



# **Examining the Right to Health amid the COVID-19 Pandemic in the Light of the Federal Competition and Consumer Protection (FCCP) Act, 2018**

*Ebelechukwu Lawretta Okiche and Chidera Philomena Onah*

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## EXAMINING THE RIGHT TO HEALTH AMID THE COVID-19 PANDEMIC IN THE LIGHT OF THE FEDERAL COMPETITION AND CONSUMER PROTECTION (FCCP) ACT, 2018

Ebelechukwu Lawretta Okiche\* and Chidera Philomena Onah\*\*

### Abstract

*The right to 'health' which is said to be 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity' is among the fundamental rights of every human person. This right is so inclusive that it encompasses not just appropriate and affordable health care but every other determinant of health such as adequate nutrition, safe and potable water, sanitation, and health-related education and information. Recently, the world was jolted by the outbreak of a viral infection 'COVID-19' which first appeared in Wuhan, China in December 2019. Declaring the disease a pandemic as a result of the alarming rate of spread and mortality, the World Health Organisation (WHO) urged nations to take aggressive steps to contain the disease. Measures taken include lockdown, prohibition of mass gatherings, social distancing and isolation, the use of face masks, hand sanitizers, disinfectants, latex gloves, and the rest of them. All over the world including Nigeria prices of goods and services skyrocketed overnight as business undertakings, through obnoxious trade practices priced goods and services out of reach of the average consumer thereby impugning his right to health. This is contrary to the provisions of the FCCP Act. This paper interrogates the response of the Act and the body created by it to the situation to ascertain the adequacy or otherwise of both as consumer protection instruments. The methodology this paper employs is the doctrinal methodology with the comparative approach.*

**Keywords:** Right to Health, Covid-19, Consumer Protection, Competition, FCCPA

### 1. Introduction

The most basic of all human rights is the right to life. This is so because without life, other rights accruing to the consumer, including those set out in Part XV of the Federal Competition and Consumer Protection Act (FCCPA) 2018 become meaningless. However, for life to be meaningful, it must be healthy. As a result of this, governments all over the world Nigeria inclusive have always intervened in the area of 'health' *a sine quanon* for life. Health, which is said to be 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity,'<sup>1</sup> has since been recognised as a fundamental human right.<sup>2</sup> This right is not just confined to the right to healthcare but includes other

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\* PhD, Lecturer University of Nigeria Enugu Campus.

\*\* LLB, BL, LLM Candidate, Faculty of Law, University of Nigeria; Associate, IUC Global Chambers, Enugu.

<sup>1</sup>The 1946 Constitution of World Health Organisation, The Preamble <<https://www.who.int/about/who-we-are/constitution>> accessed 20 October, 2020.

<sup>2</sup> Ibid.

factors which enable an individual to live a healthy life such as food, potable water, housing, a healthy environment, and safe working condition.<sup>3</sup> To this end, one of the major consumer protection efforts in jurisdictions all over the world is government regulation of products and services to make sure that the consumer is not short-changed in any way and that if he is, he would get redress.

The Nigerian Government has put in place quite a lot of legal<sup>4</sup> and institutional frameworks to ensure adequate protection of the Nigerian consumer from the adverse effects of unsafe food, counterfeit and fake drugs, shoddy services, and access to quality health care when the need arises. One of such laws, the Federal Competition and Consumer Protection Act (FCCPA) 2018<sup>5</sup>, together with the institutions it creates is our major concern in this paper. The FCCPA, which is in two prongs, seeks the development and promotion of fair, efficient, and competitive markets in its competition aspect while the consumer protection aspect aims to facilitate access to safe products and services and secure the rights of all consumers in Nigeria. The Corona Virus (COVID-19) outbreak which put the world into a state of panic seems to be the first baptism of fire for the Act which came into force barely one year before COVID-19 was declared a pandemic.<sup>6</sup>

A search for relevant literature reveals no work which bears directly on our topic. However, Ikusika's work<sup>7</sup> on FCCPA and price gouging amid the pandemic is related to our study. The author decries the unconscionable increase in prices of goods critical to the health, safety, and survival of consumers in the current pandemic by undertakings in contravention of the provisions of FCCPA and calls on the Commission to take more decisive steps to live up to its

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<sup>3</sup> The Universal Declaration of Human Rights, art.25 < <https://www.un.org/en/universal-declaration-human-rights> > accessed 20 October, 2020.

<sup>4</sup> Some of the laws are the Federal Competition and Consumer Protection Act (FCCPA) 2018 the Standards Organization of Nigeria Act 1971, (2015); the Weights and Measures Act, 1974, (Cap W3); the Food and Drugs Act 1974, (Cap F32); the National Agency for Food and drug Administration and Control Act 1993, (Cap N1); the Trade Malpractices (Miscellaneous Offences) Act 1993, (CapT10); the Food, Drug and Related Products (Registration etc.) Act 1993 (Cap F33); the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions, Act 1999 (Cap C34) and the Nigerian Communications Act 2003, (Cap N33).

<sup>5</sup> The Act was signed on 30/1/2019 by President Muhammadu Buhari.

<sup>6</sup> "WHO Director-General's opening remarks at the media briefing on COVID-19-11 2020,<" <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--> > accessed 20 October, 2020.

<sup>7</sup> Bamidele Ikusika, "Examining the Federal Competition and Consumer Protection Act as A Response to Price Gouging Amidst The Covid-19 Pandemic in Nigeria" <<https://thenigerialawyer.com/examining-the-federal-competition-and-consumer-protection-act-as-a-response-to-price-gouging-amidst-the-covid-19-pandemic-in-nigeria-by-bamidele-ikusika/>> accessed 21 October, 2020.

statutory responsibility. Our work goes beyond this since our scope of study is broader. The work takes a holistic look at the consumer's right to health to ascertain the extent to which the FCCPA has safeguarded this right during the COVID-19 pandemic. Recommendations are made thereafter.

