



DOES THE CBN OVERRIDE THE FCCPC IN PROTECTING CONSUMERS OF FINANCIAL PRODUCTS AND SERVICES?

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Introduction

Nigeria's National Assembly has been busy. In the last 3 years, it has mustered the collective will to update crucial legislation, aligning it with international best practice. The Companies and Allied Matters Act (CAMA), 2020, Federal Competition and Consumer Protection Act (FCCPA), 2018; and the Banks and Other Financial Institutions (BOFIA) Act, 2020 are some noteworthy examples.

Amendments to the BOFIA have attempted to strengthen the regulatory regime and supervisory jurisdiction of the Central Bank of Nigeria (CBN) over banking services, and the business of Other Financial Institutions (OFIs) in Nigeria. Arguably, banking services would also naturally fall under the purview of the FCCPA – which, among other things, seeks to protect the interests and welfare of consumers in Nigeria. But not so. As drafted, the BOFIA may forcibly remove banking business beyond the control and protection of the Federal Competition and Consumer Protection Commission (*“the Commission”*). Will this benefit the consumers of financial products and services in Nigeria, or is this a deliberate ploy to give free rein to the already overbearing power of the CBN over banking business, without any checks and balances?

The FCCPA 2018 was designed to promote competitive markets, prohibit restrictive or unfair business practices which distort competition, and protect the interests and welfare of consumers – without restriction. The Act is administered by the Commission, while the Consumer Protection Tribunal (*“the Tribunal”*) adjudicates and enforces not only the provisions of the Act, but also other enactments in so far as they relate to competition and consumer protection. The Tribunal also reviews decisions of the Commission, and hears appeals from decisions of various regulatory authorities implicated in competition and consumer protection matters. What then imbues the CBN's authority over banking business, to the exclusion of all consumer protection oversight? Section 53(1) of BOFIA expressly ousts the application of the FCCPA among other legislation including the CAMA 2020, and the Nigeria Deposit Insurance Corporation Act - *“in so far as they relate to banks, other financial institutions and specialized banks”* (for the purpose of this article, now collectively referred to as *“banks”*).

Not yet satisfied, BOFIA gives power to the CBN Governor to regulate the banking industry, including by issuing banking regulations to protect consumers and promote competition – the exact remit of the Commission. BOFIA in no uncertain language states that the FCCPA shall not apply to *“any function, act, financial product, or financial services issued or undertaking, and transaction howsoever described by a bank or other financial institutions licensed by the CBN”*. The Commission and the Tribunal are rendered powerless in banking matters, even where a bank or other financial institution may have taken an action prejudicial to the rights of a consumer, or prejudicial to a competitive banking industry. Furthermore, the CBN is made sole regulatory authority empowered to determine whether a (proposed) merger has any effect on competition, and order an investigation of a merger; again, a realm of function otherwise reserved strictly for the Commission.

It seems unlikely that the intended beneficiaries of the BOFIA's exclusions could be the consumers of banking services. The FCCPC has a robust consumer complaint resolution mechanism that includes the setting up of an Ombudsman, whereas the BOFIA has none. The BOFIA also has no dispute resolution mechanisms to govern performing assets and other internal disputes of the bank, but only concerns itself with special procedures for recovering non-performing assets.

Banking is understandably a highly sensitive and regulated industry, requiring an uncommon level of expertise to administer; hence the traditional control of the CBN, prided with superior technical expertise in the subject matter. However, with the FCCPA requiring its commissioners to possess not less than 15-years of experience in one or more fields, including finance/accounting and economics- fields largely related to banking- it is our opinion that this concern of CBN for expertise has been put into consideration by the FCCPA.

Recommendations and Conclusion

There can be no doubt that more needs to be done by the CBN in respect of consumer protection, through enhanced complaints and dispute resolution mechanisms. The CBN, could also consider creating a Financial Ombudsman, and involving the Commission to handle bank complaints as widely practiced in advanced countries. An example of this is the UK's Financial Ombudsman Service which receives and resolves complaints relating to consumption of financial services. Furthermore, regard should be had to dispute resolution mechanisms for performing assets and other internal disputes arising from the bank and banking transactions. Banks and consumers of their services must undergo a capacity building exercise, to develop a clearer understanding of processes and procedures that exist to advance consumer protection.

The legality of the provisions of BOFIA 2020 may likely be subjected to judicial interpretation, at which point, it is hoped, clarity will emerge regarding the apparent conflicts of powers between the Commission and the CBN. In the meantime, consumers would benefit from seamless collaboration between both bodies; both in the appointment of commissioners and in consideration of substantive questions relating to consumer protection and competition as provided for in the FCCPA. In appointing commissioners, considerations should be had to their expertise in economic and finance matters, and in relation to banks and other financial matters. Nothing precludes the CBN from voluntarily seeking opinions and recommendations of the Commission in relation to matters of competition and consumer protection; the FCCPC has an elaborate system that helps resolve consumer complaints which the CBN, for the time being, conspicuously lacks.

