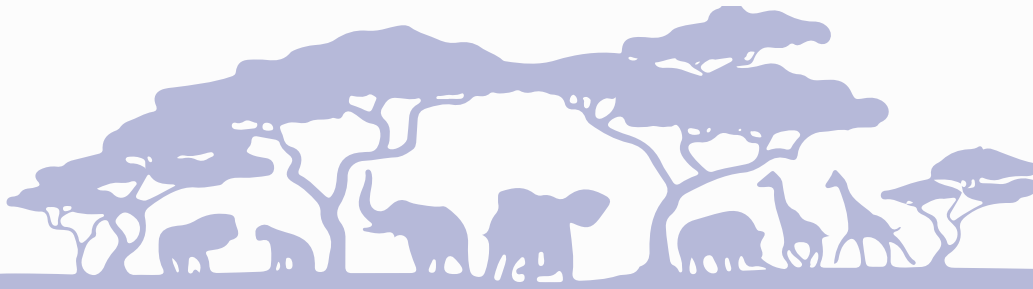




C **COVID-19 IMPACT ON CONSUMER PROTECTION AND COMPETITION IN AFRICA**



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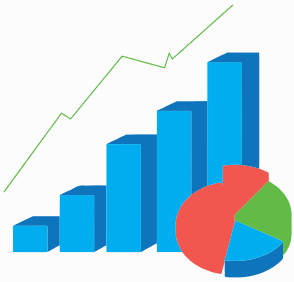


INTRODUCTION

On the 5th May, 2020 Africa International Trade & Commerce Research in partnership with Nigeria Private Sector Alliance and Centre for Trade & Business Environment Advocacy organized and facilitated a continental wide webinar titled: COVID-19: IMPACTS ON CONSUMER PROTECTION AND COMPETITION IN AFRICA.

Competition and consumer protection is seen as complementary to trade and industrial policies. Prior to the outbreak of the coronavirus, the Africa continent is mostly considered as lagging behind other continents in consumer protection. With the rampaging nature of COVID-19 and obvious inexorable change in countries economic structure, the issue of competition and consumer protection in Africa needs urgent intervention. Lending credence to this is the emergence of Campaigns involving advertisement and commercial practices concerning specific products of utmost relevance in this emergency period (for example, medical devices, drugs, and fundraising) that explicitly exploit coronavirus and people's fear for profit. More so, government action on lockdowns in several countries in Africa further induced the demand surge for essential and non-essential goods beyond supply, which has been hampered by the breakdown in the supply chain.

This situation has exposed consumers to unfair practices, and leaving them in more disadvantage state. There are lots of misleading advertisements with false claims also flourishing with substandard products. Against the foregoing background, the objective of the webinar is to deliberate on how this current pandemics has affected businesses across Africa and to discuss best possible actions for private sector institution and government to protect the vulnerable in this critical time.



COVID-19 impact on Africa Market and trade

Velloh Kedogo KIGWIRU- Doctoral research fellow on regional competition law in Africa asserted that the first thing observed during the COVID-19 pandemic is the disruption of the supply chains both at global, regional and at the national level. This has resulted in increased demand for certain products, which are classified as essential. For example, hand sanitizers, basic foods and also health supplies because of the increase in demand. Cornelius Dube, an Economist with over 16 years experience with government of Zimbabwe, said businesses deliberately increased the price of product because of limited supply due to break in the supply chain while overheads for most of the businesses remains the same. And so, businesses in Zimbabwe are using their available products to maximize profit, at the expense of consumers. Consumers with a weak bargaining power are vulnerable to exploitation by businesses through misleading and deceptive conduct, in the form of a false advertisement on the quality and unsupported scientific claims of products.