## 2. Conceptualising the Right to Health

One of the most important daily concerns of an average human being is his health and that of his loved ones. It is considered so essential and valuable that people are always willing to do anything for a healthy life. The saying that "health is wealth" simply translates to the fact that only a healthy person could work to make money or go to school or take up any responsibility for that matter. Given its indispensability to the right to life, it is not surprising that United Nations made it a fundamental human right. "The right to the enjoyment of the highest attainable standard of physical and mental health," usually shortened to "the right to health," was first articulated in the 1946 Constitution of the World Health Organisation (WHO).<sup>8</sup> The Preamble to the Constitution first defines health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'; and then says that 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.'<sup>9</sup> According to the Universal Declaration of Human Rights (UDHR), the Right to health is that:

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.<sup>10</sup>

Other international and regional instruments also define the right in the same vein.<sup>11</sup> However, it is the International Covenant on Economic, Social and Cultural Rights, which through its Committee on Economic, Social and Cultural Rights, the body responsible for monitoring compliance gave a breakdown of what the right entails.<sup>12</sup> This has succinctly been summarised as follows;

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<sup>8</sup> WHO (n 1).

<sup>9</sup> Ibid.

<sup>10</sup> Note 3.

<sup>11</sup> International Covenant on Economic, Social and Cultural Rights, art.12.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights," General Comment No 14 (2000) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEov>

The right to health is an inclusive right. We frequently associate the right to health with access to health care and the building of hospitals. This is correct, but the right to health extends further. It includes a wide range of factors that can help us lead a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights, calls these the ‘underlying determinants of health’. They include: safe drinking water and adequate sanitation; safe food; adequate nutrition and housing; healthy working and environmental conditions; health-related education and information; and gender equality.

The right to health contains freedoms and entitlements. The freedoms include the right to be free from non consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment. On the other hand, the entitlements include the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; the right to prevention, treatment and control of diseases; access to essential medicines; maternal, child and reproductive health. Other are equal and timely access to basic health services; the provision of health-related education and information; and participation of the population in health-related decision making at the national and community levels.

Right to health entails that health services, goods and facilities must be provided to all without any discrimination. Non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health. All services, goods and facilities must be available, accessible, acceptable and of good quality. Functioning public health and health-care facilities, goods and services must be available in sufficient quantity within a State. They must be accessible physically (in safe reach for all sections of the population, including children, adolescents, older persons, persons with disabilities and other vulnerable groups) as well as financially and on the basis of non-discrimination. Accessibility also implies the right to seek, receive and impart health-related information in an accessible format (for all, including persons with disabilities), but does not impair the right to have personal health data treated confidentially. The facilities, goods and services should also respect medical ethics, and be gender-sensitive and culturally appropriate. In other words, they should be medically and culturally acceptable. Finally, they must be scientifically and medically appropriate and of good quality. This requires, in particular, trained health professionals, scientifically

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approved and unexpired drugs and hospital equipment, adequate sanitation and safe drinking water.<sup>13</sup>

A careful perusal of the above shows that these determinants of health are critical requirements for the health, safety, and survival of the consumer at every point in time, especially in this pandemic.

### 3. The Corona Virus (COVID-19) Pandemic

In December 2019, an infectious disease caused by a new coronavirus was first identified in Wuhan, China. The viruses are known to cause severe respiratory infections. Fast forward to March 2020, up to 750,890 persons spread across more than 150 countries had been infected by the disease with a mortality rate of more than 36,000 people.<sup>14</sup> The world panicked. Taking cognisance of the rate at which the disease spread from country to country, the World Health Organisation quickly characterised it as a pandemic.<sup>15</sup> This brought about a halt to life as we knew it. In the bid to curb the spread of the virus, countries implemented nationwide lockdowns and economies suffered. In addition, measures such as the prohibition of mass gatherings, social distancing, and isolation became the order of the day to reduce the spread of the virus. Frequent washing of hands with soap, use of hand sanitiser, disinfectants, face masks, latex gloves, etc became the new normal. As is to be expected, prices of everything skyrocketed as a result of not just increased demand but also because of decrease or non-production and difficulties in distribution because of the lockdown.

In Nigeria, things went haywire as hoarding and price gouging took centre stage. Foodstuff, basic health amenities, and toiletries such as soap, face masks, hand sanitisers, disinfectants, latex gloves, and the rest of them became extremely expensive and scarce. Face masks, for instance, went from being as low as three pieces for N50 to N500 a piece; a paint bucket of *garri* went from N300 to N800; while a bag of sachet water went from N80 to up to N200. When word came out that chloroquine phosphate could be a possible cure for the illness, the drug became extremely expensive as people began purchasing it and self-medicating. Rumors of people washing and selling used and discarded facemasks arose; face masks that were designed to be used just once were reused multiple times because it was scarce and expensive. In all these, one sees

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<sup>13</sup>WHO Factsheet No.31 The Right to Health  
<<https://www.refworld.org/docid/48625a742.html>> accessed 20 October, 2020.

<sup>14</sup>Coronavirus disease 2019 (COVID-19)Situation Report –71  
<<https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200331-sitrep-71-covid-19.pdf>> accessed 20 October, 2020.

<sup>15</sup>WHO Director-General's opening remarks at the media briefing on COVID-19-11 2020 <<http://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> accessed 20 October, 2020.

that the consumer is in a very precarious situation as undertakings started taking advantage of his vulnerability contrary to the provisions of the FCCPA.

#### **4. The Federal Competition and Consumer Protection (FCCP) Act, 2018**

After almost a decade of going back and forth, the Federal Government finally signed the Federal Competition and Consumer Protection Bill 2018 on January 30, 2019, with its scope covering all undertakings and all commercial activities within or having an effect within Nigeria.<sup>16</sup> The purpose of the Act is to:

- (a) promote and maintain competitive markets in the Nigerian economy;
- (b) promote economic efficiency;
- (c) protect and promote the interests and welfare of consumers by providing consumers with wider variety of quality products at competitive prices;
- (d) prohibit restrictive or unfair business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria; and
- (e) contribute to the sustainable development of the Nigerian economy.<sup>17</sup>

To enable it achieve its purpose, the Act establishes two institutions - the Federal Competition and Consumer Protection Commission (the Commission)<sup>18</sup> and the Competition and Consumer Protection Tribunal (the Tribunal).<sup>19</sup> The Commission is a body corporate that may sue and be sued, is responsible for the administration and enforcement of not only the provisions of the Act but any other enactment concerning competition and protection of consumers.<sup>20</sup> To this end, the Commission is given very wide powers and authority<sup>21</sup> some of them which directly relate to this study are the power to:

- (a) initiate broad based policies and review economic activities in Nigeria to identify anti-competitive, anti-consumer protection, and restrictive practices which may adversely affect the economic interest of consumers and make rules and regulations under this Act and any other enactment with regards to competitions and protection of consumers;
- (b) advise the Federal Government generally on national policies and matters pertaining to all goods and services and on the determination of national norms and standards relating to competition and consumer protection;
- (c) eliminate anti-competitive agreements, misleading unfair, deceptive or unconscionable marketing, trading, and business practices;
- (d) resolve disputes or complaints, issue directives, and apply sanctions where necessary;
- (e) give and receive advice from other regulatory authorities or agencies within the relevant industry or sector on consumer protection and competition matters;

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<sup>16</sup>FCCPA, s 2 (1).

