

## **AfCFTA: THE ROLE OF LAW AND POLICY IN DRIVING COMPETITIVENESS FOR NIGERIAN BUSINESSES**

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### **1.0 INTRODUCTION**

Laws and policies are the life-blood for building a competitive business sector in any country. For there to be a thriving business environment, there should be far-reaching and viable laws and policies to regulate business activities in order to promote competitiveness and efficiency in the business environment. The competitive and burgeoning business environment in Nigeria has made it imperative for laws and policies to play vital roles in not only regulating business activities, but also ensuring that the level of competitiveness in the Nigerian business environment is maintained.

This essay intends to accentuate and portray the role of law and policy in driving competitiveness for Nigerian businesses. The essay shall highlight few major laws and policies that are made to promote the needed drive for competitiveness among businesses in Nigeria. It shall also in a nutshell, run through the founding of the African Continental Free Trade Area (AfCFTA) and its major objectives and provisions. The essay shall in the final analysis, show how laws and policies play a vital role in providing a competitive market/business environment for businesses in Nigeria.

### **2.0 THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA): A BRIEF OVERVIEW OF ITS FOUNDING, OBJECTIVES AND SALIENT PROVISIONS OF THE AGREEMENT.**

The African Continental Free Trade Area (AfCFTA) is a free area whose Agreement was signed on 21<sup>st</sup> March 2018 at the Extra-Ordinary Summit of the African Union held in Kigali, Rwanda and came into force on 30<sup>th</sup> May, 2019 after The Gambia became the 22<sup>nd</sup> State to ratify it. The free-trade area is the largest in the world in terms of the number of participating countries since the formation of the World Trade Organization. According to World Bank, the African Continental Free Trade Area (AfCFTA) Agreement will create the largest free trade area in the world measured by the number of countries participating<sup>1</sup>. The pact connects 1.3 billion people across 55 countries with a combined gross domestic product (GDP) valued at US\$3.4 trillion. The AfCFTA is projected to help usher in the kinds of deep reforms necessary to enhance long term growth in African countries.

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<sup>1</sup>World Bank, 'African Continental Free Trade Area' <https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area> accessed 1st October, 2021.

The general objectives of the agreement include, *inter alia*, to:

- Create competitiveness of member states within Africa and in the global market.
- Encourage industrial development through diversification and regional value chain development, agricultural development and food security.
- Establish a liberalized market through multiple rounds of negotiations.
- Create a single market, deepening the economic integration of the continent, etc.

Nigeria signed the Agreement on 7<sup>th</sup> July, 2019 and after initial dilly-dallying, ratified it in November 2020. Nigeria became the 34<sup>th</sup> Member State to ratify the Agreement.

In terms of structure, the main Agreement is divided into 7 Parts and 30 Articles. In addition, there are protocols, annexes and appendices which equally form part of the AfCFTA Agreement. Three of these Protocols are (1) the Protocol on Trade in Goods (2) the Protocol on Trade in Services, and (3) the Protocol on Rules and Procedures on the Settlement of Disputes. Article 8 of the Agreement is to the effect that the Protocols, Annexes and Appendices shall, upon adoption, form integral part of the Agreement. As common, the AfCFTA Agreement is expected to be organic as future amendments and updates are possible, provided that any additional instruments deemed necessary as to be concluded in furtherance of the objectives of AfCFTA and shall upon adoption, form an integral part of the Agreement<sup>2</sup>.

However, despite the salient objectives of the Agreement, the World Bank suggests that achieving its full potentials will depend on putting in place significant policy reforms and trade facilitation measures<sup>3</sup>. Thus, it is imperative at this juncture to examine the various laws and policies in Nigeria that drives competitiveness among businesses in Nigeria. This would be examined in the next paragraph.

### **3.0 EXAMINATION OF VARIOUS LAWS AND POLICIES IN NIGERIA THAT DRIVES COMPETITIVENESS IN THE BUSINESS ENVIRONMENT/SECTOR.**

There have been laws and policies passed in Nigeria which regulate the business and market environment. These laws and policies have ensured the viability, competitiveness and ease of doing business in the country. These laws and policies have played vital roles in creating a robust and efficient business system for business stakeholders and the lots. A highlight of some of these laws and policies includes:

- The Federal Competition and Consumer Protection Act (FCCPA)

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<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

This was enacted on 30<sup>th</sup> January, 2019 and which repealed the Consumer Protection Act and the provisions of the Investment and Securities Act relating to merger control. The Act also establishes the Federal Competition and Consumer Protection Commission (FCCPC). The FCCPC is vested with the powers to approve and regulate mergers which include amalgamations, business combinations and joint ventures. All merger control applications are to be submitted exclusively to the FCCPC. The FCCPA is currently the extant law enacted to regulate mergers among companies operating businesses in Nigeria.

