

INTRODUCTION

Antitrust, which is also known in some jurisdictions as Competition Regulations, is generally perceived as a technical subject that is not easily understood. In developing countries, there is a paucity of Antitrust Legislations designed to protect the Consumer, promote free trade and commerce, and prevent unwholesome and unethical trade practices.

Antitrust or Competition Laws and Regulations are generally designed to promote and protect a transparent and competitive market from unjust and unfair business practices. Thus, Antitrust Laws and Regulations achieve most of their objectives by discouraging and preventing price or rate fixing, price discrimination, price gouging, restrictive exclusive contracts, abuse of a dominant market position, predatory pricing practices, conspiratorial pricing between some competitors against other competitors, hoarding, institutionalised boycotting of a competitor, supplier or equipment vendor, etc.

Antitrust and Anti-Competitive practices substantially stifle and inhibit healthy competition to the detriment of the Consumer and the larger economy.

BRIEF HISTORY OF ANTITRUST AND COMPETITION LAWS

After the civil war in the United States of America, and its adoption of the free market enterprise policy without an overbearing Government interference in the market, the Sherman Act of 1890 was enacted to curb and criminalise any restraint to free trade and commerce, especially by conspiratorial and monopolistic corporations.

In the United Kingdom (?UK?), the United Kingdom Monopolies and Restrictive Trade Practices Act 1969, metamorphosed into the Competition Act 1998, the Enterprise Act 2002 and then the Enterprise and Regulatory Reform Act, 2013 which established the Competition and Markets Authority. In spite of these legislations, Competition regulations in the United Kingdom have continued to follow the European Union robust jurisprudence on this subject. Again, the underlying objective of all Antitrust and Competition Laws and Regulations remain the protection of the Consumer with minimum Government interference in the market.

HISTORY OF ANTITRUST AND COMPETITION LAWS IN NIGERIA

Post independence from Colonial Rule, the major sectors of the Nigerian economy ? power supply, telecommunications, aviation, petroleum, railway, radio, television, etc were nationalised with monopolistic structures, sole ownership and control residing in the hands of the Government. Unfortunately, these Government monopolies reportedly promoted large scale corruption and inefficiencies which inhibited growth to the detriment of the entire Nigerian economy.

The liberalisation and privatisation of some sectors of the Nigerian economy, especially the telecommunications and broadcasting sectors, starting from the 1990s, ushered in some competition from the private sector against previous public monopolies. The legislations which liberalised some aspects of the Nigerian economy also tried to introduce some minimal Antitrust and Consumer

Protection Regulations.

ANTITRUST AND COMPETITION LAWS AND REGULATIONS IN NIGERIA

There is no Legislation or Regulation that is dedicated solely to Antitrust or Competition issues in Nigeria. None of the numerous Bills before the National Assembly on the subject have been passed into Law. In different Legislations however, there are some Antitrust or Competition provisions, with the most far-reaching of these Antitrust Provisions currently being in the Nigerian Communications Act. The latter will be considered in the second part to this short-paper.

Parts II, VI and VII, Sections 26, 80-82 of the **Electric Power Sector Reform Act, 2005** has Statutory provisions which seek to provide guidelines regarding consumer service and protection, license performance, with competition and market power provisions. The Nigerian Electricity Regulatory Commission (?NERC?) is expressly required to, on a continuous basis, monitor the Nigerian Electricity market for the potentials that exist to drive additional Competition and the Tariff Regulations in the best interest of the market.

In the Aviation industry, Section 30(4) (i) of the **Civil Aviation Act, 2006** authorises the Nigerian Civil Aviation Authority to investigate any case or cases of unfair or deceptive trade practices or methods of competition, including the prices of airline tickets. Where an infringement is found, the Nigerian Civil Aviation Authority is authorised to require the offending party to desist from such antitrust or anti-competition practice.

For capital market transactions, which are mainly publicly quoted and Government quoted securities, the **Investment and Securities Act, 2007** has provisions which require the Securities and Exchange Commission (?SEC?) to prohibit market rigging and manipulation, insider rigging and all other forms of unfair and fraudulent trade practices in the Nigerian Stock Market. Where a business practice prevents or lessens competition, SEC is authorised to in the interest of the public, among other things, undertake a Court sanctioned break-up of the infringing company into separate entities, in such a way that its operations do not cause a substantial restraint on competition.

In the liberalised Broadcasting Industry, the National Broadcasting Commission (?NBC?) is the body charged under the **National Broadcasting Commission Act** to regulate and control all the kinds of broadcasting businesses in Nigeria ? i.e. Radio, Television, Cable Television Services, Direct Satellite Broadcast, etc. This is whether such broadcasting business is privately or government owned. Through its licensing regime, NBC seeks to uphold the principles of equity and fairness, with an aberration for unfair and unethical trade practices in the broadcasting industry.

To protect Consumers of stable and essential items, like sugar, salt, milk, flour, matches, petroleum products, motor vehicles, motorcycles and bicycles? with their spare parts (?Controlled Commodities?), **the Price Control Act** empowers the Price Control Board to fix the Controlled Price range for these mentioned essential items. It is a criminal offence for any person to sell any of

the listed Controlled Commodities above their approved controlled price. Hoarding of Controlled Commodities is also a criminal offence which on conviction carries fines and terms of imprisonment, seizure of the concerned goods, sealing of the premises from where the offence is carried on, etc.

CONCLUSION

Antitrust will only thrive and achieve its objectives if the Consumers are aware of their rights and are willing to make some effort and sacrifice to enforce them. The Regulators must also become more proactive, and not remain docile, in the performance of their statutory duties.

DISCLAIMER NOTICE

This is a free educational material which is not intended to serve as a source of solicitation, advertisement or offering any legal advice. No Client/Attorney relationship is therefore created by this material. Readers are strongly advised to always seek professional legal advice to their specific situations from qualified Legal Practitioners. Questions, comments, observations, suggestions, new ideas, contributions, etc. are always welcomed. You can also visit our website www.oseroghoassociates.com for more legal materials.

INTELLECTUAL PROPERTY PROTECTED.

This material is protected by International Intellectual Property Laws and Regulations. This material can only be re-distributed for non-profit educational purposes only on the strict condition that our authorship is acknowledged, and the Disclaimer Notice is prominently displayed.