<sup>17</sup> Ibid, s 1.

<sup>18</sup> Ibid, s 3.

<sup>19</sup> Ibid, s 39.

<sup>20</sup> Ibid, s 17 (a).

<sup>21</sup> Ibid, Part111, ss 17and18.

- (f) create public awareness: through seminars, workshops, studies and make available information with regard to the exercise of its powers and performance of its functions to the public;
- (g) protect and promote consumer interests;
- (h) regulate and seek ways and means of removing or eliminating from the market, hazardous goods and services, including emission, untested, controversial, emerging or new technologies, products or devices whatsoever; and cause offenders to replace such goods or services with safer and more appropriate alternatives;
- (i) collaborate with consumer protection groups and associations for consumer protection purposes;
- (j) ensure that consumers' interests receive due consideration at appropriate fora and provide redresses to obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade associations or individuals.<sup>22</sup>

The Tribunal is empowered to adjudicate over conducts prohibited by the Act.<sup>23</sup> It has the power to hear appeals and review any decision made by the Commission or any sector-specific regulatory authority in respect of competition and consumer protection matters after an initial review has been conducted by the Commission. Consequently, the Tribunal shall make a ruling necessary or incidental to such review and can impose an administrative penalty in accordance with a prohibited practice under the Act.<sup>24</sup> If a party is displeased with the ruling of the Tribunal, appeal lies to the Nigerian Court of Appeal.<sup>25</sup>

One of the most important innovations of the new Act<sup>26</sup>, is the enumeration of rights inherently granted to the consumer who it defines to include any person “who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale: or’ to who a service is rendered.”<sup>27</sup> The rights<sup>28</sup>, which align with those,

<sup>22</sup> Ibid, ss17 (b), (c), (g), (h), (i), (j), (l), (m), (r), (s)

<sup>23</sup> Ibid, s.47

<sup>24</sup> Ibid s.51 provides that administrative penalty shall not exceed 10 percent of an undertakings turnover in the preceding year. Section 52 FCCPA also provides that the Tribunal can also order an undertaking to sell its assets where it determines that it is the most appropriate remedy or when the undertaking is a repeat offender.

<sup>25</sup> Ibid s 55

<sup>26</sup> This is one of the downsides of the defunct Consumer Protection Council Act. See F. O. Ukwueze & E. L. Okiche (2020): “Product liability in Nigeria: a paradigm shift from fault-based to strict liability regime, *Commonwealth Law Bulletin*, DOI: 10.1080/03050718.2020.1788403.

<sup>27</sup> Ibid, s.167

<sup>28</sup> They are, the rights to satisfaction of basic needs; safety; information; choice; to be heard; redress; consumer education; and healthy and sustainable environment. See Consumer International, ‘Consumer Rights’



granted to the consumer under the United Nations Guidelines on Consumer Protection (UNGCP)<sup>29</sup> and the Model Law for Consumer Protection in Africa (MLCPA)<sup>30</sup> are rights to:

Information in plain and understandable language which include trade description and price disclosure;<sup>31</sup>

b. Select suppliers, cancel advance reservation, booking or order, choose and examine goods; return unsatisfactory goods;<sup>32</sup>

c. Fair dealings;<sup>33</sup>

d. Quality and safe products and services;<sup>34</sup> and

e. Redress, including damages, refund and replacement of defective goods.<sup>35</sup>

In the same vein, the Act imposes general obligations to manufacturers, importers, distributors, suppliers of goods, and service providers.<sup>36</sup> In addition, it creates specific offences.<sup>37</sup>

It is an offence for an undertaking defined as “any person involved in the production of, or the trade in, goods, or the provision of services”<sup>38</sup> to <sup>39</sup>conspire, combine, agree or arrange with another undertaking to prevent, limit or reduce unduly, the manufacture or production of any goods or services or to unreasonably enhance the price of any goods or services.” Also, an undertaking shall not require a consumer to pay a price for any goods or services higher than the displayed price for those goods or services, or if more than one price is concurrently displayed higher than the lower or lowest of the prices so displayed. It is equally an offence for an undertaking to:

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

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<<http://www.consumersinternational.org/who-we-are/consumer-rights>> accessed 20 October 2020.

<sup>29</sup>Art 5.The Guidelines were first adopted by the General Assembly in resolution 39/248 of 16 April 1985, later expanded by the Economic and Social Council in resolution 1999/7 of 26 July 1999, and revised and adopted by the General Assembly in resolution 70/186 of 22 December 2015

<sup>30</sup>Model Law for Consumer Protection in Africa (Zimbabwe 1996) art 3.

<sup>31</sup>FCCPA, ss. 114-117

<sup>32</sup>Ibid, ss 119-122

<sup>33</sup>Ibid, ss 123-129

<sup>34</sup>Ibid, ss130-131

<sup>35</sup>Ibid, ss132 and 136

<sup>36</sup>Ibid, Part XVI

<sup>37</sup>Ibid, Part XIV

<sup>38</sup>Ibid, s167

<sup>39</sup>Ibid, s108 (1) (b).

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

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

The penalty for the contravention of any right of the consumer under the Act by a natural person is imprisonment for a term not exceeding five years, or to payment of fine not exceeding N1 0,000,000.00 or to both: for a body corporate, a fine of not less than N100, 000,000.00 or 10% of its turnover in the preceding business year whichever is higher: and each director of the body corporate is liable to be proceeded against and dealt with as an individual. <sup>40</sup>From the foregoing, it could be clearly seen that the Act provides an adequate legal and institutional framework for the protection of the Nigerian consumer.

