contract or instrument, or in law or equity
28 shall by virtue to this Act be assigned to and vested in the Commission
29 established under this Act.

30 (5) Any contract or instrument referred to in subsection (4) of this

1 section shall be of the same force and effect against or in favour of the
2 Commission established under this Act and shall be enforceable as fully and
3 effectively as if, instead of the Consumer Protection Council under the
4 repealed enactment, the Commission established under this Act had been
5 named or had been a party.

6 (6) The Commission established under this Act shall be subject to
7 all obligations and liabilities to which the Consumer Protection Council
8 under the repealed enactment was subject to before the commencement of
9 this Act.

10 (7) Any proceeding or course of action pending or existing before
11 the commencement of this Act against the Consumer Protection Council
12 under the repealed enactment in respect of any right, interest, obligation or
13 liability of the Consumer Protection Council under the repealed enactment
14 may be continued, or as the case may require, be commenced and the
15 determination of any court of law or other authority or person may be
16 enforced by or against the Commission established by this Act to the same
17 extent that such course of action or determination might have continued, or
18 enforced by or against the Consumer Protection Council under the repealed
19 enactment.

20 (8) Any regulation, order, by-law or notice made or issued or
21 deemed to be made or issued by, or for the purposes, of the Consumer
22 Protection Council under the repealed enactment existing before the
23 commencement of this Act shall be deemed to have been made or issued by
24 or for the purposes of the Commission established under this Act and shall
25 continue in force until revoked or amended, subject to such modifications as
26 may be applicable to the 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
29 Consumer Protection Council shall be continued and completed by the
30 Commission established under this Act.

Transitional
Provisions

1 **168.**-(1) Subject to the provisions of this Act, all employees and staff
2 of the Consumer Protection Council are deemed to have transferred to the
3 Commission established under this Act.

4 (2) Subject to the provisions of this Act, the Director - General of the
5 Consumer Protection Council, established under the repealed Act is deemed to
6 have been transferred to the Commission established under this Act under the
7 same conditions as Director - General.

Consequential
amendment

8 **169.**-(1) Sections 118, 119, 120, 121, 122, 123, 124, 125, 126, 127 and
9 128 of the Investments and Securities Act, No 29 of 2007 are deleted.

10 (2) Without prejudice to section 6 of the Interpretation Act, the
11 consequential amendments of the Investments and Securities Act, No 29 of
12 2007 specified in subsection (1) of this section, shall not affect anything done
13 under or pursuant to the deleted sections.

Interpretation

14 **170.** -(1) In this Act, unless the context otherwise requires:

15 "acquiring undertaking" means an undertaking that:

16 (a) as a result of a merger within the meaning of section 93 of this Act
17 would directly or indirectly acquire, or establish, direct or indirect control over
18 the whole or part of the business of another undertaking; or

19 (b) as a result of a merger within the meaning of section 93 of this Act
20 has direct or indirect control over the whole or part of the business of an
21 undertaking referred to in paragraph (a);

22 "Act" means the Federal Competition and Consumer Protection Act, 2013;

23 "agent" means a person who is authorized to act for another person, ("the
24 principal") through employment or by contract, whether express or implied;

25 "agreement" includes a contract, arrangement, understanding, written or oral,
26 and concerted practice;

27 "authorized officer" means any person appointed as such by the Commission
28 for the purposes of implementation of the provisions of this Act;

29 "business" includes any activity that is carried on for gain or reward; or in the
30 course of which goods or services are acquired or supplied or any interest in

- 1 land is acquired or disposed of, otherwise than free of charge;
- 2 "business secret" means trade, business or industrial information that
3 belongs to a person which has a particular economic value and is not
4 generally available to or known by others;
- 5 "close corporation" means a corporation whose shares are not publicly
6 traded and are held by a limited number of persons;
- 7 "Code of Conduct" means a set of moral principles or rules of conduct or
8 behavior drawn up by the Commission for the Commission its employee
9 and a person acting through the authority of the Commission;
- 10 "company" includes any entity registered under the Nigeria Companies and
11 Allied Matters Act or the laws of any other country;
- 12 "complainant" means a person who initiates a complaint;
- 13 "Commission" means the Federal Competition and Consumer Protection
14 Commission established under section 3 of this Act and members of the
15 Commission means the Executive Chairman and the Commissioners of the
16 Commission;
- 17 "concerted practice" means a practice involving direct or indirect contacts
18 between competitors falling short of an actual agreement;
- 19 "consumer" includes:
- 20 (a) any person who purchases or offers to purchase goods
21 otherwise than for the purpose of resale but does not include a person who
22 purchases any goods for the purpose of using them in the production or
23 manufacture of any other goods or articles for sale; or
- 24 (b) any person to whom a service is rendered;
- 25 "Court" means the Federal High Court of Nigeria; "dealer" means a person
26 who buys goods or services for resale;
- 27 "document" means a document in any form, whether signed or otherwise
28 authenticated by its maker or not, and includes:
- 29 (a) any writing on any material;
- 30 (b) any information recorded or stored by means of any tape-

