

Towards a Competition Law in Nigeria : Why the new Federal Competition and Consumer Protection Bill may not fly!

Competition policy addresses the structures and conducts of firms in the market place with a view to ensuring that resources are efficiently allocated in such a manner as to achieve optimum utilisation of resources in the economy, which, in turn results to the best possible price for the consumer.

After years of going round in circles in a bid to enact a competition law for Nigeria, there seem to be no end in sight for the confusion generated by multiplicity of Bills, reflecting the multiplicity of efforts put into the process by the various stakeholders, mainly from the public sector.

The latest child in the family of Bills is entitled 'Federal Competition and Consumer Protection Bill'. This Bill is from the stables of the Bureau of Public Enterprises (BPE), the operative arm of National Council on Privatisation (NCP). The BPE started the process of drafting a Competition Bill for Nigeria sometime in 2002, leading to the first version of the Federal Competition Bill sometime in 2003. But for some reasons another Bill emanating from the office of the Attorney General and Minister of Justice gained the favour of the Federal Executive Council and was presented to the National Assembly in 2006. This Bill suffered 'legislative hostility'- it was thrown out by the Senate on first reading. One of the reasons cited for the rejection of the Bill is that the Senators felt that there were already too many Commissions in the country. It was reported that some of the Senators queried the establishment of a Competition Commission when there is already the Consumer Protection Council in Nigeria. This betrayed the lack of proper appreciation of the subject matter among many stakeholders.

Meanwhile, in an apparent bid to produce a Bill that would fly in the legislative chambers learning from the fate of the earlier Bill, the BPE put up this very version entitled 'Federal Competition and Consumer Protection Bill' (FCCPB). The Bill has now been tabled for consideration by the Federal Executive Council for onward presentation before the National Assembly.

There are two interrelated factors that would clip the wings of the Bill in the legislative chambers. These are internal and external factors in relationship to the Bill. The internal factors derive

from some 'innocuous' provisions which are also reflected in the title. As the title suggests, the Bill seeks to lump competition and consumer protection under one institutional framework, which is not a bad idea on its own since experience from other jurisdictions have shown that this is a viable approach which allows for complementarities in the related ends of the two systems. The problem however, arises from the fact that the Bill does not take any serious attempt to define how the Commission would exercise this power. For the avoidance of doubt, the 'innocuous' provisions referred to above sought out to achieve this purpose but, with due respect, failed in doing so and that is actually where the problem lies.

Section 9(2) provides that from the date of the coming into effect of the Act, the Commission established under the Act shall take over and administer the functions of the Consumer Protection Council and shall have transferred to it the staff and assets of the Council. This, as earlier observed is well intended as it would give the Commission initial boost. The challenge, however, is that the Bill does not contain any other provisions relating to consumer protection. Section 19 of the Bill simply provides that the Commission shall have the power to administer and implement the provisions: Dumped and Subsidised Good Act, 2005; Safeguards Act, 2005; Consumer Protection (Special Provisions) Act, 2005; and Weight and Measures Act 2005.

It is interesting to note that none of these 'Acts' exist today in the Statute Books in Nigeria except the Weight and Measures Act Cap 467 Laws of the Federation of Nigeria 1990. But before we ask how this section found its way into the Bill, let us quickly mention that the Consumer Protection (Special Provisions) Act, 2005 is not the same thing as the Consumer Protection Act, 1992 which is the extant law regulating consumer protection in Nigeria. Back to the question of how this provision came about; the answer is simple, this same provision is contained in another Bill entitled 'Nigerian Trade and Competition

Commission' (NTCC) Bill. This leads us to the second factor - the external factor.

The NTCC Bill which was presented before the last Senate of the National Assembly has come up before this present Senate and is, in fact, at the Committee stage. The NTCC Bill sought to provide for a common Commission to regulate Competition and other trade related measures such as Anti Dumping, Safeguards, Consumer Protection and Weights and Measures. Included with this Bill are all the other Bills cited in Section 19 of the FCCP Bill. The original idea was that these Bills would be passed together hence the reference to their administration and implementation under one institution in the former Bill. The Bill on Consumer Protection referred to above [Consumer Protection (Special Provisions) Act, 2005] is meant to be an amendment to the extant Act and not a re-enactment of it. The question then is: if the FCCP Commission 'takes over' the CPC without any provision indicating that the Commission shall implement the existing Consumer Protection Act, how then would the confusion be resolved?