## 5. FCCPA, Consumer Protection and COVID 19 Pandemic

No sooner had the World Health Organisation announced the use of essential health products (face masks, hand sanitizers, disinfectants, latex gloves, etc) necessary for containing the spread of the virus than price gouging, hoarding, and other unconscionable practices began all over the world. Immediately and surprisingly too, the Federal Competition and Consumer Protection Commission intervened. The intervention was through a circular issued on 1 March 2020 by its Chief Executive Officer, Irukera cautioning against arbitrary, unreasonable, unconscionable, excessive, and irrational pricing of critical hygiene products (price gouging). Referring to Sections 17(h) (s), 18 (1) (c), 108 (1) (b) (c) and (d), 115 (3) and 124(1) of the Federal Competition and Consumer Protection Commission Act (FCCPA), he stated:

This unusual and inordinate practice of unreasonably increasing the price of these products in an indiscriminate manner, on account of the national public health concern (Coronavirus) violates both moral codes and extant law. Abusing citizens' sensitivity, apprehension, anxiety, and vulnerability, especially during emergencies that could adversely affect national security is a violation of the law, specifically, Section 17 (s) of the Federal Competition and Consumer Protection Act (FCCPA) which prohibits obnoxious trade practices, or the unscrupulous exploitation of consumers.<sup>41</sup>

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<sup>40</sup> Ibid, s155

<sup>41</sup> B Irukera, 'Price Gouging, Unreasonable and Arbitrary Increases in Prices of Protective and Hygiene Products on Account of COVID-19 (Corona-virus) Concerns' <<http://fccpc.gov.ng/news-events/releases/2020/03/01/price-gouging-unreasonable-and-arbitrary-increases-in-prices-of-protective-and-hygiene-products-on-account-of-covid-19-corona-virus-concerns/>> accessed 26 October, 2020.

Encouraging consumers to be vigilant, and report arbitrary prices in consumer goods and unreasonable trade practices to the Commission through telephone numbers and email addresses he supplied, he further warned that ‘any person who engages in the act of conspiracy, combination, agreement, or arrangement to unduly limit or manipulate supply, to unreasonably enhance price or otherwise restrain competition is liable for a criminal offense.’ He equally enjoined consumers to ‘proceed in abundance of caution and follow all respiratory and hand-washing hygiene practices that have been published by NCDC, W.H.O, LASG, FCCPC and other official and authoritative sources...’<sup>42</sup>

As prices continue to rise astronomically, the Commission on 13 March issued another alert urging suppliers, retailers, online shopping platforms and individuals who buy to resell to desist from charging unreasonable or inflated prices. It warned that violators will be criminally prosecuted.<sup>43</sup> Consumers were admonished against panic buying especially with regards to the purchases of Chloroquine, which according to the Commission, “raise questions of fairness both by suppliers/retailers, and consumers who are insistent on purchasing all available inventory, even when personal needs are inconsistent with that available inventory.”<sup>44</sup> In addition, it urged ‘consumers to avoid large gatherings, including markets/stores to make needless or non-essential purchases, and to practice the strongest discipline in staying at home and enforcing social distancing measures.’<sup>45</sup>

Again on 28 March 2020 the Commission issued another release stating that it is prioritising COVID-19 related complaints/issues, particularly its surveillance to ‘prevent unconscionable, unjust, unreasonable, exploitative, predatory or unscrupulous conduct by businesses, whether manufacturer/importer, distributor, or retailer such as price gouging, and supply manipulation of critical hygiene products, medications, and other vital medical devices/supplies.’<sup>46</sup> It counseled businesses ‘to operate within the law, or risk consequences which may include prosecution’ reinterring that it was receiving information including pictures through its dedicated platform that would aid investigation where and when the need arises.<sup>47</sup>

Knowing that insisting on strict adherence to certain provisions of the Act during the pandemic might work hardship on both the consumer and

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> B Iruékera, ‘Update: Limited Operations and prioritization during Covid-19 Emergency and Response’ <<http://fccpc.gov.ng/news-events/releases/2020/03/28/limited-operations-and-prioritization-during-covid-19-emergency-and-response>> accessed 26 October, 2020.

<sup>47</sup> Ibid.

undertakings, the Commission on 28 April quickly published what it termed ‘Guidance Regarding FCCPC’s (Commission) Merger Notification Process/ Interpretation of the Law on Other Competition Issues under the Federal Competition and Consumer Protection Act (FCCPA); During COVID-19 Pandemic.’<sup>48</sup> The Guideline relaxes certain rules concerning authorisations for cooperation among businesses and certain consumer rights under Part XV of the Act during the COVID-19 pandemic.<sup>49</sup> For instance, it says that cooperation, coordination, or joint efforts to ensure the supply and distribution of scarce products and services that attend to the health, safety, and subsistence needs of consumers ‘provided they are limited in scope and duration necessary to address concerns arising from the current crisis and does not go further or last longer than necessary, will not receive legal sanction from the FCCPC.’<sup>50</sup> Regarding consumer rights, the time for the return of defective goods shall subsist ‘so long as the consumer shall ensure that the goods are not used and remain in pristine condition.’<sup>51</sup>

However, it is important to note that it was not just released; the Commission surely walked its talk during this pandemic. As a result of the warning to sellers engaged in price gouging and arbitrary increases in prices of protective and hygiene products issued by FCCPC, JUMIA Nigeria, an online shop, delisted 390 products belonging to 168 sellers of hand sanitizers and face masks from its platform.<sup>52</sup> Jumia even went out of its way to source for sellers who would sell at cheap prices and in addition forgo its commission as a result of the Commission’s effort.<sup>53</sup> Also, the Commission took four supermarkets in Abuja and their proprietors to court for an alleged arbitrary hike in prices of sanitizers, hand-wash liquids, disinfectants, and other anti-bacterial hygiene products contrary to Section 125 (1) (a), punishable under section 155 of the Act.<sup>54</sup> Furthermore, in furtherance of its surveillance operations, the Commission paid

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<sup>48</sup>FCCPC 2020 Guideline <<http://fccpc.gov.ng/uploads/FCCPC%202020%20Guidelines%20on%20Competition%20and%20Consumer%20Protection.pdf>> visited 27/10/20

<sup>49</sup>Pursuant to FCCPA, ss. 17 (b), 163 (1), (2) (a) and (e)

<sup>50</sup> FCCPC 2020 Guideline, para 1.5

<sup>51</sup> Ibid, para 3.3

<sup>52</sup> FCCPC ‘Jumia Delists 390 Products on Account of FCCPC Warning over Hike in Prices of Protective and Hygiene Products, Assures Commission of Cooperation’ <<http://fccpc.gov.ng/news-events/releases/2020/03/13/jumia-delists-390-products-on-account-of-fccpc-warning-over-hike-in-prices-of-protective-and-hygiene>> accessed 22 October, 2020.