1 recorder, computer, or other device; and any material subsequently derived
2 from information so recorded or stored;

3 (c) any label, marking, or other writing that identifies or describes
4 anything of which it forms part, or to which it is attached by any means;

5 (d) any book, map, plan, graph, or drawing; and

6 (e) any photograph, film, negative, tape, or other device in which one
7 or more visual images are embodied so as to be capable (with or without the aid
8 of some other equipment) of being reproduced;

9 “enterprise” means any person involved in business;

10 “Executive Chairman” means the Executive Chairman of the Commission;

11 “Federal” refers to the Federal Republic of Nigeria;

12 “function” includes powers and duties;

13 “give effect to”, in relation to a provision of a contract, arrangement or
14 understanding, includes:

15 (a) doing an act in pursuance of or in accordance with that provision;

16 (b) enforce or purport to enforce that provision; “goods”:

17 (a) when used with respect to particular goods, includes any other
18 goods that are reasonably capable of being substituted for them, taking into
19 account ordinary commercial practice and geographical, technical and
20 temporal constraints;

21 (b) includes:

22 (i) ship, aircraft, and vehicles;

23 (ii) minerals, trees, and crops, whether on, under, or attached to land
24 or not;

25 (iii) gas and electricity; “government of the Federation” means the
26 Federal, States and any of the Local Governments of the Federation;

27 “Judge” means Judge of the Federal High Court; “merger” means a transaction
28 falling under the definition of section 93 of this Act;

29 “Minister” means, unless otherwise stated, the Minister responsible for trade
30 matters;

1 **“President” means the President and Commander-in-Chief of the Armed**
2 **Forces of the Federal Republic of Nigeria;**
3 **“person”, includes any natural or legal person, whether incorporated or not;**
4 **“prescribed” means prescribed by regulations under this Act or by the**
5 **Commission;**
6 **“price” includes any charge or fee or valuable consideration in any form,**
7 **whether direct or indirect; and includes any consideration that in effect**
8 **relates to the acquisition or supply of goods or services or the acquisition or**
9 **disposition of any interest in land although ostensibly relating to any other**
10 **matter or thing;**
11 **“principal” means a person who authorizes or empowers another person to**
12 **act as its representative or agent;**
13 **“products” includes goods or services; “Public Service Rules” means the**
14 **version of the Public Service Rules currently in force;**
15 **“respondent” means a person against whom a complaint is made;**
16 **“restrictive practices” means practices in restraint of trade or which**
17 **otherwise hinder competition;**
18 **“retailer” means a person who sells goods or services to consumers;**
19 **“repealed enactment” includes sections 118, 119, 120, 121, 122, 123, 124,**
20 **125, 126, 127 and 128 of the Investments and Securities Act, No 29 of 2007**
21 **(as amended) and the Consumer Protection Council Act, CAP C25 Laws of**
22 **the Federation of Nigeria, 2004 “service” includes:**
23 **(a) a service of any description, whether industrial, trade,**
24 **professional or other;**
25 **(b) the sale of goods, where the goods are sold in conjunction with**
26 **the rendering of a service;**
27 **“sale” includes advertisement for sale, display for sale, and offer for sale,**
28 **and “sell”, “selling”, and “sold” have corresponding meanings;**
29 **“share” means a share in the share capital of a company or other body**

1 corporate, whether or not it carries the right to vote at general meetings, and
2 includes;

3 (a) a beneficial interest in any such share;

4 (b) a power to exercise, or control the exercise of, a right to vote
5 attaching to any such share that carries the right to vote at meetings of the
6 company;