Velloh Kedogo Kigwiru, further asserted that Unfair trade practices during the Covid-19 crisis include Restrictive trade practices such as price-fixing, exclusive agreements, refusal to deal, market allocation, refusal to produce or provide essential commodities/product hoarding, bid-rigging in the form of collusion in tenders, auctions or government deals regarding essential commodities and abuse of dominant position



Actions of Africa Governments, Competition and Consumer Protection Agency and OPS amidst COVID-19

The unprecedented nature of the pandemic has weakened the capacity of most regulatory authorities across the globe to regulate price gouging, thereby hindering competition and undermining the right of consumers, and Africa is not an exemption. Mr. Leonard UGBAJAH, Founder & Executive Director, Centre for Trade and Business Environment Advocacy (CTBA), said COVID-19, presents certain kind of challenges to the laws we have in Africa. And usually what Africa need at the moment is to apply flexibility in the law that will lead to changes to meet the current circumstances. Other panelist agreed that this flexibility are available in the laws of different countries and regional competition authorities in Africa and is also important to consider the experiences from other countries and regions outside Africa. It was further augured that measures such as curfews, declaration of a state of emergencies, border closure, city, state and country lockdown's, restricted movement, quarantined health testing, restrictions of nonessential government services and business, may have worsen the situation in Africa. Although, most of the African competition agencies following consumer complaints and market surveillance have issued precautionary notices on price hiking, deceptive practices and unconscionable conduct. The competition commission in Namibia for instant. issued precautionary notice on price hiking following a market analysis where it found that the prices of immune boosters, hand sanitisers and facemask had increased

during the lockdown. Seychelles Fair Trading Commission (SFTC) collaborated with the Retailers Association (RA) to address excessive pricing. Malawi Competition and Fair Trading Commission (MCTC) suspected collusive practices and unconscionable conduct by independent schools on the level of school fees to be charged for online learning programs, and asked the schools to cease the practice. Competition Authority of Kenya (CAK) found that, Cleanshelf supermarket was engaging in price gouging by unconscionably adjusting the prices of Tropikal brand hand sanitizers in contravention of section 56(1) of the Competition Act. CAK ordered the supermarket to contact and refund all the customers who had purchased the hand sanitizers. Federal Competition and Consumer Protection Commission (FCCPC), Nigeria: Issued cautionary notice against price gouging, unreasonable and arbitrary increases in prices of protective and hygiene products on account of COVID-19. This led to Jumia delisting some of the hiked products from its online platform. Zambia Competition and Consumer Protection Commission (ZCCPC) warned citizens about false online money banking during Covid-19 pandemic

Mr Nwiabu Legborsi NUKA, Esq. - Executive Director, Nigeria Private Sector Alliance (NIPSA) mentioned that Organized Private Sector (OPS), in Nigeria as a body is ensuring that products and services get to consumers within the period of the lockdown especially and they also ensure that their members mostly the business members' organizations are working to ensure people don't take advantage of the system by increasing their price. Mr Babatunde Irukera - Chief Executive Officer, Federal Competition and Consumer Protection Commission, FCCPC- Nigeria mentioned that as early as 28th of February, the FCCPC issued an advisory prohibiting

price gouging essentially addressing the specific provisions of the Federal Competition and Consumer Protection Act that criminalizes that conduct and prohibits it otherwise. FCCPC also issued a second advisory to the market and some of the investigations the agency had concluded had to file criminal charges. On the competition side FCCPC established protocols for receiving merger notification. It is an electronic platform where such notification can be file without a requirement for physical filing. The CEO of FCCPC also mentioned that the government of Nigeria is trying to promote a local industry with respect to basic hygiene products and has issued block approvals concerning potential restrictive agreement in such areas. Due to the pandemic FCCPC is also advising the government of the possibility to activate exceptions treaty under the WTO protocols because of the need to locally appropriate and manufacture some of the therapies that may ultimately become established as required by local drug regulatory agency.

Mr Cornelius Dube asserted that in Zimbabwe, the government has announced a stimulus package of about 50 million USD targeted at businesses to enhance their capacity to produce and meet excess demand locally. He said the government of Zimbabwe has also issues a directive to businesses to revert to the prices they were charging before the outbreak of COVID-19.