<sup>53</sup> Ibid.

<sup>54</sup> Bassey Udo, ‘Coronavirus: Nigerian govt sues H-Medix, Faxx Stores, others over hike in prices of sanitizers’ <<https://www.premiumtimesng.com/news/top-news/384844-coronavirus-nigerian-govt-sues-h-medix-faxx-stores-others-over-hike-in-prices-of-sanitizers.html>> accessed 27 October, 2020.

unscheduled visits to several companies.<sup>55</sup> It sealed off some of the companies that it visited, including the FarEast Mercantile Company and Apples and Pears Ltd where it uncovered large quantities of expired products.<sup>56</sup>

For being so proactive, the Federal Government, through the Federal Ministry of Industry, Trade and Investment (FMITI) gave the Commission an award tagged “Extra Mile Award.”<sup>57</sup> The certificate says the Extra Mile Award was for outstanding performance as a member of the Federal Ministry of Industry, Trade and Investment Committee on Sustainable Production/Delivery of Essential Commodities during the COVID-19 pandemic.”<sup>58</sup> In a related development, a no less important body than the United Nations Conference on Trade and Development (UNCTAD) commended FCCPC for the proactive and effective actions it took against price gouging and other anti-consumer activities during the ongoing global Coronavirus pandemic.<sup>59</sup> The world body praised FCCPC’s leadership role as demonstrated by its ‘early successive warnings against unfair practices and anti-market behaviour and also for its robust determination to enforce the law against any breaches.’<sup>60</sup>

## 6. Comparative Analyses with other Jurisdictions

### 6.1 Europe

Since the mid-20<sup>th</sup> century, the European Union (EU) has had an advanced system of competition practice which is based on the provisions of Articles 101<sup>61</sup> and 102<sup>62</sup> of the Treaty of the Functioning of the European Union (TFEU).<sup>63</sup> Articles 101 prohibits the prevention, restriction, or distortion of

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<sup>55</sup>The FCCPA, s 18(1)

<sup>56</sup>Sealing of Apples and Pears Business Location for Expired/Expiring Inventories and Unsafe Food Product Handling <<http://fccpc.gov.ng/news-events/events/in-furtherance-of-an-open-investigation-on-reasonable-suspicion-of-illegal-activities-s-dot-18-1-fccpa-fccpc-sealed-med-contour-in-an-abundance-of-caution-and-consumer-safety-pending-further-inquiry/>> accessed 27 October, 2020.

<sup>57</sup>COVID-19 Response: FCCPC Receives FG Award> <http://fccpc.gov.ng/news-events/releases/2020/08/19/covid-19-response-fccpc-receives-fg-award/>, accessed 27 October, 2020.

<sup>58</sup>Ibid.

<sup>59</sup> UNCTAD Hails Nigeria on Consumer Protection during Pandemic <<http://fccpc.gov.ng/newsevents/releases/2020/05/14/unctad-hails-nigeria-on-consumer-protection-during-pandemic/>>, accessed 20 October, 2020.

<sup>60</sup>Ibid.

<sup>61</sup>Treaty on the Functioning of the European Union (TFEU), art. 101 <<https://www.lawteacher.net/acts/article-101-tfeu.php>> accessed 27 October, 2020.

<sup>62</sup> Ibid, art. 102.

<sup>63</sup> For details see, EL Okiche and AB Okiche, (2020) ‘The Balance between Equity and Efficiency; Reflections on the Goals of the New Nigerian Competition Law’ *Commonwealth Law Bulletin* DOI: 10.1080/03050718.2020.1756881

competition within the internal market; while 102 is against the imposing of unfair purchase or selling prices or other unfair trading conditions; limiting production, markets, or technical development to the prejudice of consumers; applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.<sup>64</sup> Although not delineable from other union objectives, maintaining the European single market has long been one main objective of EU competition law.<sup>65</sup> As a result of this, the EU came up with uniform measures for its members which are enforceable by the European Competition Network (ECN), the network representing the European Commission and EU national competition authorities. Space will not permit us to enumerate all of them<sup>66</sup> but the gravamen of the release is that the ECN 'will not hesitate to take action against companies taking advantage of the crisis to form cartels or abuse their dominant position.'<sup>67</sup> This is, however, without prejudice to the measures taken by individual member nations of the EU.

## 6.2 The United Kingdom

From the time COVID-19 was adjudged a pandemic, the UK competition regulator, the Competition and Markets Authority (CMA) took measures to ensure the availability of essential goods and services and also provide guidance on the application of competition law to co-operation activities during the crisis.<sup>68</sup> The CMA first issued a statement urging traders to behave responsibly and warned them against taking advantage of the Coronavirus outbreak to exploit the consumer.<sup>69</sup> Subsequently, it keeps on releasing statements that address different aspects of consumer concerns.<sup>70</sup> For instance, the statement of 19 March 2020 is on 'temporary relaxation of competition law for groceries and supermarkets allowing them to work together to ensure supplies were

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<sup>64</sup> Ibid.

<sup>65</sup> Albertina Albors-Llorens, 'Competition Policy and the Shaping of the Single Market' in Barnard C and Scott J (eds), *The Law of the Single European Market* (Hart Publishing, 2002)

<sup>66</sup> For details see COVID-19: Competition Law Implications of the Coronavirus Crisis, <[https://ca.practicallaw.thomsonreuters.com/w-024-8054?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://ca.practicallaw.thomsonreuters.com/w-024-8054?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 27 October, 2020.