7 (c) a power to acquire or dispose of, or control the acquisition or
8 disposition of, any such share;

9 (d) a perpetual debenture and perpetual debenture stock; "State office"
10 means an official position, division or agency of a local, state or federal
11 government;

12 "supplier" means a person who supplies goods or services to another person;

13 "supply", in relation to goods, includes supply, or re-supply by way of gift, sale,
14 exchange, rent, lease, hire, or hire purchase; and in relation to services,
15 includes provide, grant, or confer and "supply" as a noun, and "supplied" have
16 corresponding meanings;

17 "target undertaking" means an undertaking, which:

18 (a) as a result of a merger within the meaning of section 93 of this Act,
19 the whole or part of whose business would be directly or indirectly controlled
20 by an acquiring undertaking; or

21 (b) as a result of a merger within the meaning of section 93 of this Act
22 would directly or indirectly transfer control of the whole or part of, its business
23 to an acquiring undertaking; "turnover" means the amount of money taken by
24 the business in a determined period;

25 "trade" includes any business, industry, profession, occupation,
26 activity of commerce or undertaking relating to the supply or acquisition of
27 goods or services or to the disposition or acquisition of any interest in land;

28 "Tribunal" means the Competition and Consumer Protection
29 Tribunal established under section 39 of this Act;

30 "undertaking" includes any person involved in the production of, or the trade

1 in, goods, or the provision of services.

2 (2) In this Act, a reference to "engaging in conduct" shall be read as
3 a reference to doing or refusing to do any act, including the entering into, or
4 the giving effect to a provision of, a contract or arrangement.

5 (3) In this Act:

6 (a) a reference to the "acquisition of goods" includes a reference to
7 the acquisition of property in, or rights in relation to, goods in pursuance of a
8 supply of the goods;

9 (b) a reference to "the supply or acquisition of goods or services"
10 includes a reference to agreeing to supply or acquire goods or services;

11 (c) a reference to "the supply or acquisition of goods" includes a
12 reference to the supply or acquisition of goods together with other property
13 or services or both;

14 (d) a reference to "the supply or acquisition of services" includes a
15 reference to the supply or acquisition of services together with property or
16 other services or both.

17 (4) For the purposes of this Act, any two undertakings or
18 associations of undertakings are to be treated as affiliated if:

19 (a) one of them is an undertaking of which the other is a subsidiary;
20 as such subsidiary is understood pursuant to the provisions of the
21 Companies and Allied Matters Act, CAP C20, Laws of the Federation of
22 Nigeria, 2004;

23 (b) both of them are subsidiaries (within the meaning of those
24 sections) of the same undertaking; or

25 (c) both of them are affiliated with undertakings that, in accordance
26 with paragraph (a) or paragraph (b) of this subsection, are affiliated;

27 (5) In this Act, "competition" means workable or effective
28 competition in relation to the supply and demand of goods or services in any
29 given market and unless the context otherwise requires, references to the
30 lessening of competition include references to the hindering or preventing

1 of competition.

2 (6) For the purposes of this Act, the effect on competition in a market
3 shall be determined by reference to all factors that affect competition in that
4 market, including competition from goods or services supplied or likely to be
5 supplied by undertakings not resident or not carrying on business in Nigeria.

6 (7) For the purposes of this Act:

7 (a) a provision of a contract or arrangement shall be deemed to have
8 had, or to have, a particular purpose if;

9 (i) the provision was or is included in the contract or arrangement or is
10 required to be given, for that purpose or purposes that included or include that
11 purpose; and

12 (ii) that purpose was or is a substantial purpose;

13 (b) a person shall be deemed to have engaged, or to engage, in conduct
14 for a particular purpose or a particular reason if that person engaged or engages
15 in that conduct for that purpose or reason or for purposes or reasons that
16 included or include that purpose or reason, and that purpose or reason was or is
17 a substantial purpose or reason.

18 (8) in this Act:

19 (a) a reference to a contract shall be construed as including a reference
20 to a lease of, or a license in respect of, any land or a building or part of a
21 building, and shall be so construed notwithstanding any express reference in
22 this Act to any such lease or license, but shall not mean a reference to the
23 memorandum of association or articles of association of a company;

24 (b) a reference to making or entering into a contract, in relation to such
25 a lease or license, shall be read as a reference to granting or taking the lease or
26 license;

27 (c) a reference to a party to a contract, in relation to such a lease or
28 license, shall be read as including a reference to any person bound by, or
29 entitled to the benefit of, any provision contained in the lease or license.