- The Companies and Allied Matters Act (CAMA) 2020.

The CAMA 2020 was signed into law on the 7<sup>th</sup> of August, 2020 by the President, Muhammadu Buhari. The Act repealed the now defunct CAMA 2004. The Act is the extant legal framework regulating companies and businesses in Nigeria. The highlights of the new Act include:

- i. That more small and medium-sized enterprises are able to benefit from the incentives provided to small companies such as exemption from audits and from the requirements to appoint a company secretary and hold annual meetings. Under the Act, a small company is one that has a turnover of not more than NGN120 million and a net assets of not more than NGN60 million.
- ii. That the use of company seals by Nigerian Companies will no longer be mandatory.
- iii. That under the Act, it is possible for Limited Partnerships (LPs) and Limited Liability Partnership (LLPs) to be recognized and registered within the framework of the Companies and Allied Matters Act, which is a Federal law. Before this Act, it was only Lagos that provided a framework for LPs and LLPs but the constitutionality of the Lagos state law was questionable.
- iv. The Act introduced the close-netting provisions as a means of promoting financial stability and investor confidence in Nigeria.
- v. The Act also provides for small companies to have a single shareholder and director. Etc

- The Finance Act 2020

This was signed into law on the 13<sup>th</sup> January, 2020. One of the major objectives of the Act include inter alia: to support small businesses in line with the Ease of Doing Business Reforms.

Other laws and policies passed in Nigeria which regulates business activities and drives competitiveness in the business environment include *inter alia*: The Companies Income Tax Act (CITA)<sup>4</sup> which is the legal framework for the taxing of companies profit from all sources; Value Added Tax<sup>5</sup> which is the legal framework for the tax charged on the sale of specified goods at given rate; The Executive Order On The Promotion of Transparency and Efficiency in the Business Environment (EO) passed on 18<sup>th</sup> May, 2017; The National Office of Technology Acquisition and Promotion Act (NOTAP Act)<sup>6</sup>, etc.

Having highlighted few laws and policies out of the many that regulate the doing of business in Nigeria, it would be instructive at this juncture to critically examine the role these laws and policies play in driving competitiveness in Nigerian businesses. This would be critically dealt with in the next paragraph.

#### **4.0 THE ROLE OF LAW AND POLICY IN DRIVING COMPETITIVENESS IN NIGERIAN BUSINESSES.**

As earlier stated in the introductory part of this essay, the burgeoning nature of the Nigerian business has made it imperative for laws and policies to play crucial role in driving competitiveness amongst businesses in the country. These roles that laws and policies play would be itemized in various subheadings as it pertains to a business sector and/or aspect, and would be critically examined in line with such laws and policies that regulate that aspect of business:

- Mergers and Acquisition (M & A).

The growing and competitive business environment and the inability of some businesses to catch up with the growing and competitive business train has made it necessary for mergers and acquisition. This is a situation where a liquidating company can agree to merge their assets with one or more companies for resuscitation or may opt for an outright sale wherein the company or business acquiring, acquires all the present assets of the selling company for an agreed buy-off fee. This, is today very prevalent in the Nigerian business environment as there has been a lot of mergers and acquisition in recent times which is intended to drive the competitiveness of businesses in Nigeria<sup>7</sup>. However, without laws and policies put in place, mergers and acquisitions would not be effectively and uniformly carried out. Thus, law comes in handy to regulate it. The extant law regulating Mergers and Acquisition is the Federal Competition and Consumers Protection Act. The Act regulates mergers between or among companies and/or businesses which are subject to the prior

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<sup>4</sup>Companies Income Tax Act (CITA) CAP C21, LFN 2004 (as amended).

<sup>5</sup>Value Added Tax Act 2007.

<sup>6</sup> CAP N62, LFN 2004.

<sup>7</sup> A recent and popular M & A was the Access-Diamond Bank M & A.

review of the Federal Competition and Consumer Protection Commission (FCCPC). Merger thresholds are calculated based on the annual turnover of the merging companies in Nigeria and not by the FCCPC. The FCCPA provides for small and large mergers. Large mergers are subject to prior review and approval by the FCCPC. Whereas, for small mergers, the FCCPC only needs to be notified of that merger where the merger is likely to substantially prevent or lessen competition.