<sup>67</sup> Ibid.

<sup>68</sup> CMA warns against exploitative sales and pricing practices during Coronavirus outbreak <<https://uk.practicallaw.thomsonreuters.com/w-024-3369?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29>> accessed 27 October, 2020.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

maintained during the crisis.<sup>71</sup> Sequel to this, several emergency amendments were made to the Competition Act to contain the pandemic. Such amendments include temporarily suspending the application of Chapter 1 of the Act in relation to agreements between 'dairy produce suppliers which relate to collecting and sharing information and certain coordination, with the purpose of maximising the processing, transport and storage efficiency and the storage capacity of dairy produce, and preventing or maximising the need for the disposal of milk resulting from the crisis.'<sup>72</sup>

On 20 March 2020, a COVID-19 task force was created by the CMA to tackle the negative impacts of the pandemic.<sup>73</sup> The task force is to 'scrutinise market developments to identify harmful sales practices; warn firms suspected of exploiting the circumstances and people's vulnerability, and take enforcement action if there is evidence firms may have breached competition or consumer law and if they failed to respond to warnings.'<sup>74</sup> The taskforce which is a very active watchdog notes that the majority of the complaints it receives concern unfair pricing and refund and that it had written to over 250 traders regarding these complaints.<sup>75</sup> The latest update from the task force shows that two major holiday firms had formally and firmly committed to addressing the majority of cancellation and refund complaints.<sup>76</sup> The CMA also notes that the volume of price gouging complaints continues to decline.<sup>77</sup>

The most significant aspect of the CMA's response to the COVID-19 crisis is the synergy between the body and other sector specific regulators. The Department for Business, Energy and Industrial Strategy (BEIS) announced on 19 March 2020 an agreement with the energy industry to support vulnerable people with pre-payment meters, suspend disconnections and support energy customers in financial distress.<sup>78</sup> To this end, the Office of Gas and Electricity

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<sup>71</sup> COVID-19: temporary relaxation of competition law to allow supermarkets to work together and CMA statement on approach to essential business cooperation <<https://uk.practicallaw.thomsonreuters.com/w-024-5629?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29>> accessed 27 October, 2020.

<sup>72</sup> The Competition Act 1998 (Dairy Produce) (Coronavirus) (Public Policy Exclusion) Order 2020

<sup>73</sup> CMA launches COVID 19 taskforce <<https://uk.practicallaw.thomsonreuters.com/w-0245685?originationContext=document&transitionType=DocumentItem&contextData=%28sc.Default%29>> accessed 27 October, 2020.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Legal update, COVID-19: measures agreed with energy industry to support vulnerable people <<https://www.gov.uk/government/news/government-agrees-measures-with->



Markets (Ofgem) published an update stating that its priorities are to ensure reliable and secure supplies of gas and electricity and the protection of vulnerable consumers.<sup>79</sup>

Water Services Regulation Authority (Ofwat), the body responsible for the regulation of privatised water and sewerage equally announced its package of initiatives for combating the crisis. These include minimising disruption in the water markets to support vulnerable consumers; allowing premises temporarily closed to be marked as vacant for settlement; making adjustments for the late payment of bills and considering urgent changes to prevent disconnection for non-payment by consumers.<sup>80</sup> In the area of financial services, the Financial Conduct Authority (FCA) and Payment Systems Regulator (PSR) are keyed into the whole project. Both issued a joint statement supporting the CMA and pledging to 'provide essential services, while not tolerating exploitative conduct that harms consumers.'<sup>81</sup> The telecommunications industry was not left out. It committed to 'working with customers on bills, removing data allowance caps, offering new mobile and landline packages at low prices, and ensuring vulnerable and self-isolating customers get alternative communications if repairs cannot be carried out.'<sup>82</sup>

### 6.3 The United States

The United States does not have a federal legislation on hoarding (even though various states have) but the Defense Production Act of 1950<sup>83</sup> empowers the President to designate materials as 'scarce materials or materials the supply of which would be threatened by such accumulation' to prevent the hoarding of the

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[energy-industry-to-support-vulnerable-people-through-covid-19](#)> accessed 20 October 2020.

<sup>79</sup>Legal update, COVID-19: Ofgem update on industry response and guidance <[https://content.next.westlaw.com/Document/Ie77421c1703b11ea80afece799150095/Vi ew/FullText.html?transitionType=Default&contextData=\(sc.Default\)&firstPage=true,>](https://content.next.westlaw.com/Document/Ie77421c1703b11ea80afece799150095/Vi ew/FullText.html?transitionType=Default&contextData=(sc.Default)&firstPage=true,>) accessed 20 October 2020.

<sup>80</sup> see Legal update, COVID-19: <Ofwat letter on water industry response <[https://uk.practicallaw.thomsonreuters.com/w-024-5611?transitionType=Default&contextData=\(sc.Default\)&firstPage=true,>](https://uk.practicallaw.thomsonreuters.com/w-024-5611?transitionType=Default&contextData=(sc.Default)&firstPage=true,>) and Legal update, COVID-19, Ofwat joint letter with MOSL on impact on the business retail market <[https://uk.practicallaw.thomsonreuters.com/w-029-4278?transitionType=Default&contextData=\(sc.Default,>](https://uk.practicallaw.thomsonreuters.com/w-029-4278?transitionType=Default&contextData=(sc.Default,>)) > all accessed 20 October 2020.

<sup>81</sup>Legal update, COVID-19: FCA and PSR statement on approach to competition law enforcement <[https://uk.practicallaw.thomsonreuters.com/w-024-6973?transitionType=Default&contextData=\(sc.Default>](https://uk.practicallaw.thomsonreuters.com/w-024-6973?transitionType=Default&contextData=(sc.Default>)) > accessed 20 October 2020.

<sup>82</sup>Legal update, COVID-19: measures agreed with telecoms companies to support vulnerable <consumers[https://ca.practicallaw.thomsonreuters.com/w-024-7395?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://ca.practicallaw.thomsonreuters.com/w-024-7395?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 20 October 2020.