Stretching the external factor, it would be interesting to see how the Senate would receive this present Bill. Would the Senate throw away the Bill they were already considering and settle for the Executive Bill? Would the Senate ask the Executive to go and further harmonise the FCCP Bill with the NTCC Bill? We can only wait to see. But from a public interest perspective, it is better for the Federal Executive Council to be properly informed about the existence of the NTCC Bill and the areas of convergence and divergence so that they can reach an informed decision before going to the National Assembly especially in this era of 'legislative hostilities' being meted out to Executive Bills - the fresh case of the Political Parties Registration and Regulation Commission Bill is instructive in this regard.

From a policy perspective, this writer thinks that the country has to get it right at this time on the enactment of a competition law. However, the only way to get it right is to define appropriately, what the policy orientation and the scope of the law would be. Aside the technical policy consideration which is not the focus of this write-up, we should determine whether we want to have a single agency administering competition and other trade related remedy instruments as listed above, including consumer protection or we want to have a dedicated competition authority. Whichever option we take should be unambiguously reflected on the Bill. As noted earlier, both approaches find support in literature and in practice. Without necessarily preferring one approach to the other, one would use this opportunity to point out the fact that Nigeria is

overdue for those other proposed laws on trade defence - anti dumping and safeguards and they are in some ways complimentary to competition law. In some jurisdictions, separate institutional provision is made for them and we can start thinking along this direction in Nigeria.

Still on the institutional orientation, co-locating different regulatory functions under the same Commission has its advantages and disadvantages. The major advantage lies in the cost savings arising from common administrative arrangement. There is also room for cooperation across the different regulatory spheres for overall efficiency. The disadvantage however, lies in the tendency for the Commission to become overburdened with different and sometimes conflicting responsibilities thereby losing depth in all the areas.

Having made the point, there is however, some case for co-locating competition and consumer protection commissions. This trend derives mainly from the close similarity between the objectives of the two institutions. Both have consumer welfare as an end. Competition Policy and Consumer Protection Policy seeks to ensure that the consumer gets the best possible range of goods and services at the best possible prices. What differ are the approaches adopted by the two policies.

Competition policy addresses the structures and conducts of firms in the market place with a view to ensuring that resources are efficiently allocated in such a manner as to achieve optimum utilisation of resources in the economy, which, in turn results to the best possible price for the consumer. Also the process of competition leads to innovations in terms of new and better production and management processes as well as new and improved products which eventually translate to improved value for the consumer. The process of competition requires firms to fight for and maintain their market share hence they need to constantly reinvent.

Consumer Protection Policy, on the other hand, seeks to address the factors inhibiting the ability of the consumer to make informed choices and to have value for money spent. Such factors usually relates to misinformation contained in advertisements or promotions; or sometimes false or lack of information on products and services specifications and quality. Consumer Protection Policy seeks to ensure that the consumer is protected from the unconscionable conduct of firms in the market place as it relates to the actual goods and services they sell to the consumer. Consumer protection and competition regulation have been described as two sides of the same coin. While competition law concentrates on the integrity of the market structure and conduct that produces the goods and services, consumer protection focuses on the

integrity of the goods and services produced. The approach of the former is mainly proactive while the later is mainly reactive.

In order to achieve a sound and workable system in either of the two approaches above, there is need to adopt a stakeholders' oriented approach where the major stakeholders from the private sector, civil society, academia, media, etc are carried along in the process of developing the Bill. The BPE used this approach in 2002 in the process of designing the first version of the Federal Competition Bill. The consultations/workshops that took place however did not seem to have engendered the required private sector and civil society participation and input in the process largely because of the dearth of awareness on the subject. This problem could have been addressed by a consistent programmes of public enlightenment aimed at shoring up the knowledge base of the stakeholders. Perhaps, the lack stakeholders participation and input in the process was the reason for the lack of advocacy for or against the

Bill throughout the legislative process that led to its demise.

A stakeholders' oriented approach should therefore, be accompanied with massive sensitisation on the implications of the laws on our economic development, especially how it affects the ordinary citizens in their daily life and business, with more emphasis on the consumer welfare benefits. This is the only way to generate the required level of awareness and interest and would help to expand the scope of debate around the issues and possibly form an army of advocates for the Bill.

At the moment the level of public (and political) interest and awareness on competition law is very low even among the professional like lawyers and economists who are expected to drive the implementation. There is also need to close ranks among different government agencies that have interest in the Bill to present a common front both before the stakeholders and the National Assembly. This is the only way forward.

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