Representation Loss of Competition and Consumer Protection Agency in Africa

Competition and consumer protection have been largely underestimated in Africa as several Africa countries do not have the presence of consumer protection agency and comprehensive policies on competition and consumer protection. Appiah Adomako- West Africa Regional Director, CUTS International mentioned that Ghana, does not have competition nor consumer protection institutional agency. In responding to the how Ghana has handled unfair trade practices leading to consumer exposure to substandard product across the border, Mr Appiah asserted that though Ghana does not have consumer protection agency the country has what is called Ghana standard authority stationed at the port to assess goods that meet up to standard. He, however, opined that sometimes people use some unauthorized route to bring goods into the market. The standard authority also carries out market surveillance. Consumers are also charged with the responsibility of reporting businesses selling substandard product. On competition issues, Mr Appiah said some sectors, especially the downstream petroleum sector the telecom sector, they have some competition regulation that tends to regulate competition in those sectors. But when it comes to the traditional consumer market, there are no competition regulation.



Recommendations

i. Appropriation of Flexible Countries' Consumer Protection Acts

when a country is faced with an unprecedented situation like coronavirus that poses massive economic challenge businesses. Regulatory, frameworks should have a clause that allows institutional authorities to support businesses, while also holding businesses accountable not to take advantage of the situation. For instance under Section 60 of the Competition and Consumer Protection Act of Nigeria, a business can seek exemption from certain conduct that ordinarily would be considered to be in violation of the law. The same exemption clause is found in article 11 of ECOWAS regional and supplementary act on competition, and also sections 25 and 26 of the Competition Act in Kenya and Section 20 of the regulation of the COMESA Competition regulation, has this clause. This should be prevalence in law setting up competitions and regulatory authorized across Africa.

Ratification of Africa Continental Free Trade Area Agreement:

Mr Appiah stressed that AfCFTA will provide a continental platform for integrating some of the issues on consumer protection and competition in Africa. In phase II negotiation of AfCFTA issues of intellectual property, competition policy, product quality, standards and parallel importing comes to mind.

iii. Harmonization of Africa member states political will:

All competition practitioners in the continent should advocate for competition reforms across Africa countries and encourage countries that don't have to establish a competition authority, through evidence based research.

iv. Public-Private Sector Dialogue:

A framework for public-private sector for competition and consumer dialogue in post COVID-19. Ultimately, governments must try as much as possible to work closely or to enhance public-private dialogue or public-private partnership with the business community to ensure there are no frictions so that the citizens or consumers don't suffer in the middle of trying to enforce or try to regulate the market. And so stakeholders must find a middle ground for businesses and governments to meet to ensure policy formulations consider the unique local reality.

v. Creating Public Awareness:

Majority of those people who make misleading posts on social media platforms are not aware they are breaking certain rules. Government and consumer protection agencies should sensitize the public of the criminality of any behaviour that can be construed as misleading advertising.



vi. Enhancement of Continental wide supply chain through AfCFTA:

it's time for Africa as a region to enhance its regional value chain because the global value that used to supply the continent with some of the essential products are taking care of their own countries. And it's time communities enhance industrialization within the region through AfCFTA.

vii. Integration of technology in the country's system:

More emphasize should be placed on the use of technology to solve the consumer protection and competition challenge in Africa. Post COVID-19 Africa should see an increased number of competition authorities using technology to deliver their services.

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Panelist:

1. Babatunde IRUKERA - Chief Executive, Federal Competition and Consumer Protection Commission, FCCPC- Nigeria
2. Appiah ADOMAKO- West Africa Regional Director, CUTS International
3. Vellah Kedogo KIGWIRU- Doctoral research fellow on regional competition law in Africa
4. Leonard UGBAJAH, Founder & Executive Director, Centre for Trade and Business Environment Advocacy (CTBA)- Nigeria
5. Nwiabu Legborsi NUKA, Esq. - Executive Director, Nigeria Private Sector Alliance (NIPSA)
6. Cornelius DUBE, an Economist with 16 years' experience. He has worked for the Government of Zimbabwe; Competition and Tariff Commission

Moderator:

Sand MBA KALU, Executive Director, Africa International Trade & Commerce Research

¹<https://www.centerforfinancialinclusion.org/why-does-consumer-protection-lag-in-africa>



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