<sup>83</sup>[50 U.S.C. § 4512](#),



materials ‘for the purpose of resale at prices in excess of prevailing market prices.’<sup>84</sup> Pursuant to this, the President issued an executive order ‘preventing the hoarding of health and medical resources necessary to respond to the spread of COVID-19 within the United States.’<sup>85</sup> It is instructive to note that within two months of the order, the Federal government charged a lot of people to court for conspiracy to violate the Defense Production Act by price gouging.<sup>86</sup> Based on this, the Antitrust Division of the Department of Justice (DOJ) and the Bureau of Competition of the Federal Trade Commission (FTC) came out with ways firms, including competitors, could engage in pro-competitive collaboration without violating the antitrust laws.<sup>87</sup>

The DOJ created the “Covid-19 Hoarding and Price Gouging Task Force ‘to address COVID-19-related market manipulation, hoarding, and price gouging.’<sup>88</sup> The task force was also to ‘investigate and prosecute those who acquire vital medical supplies in excess of what they would reasonably use or for the purpose of charging exorbitant prices to the healthcare workers and hospitals who need them.’<sup>89</sup> Like in the UK, there is serious synergy between the FTC and all the sector specific agencies in the areas of health and safety; travel, immigration, and transportation; money and taxes; education; scams and fraud; benefits and grants; housing and communications leading to an all-round protection of the consumer. The result is that as of 21 September, 2020 the FTC has received over 200,000 Coronavirus-related consumer complaints.<sup>90</sup>

In addition to the above, most states in the US have legislation against price gouging and this has made for more grass-root coverage and protection for the consumer. The Tennessee Law ‘prohibits any person from charging a price that is grossly in excess of the price generally charged for the same or similar goods or services in the usual course of business.’<sup>91</sup> The items covered are Consumer

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<sup>84</sup> Ibid

<sup>85</sup> <<https://www.federalregister.gov/documents/2020/03/26/2020-06478/preventing-hoarding-of-health-and-medical-resources-to-respond-to-the-spread-of-covid-19#print>> accessed 20 October, 2020.

<sup>86</sup> <<https://www.kslaw.com/pages/covid-19-survey-of-federal-and-state-price-gouging-laws#California>> accessed 20 October, 2020.

<sup>87</sup> Antitrust Division’s Business Review Process< <https://www.justice.gov/atr/business-reviews>> and the Federal Trade Commission’s Advisory Opinion Process <<https://www.ftc.gov/tips-advice/competition-guidance/competition-advisory-opinions>> all accessed 20 October, 2020.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Consumer complaints about COVID-19 fraud pass 200,000 <<https://uspirg.org/news/usp/consumer-complaints-about-covid-19-fraud-pass-200000>> accessed 23 March, 2021.

<sup>91</sup> Tenn. Code Ann. § 47-18-5103 (a) (1) <<https://advance.lexis.com/documentpage/?pdmfid=1000516&crid=a3e2091f-222c-4313-9fb4-6de01f5c0baa&pdistocdocslicderaccess>> accessed 23 March, 2021.

food items; Repair or Construction services; Emergency supplies; Medical supplies; Building materials; Gasoline; Transportation, Freight, and Storage services; or Housing.<sup>92</sup> So when news got out that a Tennessee man cleaned out stores of sanitisers and wipes in an attempt to profit off the public's panic over the pandemic by attempting to sell each of the 17,000 bottles of hand sanitiser he purchased at dollar stores for as much as \$70 each, the Attorney General's Office stepped in.<sup>93</sup> The AG's Office sent him a cease-and-desist letter and opened an investigation, stating that it would not tolerate price gouging in this time of exceptional need. As a result, the man donated all the said supplies to a church for the church to distribute to people in need across Tennessee.

California's law<sup>94</sup> prohibits selling or offering to sell the covered items or services 'for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to a date set in the proclamation or declaration of emergency.'<sup>95</sup> The covered items are consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels." The fallout of this is the case of *Fraser et al v. Cal Maine Foods et al*<sup>96</sup> where in a class action, several consumers who purchased eggs sued over two dozen defendants for price gouging. According to the plaintiffs, the defendants, who are producers, wholesalers, and retailers of eggs, seek "to unfairly profit from the increased consumer demand for eggs in the midst of the ongoing crisis."<sup>97</sup>

#### 6.4 South Africa

Back home in Africa, the South African government has equally been very proactive in the handling of the COVID-19 crisis. Directly the government declared the pandemic a national disaster, the Minister of Trade, Industry, and Competition issued block exemptions (the first country in Africa to do so) in respect of four critical sectors of the economy to strengthen the country's fight against COVID-19.<sup>98</sup> Block exemption entails exempting the sectors from the provisions of the Competition Act in respect of restrictive horizontal and

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<sup>92</sup> Ibid.

<sup>93</sup> <https://www.tennessean.com/story/opinion/2020/04/20/coronavirus-amazon-fighting-price-gouging/5168526002/>,

<sup>94</sup> Cal Penal Code s 396.

<sup>95</sup> Ibid (b).

<sup>96</sup> Case No. 3:20-cv-02733, in U.S. District Court for the Northern District of California. <<https://www.law360.com/articles/1265960> > accessed 21 October, 2020.

<sup>97</sup> Ibid.

<sup>98</sup> L Naidu and S Nxumalo, South Africa: Competition Law Exemptions and Regulations applicable during COVID-19 <https://globalcompliancenews.com/south-africa-competition-law-covid19-24032020> > accessed 22 October, 2020.

vertical practices<sup>99</sup> not only to enable them to combine and coordinate infrastructure and resources for the benefit of consumers but also to fight price gouging during the crisis. The four sectors concerned are healthcare, consumer and customer protection, banking and retail property (clothing, footwear, and home textile retailers; personal care services (i.e. hairdressers, health and beauty salons, and restaurants).<sup>100</sup>

Following these measures, the Competition Commission has been vigorously enforcing allegations of price gouging and other unfair trade practices. For instance, it has engaged with retailers and other stakeholders who have agreed to notify it of “unusual increases of prices” by suppliers.<sup>101</sup> To this end, more than 900 complaints were received by the Commission as of 14 May 2020, and majority investigated. Out of these, the Commission swiftly obtained more than twenty consent agreements<sup>102</sup> with the firms concerned while three referrals are pending before the Competition Tribunal.<sup>103</sup> In the case of Centrum Pharmacy, for example, the Commission was able to get the Pharmacy to immediately desist from excessive pricing of face masks; reduce its mark-up on face masks, and donate essential goods to the value of ZAR 25 410 to two local old age homes.<sup>104</sup> All the other consent agreements follow the same pattern.<sup>105</sup>