30 (9) For the purposes of this Act, any contract or arrangement entered

1 into by an association or body shall be deemed to have been entered into by
2 all the persons or undertakings who are members of the association or body.

3 (10) Nothing in subsection (9) of this section shall apply to:

4 (a) any member of an association or body who expressly notifies
5 the association or body in writing that he disassociates himself from the
6 contract, or arrangement or any provision thereof and who does so
7 disassociate himself;

8 (b) any member an association or body who establishes that he had
9 no knowledge and could not reasonably have been expected to have had
10 knowledge of the contract, arrangement, or understanding.

11 (11) In this Act, reference to:

12 (a) Federal Government means the Federal Government of the
13 Federal Republic of Nigeria;

14 (b) State Government means the Government of one or any of the
15 States that constitute the territories of the Federal Republic of Nigeria, as
16 recognized by the *Constitution of the Federal Republic of Nigeria, 1999 (as*
17 *altered)*; (a Local Government means the authority and the territories
18 relating to one or any of the local government recognized by the
19 *Constitution of the Federal Republic of Nigeria, 1999 (as altered)*.

20 (12) Every reference in this Act to the term "market" is a reference
21 to a relevant market in Nigeria for goods or services as well as other goods or
22 services that, as a matter of fact and commercial common sense, are
23 substitutable for them and the meaning of the term relevant market shall be
24 based on examination of demand substitutability, supply substitutability and
25 potential competition.

26 (13) For the purpose of this Act, the term:

27 (a) "regulatory agency" shall mean any government agency
28 established to regulate the terms and conditions for demand and supply of
29 goods and services in any given industry and in this respect, the regulatory
30 agency in question is one established either by Federal or any State

1 Government;

2 (b) “regulated industry” shall mean an industry which is designated
3 as such by the Commission and which is under the regulatory authority of a
4 regulatory agency.

5 (14) For the purpose of this Act, the term “professional association”
6 shall mean associations mentioned in Schedule I of this Act.

Short title

7 **168.** This Act shall be cited as the Federal Competition and Consumer
8 Protection Bill, 2015.

9 SCHEDULE I

10 PROFESSIONAL ASSOCIATIONS

11 [Section 167 (14)]

12 The associations and their governing bodies established by the under listed
13 enactments are professional associations for the purposes of this Act:

14 (a) Architects (Registration, Etc.) Act, Cap. A19 Laws of the
15 Federation of Nigeria, 2004;

16 (b) Institute of Chartered Accountants Act, Cap. I. 11, Laws of the
17 Federation of Nigeria, 2004;

18 (c) Dental Technologists (Registration, Etc.) Act, Cap. D6, Laws of
19 the Federation of Nigeria, 2004;

20 (d) Engineers (Registration, Etc.) Act, Cap. E 11, Laws of the
21 Federation of Nigeria, 2004;

22 (e) Estate Surveyors and Valuers (Registration, Etc.) Act, Cap. E 13,
23 Laws of the Federation of Nigeria, 2004;

24 (f) Legal Practitioners Act, Cap. L 11, Laws of the Federation of
25 Nigeria, 2004;

26 (g) Medical and Dental Practitioners Act, Cap.M8, Laws of the
27 Federation of Nigeria, 2004;

28 (h) Nigerian Institute of Marketing Act;

29 (i) Nursing and Midwifery (Registration, Etc.) Act, Cap. N143, Laws
30 of the Federation of Nigeria, 2004;

- 1 (j) Pharmacists Commission of Nigeria Act, Cap. P11, Laws of the
2 Federation of Nigeria, 2004;
- 3 (k) Quantity Surveyors (Registration, Etc.) Act, Cap. Q1, Laws of
4 the Federation of Nigeria, 2004;
- 5 (l) Surveyors Registration Commission of Nigeria Act, Cap. S.18,
6 Laws of the Federation of Nigeria, 1990;
- 7 (m) Town Planners (Registration, Etc.) Act, Cap. T7, Laws of the
8 Federation of Nigeria, 2004;
- 9 (n) Veterinary Surgeons Act, Cap. V3, Laws of the Federation of
10 Nigeria, 2004; and
- 11 (o) any other professional association created by any law and
12 designated as such by the Commission, provided that any designation of an
13 association as a professional association shall be published by the
14 Commission by regulations for the purpose of inclusion in this Schedule.

