# Nigerian Competition Law: FCCPC Publishes Penalty Guidelines

By Michael-James Currie and Jemma Muller

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**Nigeria is quickly emerging as one of the more important antitrust regimes on the African continent. Not only because it is a significant market, but largely due to a raft of recent legislative developments. The Federal Competition and Consumer Protection Commission ("FCCPC") has been formally established and is fully operational with the legislative tools to tackle and prosecute the traditional spread of competition law violations including restrictive horizontal practices, abuses of market power and conduct robust analysis in relation to its merger control regime.**

The most recent publication by the FCCPC is its Administrative Penalties Regulations, 2020 ("**Penalty Regulations**"). The publication of these Penalty Regulations not only serve as stark reminder of the risks of non-compliance with the competition laws but also signals the start of an active enforcement regime.

The Penalty Regulations provide for a largely mechanical calculation for purposes of quantifying an administrative penalty. In essence, however, the Penalty Regulations provide for a prescribed "base amount" (which is either fixed fee or calculated as a percentage of turnover) and this base amount is increased (or decreased) based on aggravating and mitigating factors as well as taking the duration of the infringement into account.

Importantly, the penalties are calculated with reference to annual turnover. This is not qualified by local or Nigerian derived turnover only. There is a risk that when calculating administrative penalties a firms' total worldwide turnover is taken into account. This


**Michael-James Currie**
Director
South Africa

m.currie@primerio.international

Cell +27 (0)84 506 7610



**Jemma Muller**
Candidate Attorney
South Africa

j.muller@primerio.international


## Contact details


**Johannesburg, South Africa**
John Oxenham, Michael-James Currie
j.oxenham@primerio.international
m.currie@primerio.international
135 Daisy Street Sandton, Johannesburg, 2031

**Nairobi, Kenya**
Ruth Mosoti, Fidel Mwaki
r.mosoti@primerio.international
f.mwaki@primerio.international
Kalson Towers, 2nd Floor, The Crescent,
Off Parklands Road, Nairobi

**Port Louis, Mauritius**
Gilbert Noël
g.noel@primerio.international
Suite 401, St James Court, St Denis Street, Port Louis

Email: info@primerio.international
Tel: +27 (0) 11 083 2411

poses a significant risk for foreign entities who might only have a relatively negligible presence in Nigeria but are significant players on the global market.

Failure to notify a mandatorily notifiable merger (i.e., gun-jumping or prior implementation) attracts a base penalty of 2% of the parties' annual turnover. This includes a pure foreign-to-foreign merger (i.e. where parties are domiciled outside of Nigeria) but have a nexus to Nigeria by virtue of having a subsidiary in Nigeria or derive turnover in or from Nigeria.

The good news for foreign firms is that parties to a foreign-to-foreign merger (or to a merger which raises no overlapping business relationships) may apply to have their transaction assessed under an expedited review regime. The expedited regime envisages reducing the review period of a phase 1 merger by up to 40%. It is advisable to engage the FCCPC by way of the pre-merger consultation process in order to confirm whether a proposed transaction qualifies for an expedited review.

Over and above administrative penalties, firms operating in Nigeria should also note that the FCCPC has the powers to pursue criminal prosecution against firms and individuals who violate certain provisions of the legislation. These include provisions dealing with, *inter alia*, price fixing, conspiracy, bid-rigging, obstruction of an investigation or inquiry of the Commission, providing false or misleading information, the failure to give evidence or appear before the Commission, and the failure to comply with a compliance notice or order issued by the Commission.

Like most jurisdictions which adopt a new, novel or revamped competition law regime, there are several aspects of Nigeria's legislation which would benefit greatly from precedent. But in relation to the primary obligations of firms operating in Nigeria, the fundamentals are clear and the consequences for contraventions are of sufficient import to ensure that Nigeria is placed on the compliance radar.

*[**Michael-James Currie** is a partner at **Primerio** and specializes in competition law in several African jurisdictions including Nigeria. Please feel free to get in touch with Michael-James by sending an email to m.currie@primerio.international*]

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