Other regulation regulating M & A include: The Companies and Allied Matters Act 2020 and the Investment and Securities Act.

- Public-Private Partnership

Due to the growing demand for infrastructural development and competition in business, partnership between public and the private sector has become an increasingly viable option. As a result of this, the law has come in handy to play a vital role in ensuring efficiency in such partnership. In recent years, legislations have been enacted to regulate such partnership. The Lagos State Public-Private Partnership Law 2011 (PPP law) is one out of them.

- Privatization of Public Enterprises.

One crucial role law plays in the driving of competitiveness in the Nigerian business is in the area of privatization of public enterprises. The lackluster and complacent running of public enterprises has made it necessary for the privatization of these enterprises. This in turn ensures the better running of these enterprises. With the trend of privatization of public enterprises over the years, there has been a competitive venturing into acquiring public enterprises for privatization<sup>8</sup>. The role of law also comes in handy here. The Public Enterprises Act, 1988 provides for privatization and commercialization of certain public enterprises. The Act provides that enterprises listed in Part I of the First Schedule shall be partially privatized while the enterprises listed in Part II of the First Schedule shall be fully privatized in accordance with the provision of the Act. The Act also provides that the mode of privatization shall be either by public issue or private placement; or for the further divestment of Federal Government shares.

- Ease of Doing Business.

On the 18<sup>th</sup> Of May, 2017, the Presidency issued the Executive Order on the Promotion of Transparency and Efficiency in the Business Environment in a bid to improve the Ease of Doing Business (EDB) of Nigeria. The need for a competitive and efficient business environment prompted

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<sup>8</sup>A recent privatization of a public enterprise was in the power sector.

the making of this Order. The Executive Order (EO) is particularly focused on improving Nigeria's EDB through transparent and efficient service delivery by various government Ministries, Departments and Agencies (MDAs). To promote transparency in MDAs' dealings, the EO makes it mandatory for them to make public all the requirements for license, permits, waivers, approvals and tax related information for intending business ventures. Pursuant to the EO, every MDA must ensure that its fees, timelines and other deliverables it owes applicants are published within its premises and regularly updated on their websites. The EO puts added pressure on regulators – especially business facing ones (needing to approve new products, or transactions) and whose enabling law actually prescribes timeline for granting approvals, but who observe same in breach, rather than in compliance.

One striking development from the EO is 'default approvals'. Paragraph 3 of the EO provides : *'where the relevant agency or official fails to communicate approval or rejection of an application within the time stipulated in the published list, all applications for business registrations, certification, waivers, licenses or permits not concluded within the stipulated timeline shall be deemed approved and granted'*. This provision helps to avoid undue delays which mean that such would no longer be a drag on the pace of doing business transactions and in the long run, build a competitive Nigerian business environment.

From the foregoing subheadings, the role of law and policy in driving competitiveness in Nigeria can never be overemphasized. In every business area, law is pivotal. The use of laws and policies in business helps make for an efficient and organized business environment. It is not possible for this essay to highlight all the roles laws and policies play in the Nigerian business environment, however, this essay has been able to highlight a few of the roles in some specific business area. The AfCFTA Agreement is one of those that play a role in driving competitiveness in Nigerian business. Its objectives as earlier brought to fore in this paper clearly accentuate this. Nigeria, having ratified it pursuant to Section 12 of the Constitution<sup>9</sup>, is a step in the right direction for the Nigerian business.

## 5.0 CONCLUSION

In the final analysis, the Nigerian business environment is a burgeoning and competitive one, and to maintain that competitiveness, it is important that there are well defined frameworks that ensure this. This is the role laws and policies play – to build a well organized business environment and to drive competitiveness among businesses. This essay has been able to highlight these roles in specific subheadings in line with few laws that have been passed in the country that regulate these specific business areas. This paper has also run through the

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<sup>9</sup> CFRN 1999

AfCFTA which has been ratified in Nigeria and which among its many objectives, is to provide a competitive business environment. Thus, this paper submits that the role of law and policy in driving competitiveness in Nigerian businesses can never be overemphasized. Even this paper cannot conclusively provide the several roles it plays. However, its major roles can be gleaned from the angle of promoting a well structured, efficient, organized, moving and competitive business environment.