15 SCHEDULE II

16 TRANSITIONAL PROVISIONS

17 *Transfer of Assets*

- 18 1. -(1) All Assets and funds which immediately before the
19 commencement of this Act were vested in the Consumer Protection Council
20 (hereinafter referred to as “the Council”) shall by virtue of this Act be vested
21 in the Federal Competition and Consumer Protection Commission herein
22 after referred to as “the Commission”).
- 23 (2) All bonds, hypothecations, securities, deeds, contracts,
24 instruments, documents, and working arrangements with respect to the
25 assets transferred, that subsisted immediately before the commencement of
26 this Act and to which the Council was a party shall be as fully effective and
27 enforceable against or in favour of the Commission as if, instead of the
28 Council, the Commission had been named therein.
- 29 (3) Any cause of action or proceeding which existed or was
30 pending with respect to the assets transferred by or against the Council

1 immediately before commencement of this Act, shall be enforced or continued,
2 as the case may be, by or against or in favour of the Commission in the same
3 way that it might have been enforced or continued by or against the Council had
4 this Act not been passed.

5 (4) No action or other proceeding shall be commenced against the
6 Commission in respect of an employee or asset that has been transferred to the
7 Commission, if had there been no transfer, the time for commencing the action
8 or other proceeding would have expired.

9 (5) Nothing in this Act and nothing done as a result of a transfer under
10 sub-paragraph (1) of this paragraph shall create any new cause of action in
11 favour of:

12 (a) a holder of a debt instrument that was issued by the Council before
13 the commencement of this Act;

14 (b) a party to a contract with the Council that was entered into before
15 the commencement of this Act.

16 (6) Any guarantee or surety-ship given or made by the Federal
17 Government or any other person in respect of any debt or obligation of the
18 Council, and which was effective immediately before the transfer of the
19 principal debt or obligation, shall remain fully effective against the guarantor
20 or surety on and after the transfer date in relation to the payment of the debt or
21 the performance of the obligation, as the case may be, by the Commission, to
22 which the principal debt or obligation was transferred.

23 *Transfer of Employees*

24 2. -(1) Upon the commencement of this Act, such number of persons
25 employed by the Council, as may be required by the Commission shall be
26 deemed to be staff of the Commission and shall be transferred to the service of
27 the Commission on a merit and value basis and on terms not less favourable
28 than those enjoyed immediately prior to the transfer.

29 (2) The service rendered by an employee transferred pursuant to sub-
30 paragraph (1) of this paragraph to the Council shall be deemed to be service

1 with the Commission for the purpose of determining employment related
2 entitlements as specified in the relevant laws of employment in Nigeria.

3 (3) Until such time as conditions of service are drawn up by the
4 Commission:

5 (a) the terms and conditions of service applicable to employees of
6 the Council shall continue to apply to every person transferred to the
7 Commission as if every such person were still in the service of the Council;
8 and

9 (b) the Commission shall continue to contribute towards any
10 pension scheme to which the Council was contributing in respect of persons
11 in the employment of the Council prior to the transfer date.

12 (4) Nothing in this paragraph shall operate so as to prevent any em-
13 ployee of the Council from resigning or being dismissed from service.

14 (5) Nothing in this paragraph shall operate so as to create an
15 entitlement for any employee of the Council to become an employee of the
16 Commission.

17 *Directions to the Council*

18 3.-(1) The Minister may give the members of the Board of the
19 Council directions in writing in order to ensure the proper transfer of the
20 assets of the Council to the Commission and the Council shall without delay,
21 comply with every such direction.

22 (2) Without derogating from sub-paragraph (1) of this paragraph,
23 directions given under that sub-paragraph may provide for:

24 (a) the cessation of all or any of the functions of the Council;

25 (b) the termination of any contract entered into between the
26 Council and any person, provided that no such direction shall authorize the
27 Council to commit an unlawful breach of any such contract; and

28 (c) the production of any report and the provision of any
29 information concerning the conduct of the Council or the members of the

- 1 board of the Council or anything done by or on behalf of the Council or the
- 2 members of the Council.

EXPLANATORY MEMORANDUM

*(This Memorandum does not form part of this Act but is
intended to explain its purport)*

This Act 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.