Regarding individual consumers, National Consumer Commission (NCC), the Competition Commission (CompCom), National Credit Regulator (NCR) and the Government Communication and Information System (GCIS) all collaborate to make sure the consumer is adequately protected. The Ministry of Trade, Industry and Competition set up easy to follow complaint procedure. It was reported that as a result of this, four months into the pandemic, about 1700 cases

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<sup>99</sup> The South African Competition Act, ss 4 and 5, <<http://www.compcom.co.za/wpcontent/uploads/2017/11/pocket-act-august-20141.pdf>> accessed 23 March, 2021.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Excessive Pricing COVID-19 <<https://ccle.sun.ac.za/excessive-pricing-covid-19>> accessed 26 October, 2020.

<sup>103</sup> T Dini, COVID-19 Excessive Pricing – The Cases Pursued by the Competition Commission, South Africa <<https://www.bowmanslaw.com/insights/competition/covid-19-excessive-pricing-the-cases-pursued-by-the-competition-commission-s>> accessed 20 March 2021.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

of alleged price gouging were received.<sup>106</sup> It is instructive to note that items covered by the synergy of the regulators were not just face masks and the like but include such consumer problems as the inability to pay loans during this pandemic, pyramid schemes, debt counseling, etc.<sup>107</sup>

## 6.5 India

Like in every other nation, the pandemic caused shortage in supplies of food and other essential consumer goods as a result of the lockdown in India. The sudden increase in demand for certain medical and healthcare products such as ventilators, face masks and the like indicated for containing the virus further compounded the situation, thereby affecting the morale of health workers.<sup>108</sup> Unlike in some other climes, the Competition Commission of India (CCI) responsible for regulating anti-competitive practices did not pass any interim regulation to deal with COVID-19; it rather issued an advisory in April to guide the businesses.<sup>109</sup> First, it made it clear ‘that efficiency gains and benefits to consumers’ are among its top priorities. CCI equally recognised that there may be a need for businesses to coordinate some activities by way of sharing data on stock levels, timings of operation, sharing of distribution network, and infrastructure, transport logistics, production, etc., to make sure that supply and distribution of healthcare and medical products and other related services are not hindered.<sup>110</sup>

To achieve this, the CCI relaxed most of its procedures by allowing things like electronic filing of antitrust cases, notifications, and deferment of non-urgent cases, Pre-Filing Consultation (PFC) for combinations through video conference.<sup>111</sup> It also created a helpline for stakeholders to reach the Commission effortlessly during the pandemic in addition to the CCI’s website always uploading information to and from the relevant stakeholders. CCI also

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<sup>106</sup>Trade, Industry and Competition on resolving issues of consumer protection during Coronavirus COVID-19 pandemic<<https://www.gov.za/speeches/trade-industry-and-competition-resolving-issues-consumer-protection-during-coronavirus>> accessed 20 March, 2021.

<sup>107</sup> Ibid.

<sup>108</sup> N Sharma and others ‘Personal Protective Equipment: Challenges and Strategies to Combat COVID-19 in India: A Narrative Review’, <<https://journals.sagepub.com/doi/full/10.1177/0972063420935540>> accessed 23 October, 2020.

<sup>109</sup>Regulating competition in times of Covid-19 <<https://www.financialexpress.com/opinion/regulating-competition-in-times-of-covid-19/2105885/>> accessed 20 March, 2021.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

put in place a mechanism for conducting virtual proceedings thus enabling it to interface with sector-specific regulators and other stakeholders.<sup>112</sup>

Being a member of BRICS, CCI is a party to the 'Statement of the BRICS Competition Authorities on Covid-19'.<sup>113</sup> The Agreement aims for members to join efforts to combat the negative economic consequences of Covid-19, by sharing experiences, information, and practices on the competition during and after the pandemic for the benefit of the society and their economies. All the above inform the response of India to the pandemic.

## 7. Recommendations and Conclusion

This paper examines the functions of FCCPC, powers, and its role in the promotion and protection of the right to health. The only thing that is constant is change, and this sort of change should be accepted wholeheartedly as it has caused a lot of good. The COVID-19 pandemic served as an unexpected mode of test-running the Act with regards to right to health and the way price gouging negatively affects the said right. From the foregoing, one can see one of the ways the Nigerian government actively attempts to protect the fundamental human rights of the citizens. It can be seen that the FCCPC lived up to its billing to a large extent, even to the point of winning an award from a world body. However, there is still room for improvement and in this regard, we make the following recommendations;

The FCCPC should learn to collaborate and synergise with sector specific regulators such as the Nigerian Communications Commission, the Standards Organization of Nigeria and the National Agency for Food and Drug Administration Commission so that every aspect of consumer goods and services would be covered. The case of the UK is very instructive.

The presence of the Commission was only felt in Abuja and Lagos. The need for the Commission to urgently widen its sphere of coverage cannot be overemphasized as most of the consumers who need to be protected are in the rural areas.

Closely related to the above is the importance of public awareness campaigns in churches, village and town hall meetings, schools, etc to enlighten consumers on the rights given to them by law.

It is also recommended that the Commission should rely more on Alternative Dispute Resolution (ADR) in dealing with issues instead of going to court. We say this because the cases instituted by FCCPC against four supermarkets are still pending while its South Africa counterpart resolved a similar issue within

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<sup>112</sup> Ibid.

<sup>113</sup> Statement of the BRICS Competition Authorities on Covid-19 <https://www.cci.gov.in/sites/default/files/event%20document/brics.pdf> > accessed 20 March, 2021.

one month. Through dialogue, the Commission was able to get South Africa Centrum Pharmacy to desist from excessive pricing of face masks; reduce its mark-up on face masks, and donate essential goods to the value of ZAR 25 410 to two local old age homes.

Conclusively, we think that FCCPC made commendable efforts towards safeguarding the consumer's right to health amid the COVID-19 pandemic but that the services of the Commission would get a lot better if the above recommendations are followed.