

# AN INSIGHT INTO THE FINE IMPOSED ON THE BRITISH AMERICA TOBACCO COMPANY BY THE FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION



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## Introduction

On December 27, 2023, the Federal Competition and Consumer Protection Commission (the "Commission", "FCCPC") imposed a fine of \$110 million (One Hundred and Ten Million dollars) against British American Tobacco (Nigeria) Limited, British American Tobacco Marketing (Nigeria) Limited, British American Tobacco PLC, and British American Tobacco (Holdings) Limited, (collectively referred to as "BAT.") in line with Section 115 of the Federal Competition and Consumer Protection Act, 2018 (the "Act").<sup>1</sup> The Commission-initiated investigation commenced on August 28, 2020, to look into the operational activities of BAT. The outcome of its investigation revealed that BAT was in contravention of the FCCPA's anti-competition provisions, necessitating the imposition of the fine.

This article aims to provide an insight into the nature and scope of the investigation carried out by the Commission, shedding light on the factors leading to the decision to impose the significant fine on BAT.

## The Investigation and Fine

### *Scope of the Commission*

The Commission is an entity established by the Act. Its primary purpose is to safeguard and advance the rights of consumers while holding producers and service providers accountable for their operations in Nigeria.<sup>2</sup>

The Act grants the Commission the authority to administer and enforce its provisions, as well as other consumer protection-related legislations. Additionally, the Commission is empowered to formulate policies and guidelines aimed at regulating activities that are anti-competition or detrimental to consumers in Nigeria. The Commission has the authority to conduct investigation into the activities of businesses.

Furthermore, upon issuance of a warrant by a competent court, the Commission can issue summons for hearings and in cases where a business is found guilty of offences outlined in the Act, impose penalties as specified by the legislation.

<sup>1</sup> Subsection (b) Federal Competition and Consumer Protection Act, 2018 (FCCPA)

<sup>2</sup> Sections 17, 28 of the FCCPA

## ***What is the Investigation and Fine on BAT all about?***

The Commission initiated an investigation into the activities of BAT based on indications of anti-competitive behaviour. Following this, the Commission sought and obtained a warrant from the Federal High Court empowering it to conduct a thorough inquiry into the affairs of BAT, search its premises and those of its service providers.

Throughout the investigative process, which included hearings and sworn testimonies, the Commission uncovered evidence indicating that BAT had violated anti-competition provisions outlined in the Act<sup>3</sup>. Consequently, BAT was found guilty of the following allegations, among others:

- a. Engaging in activities that unduly restrain competition by conspiring to unduly limit facilities, prevent the production of goods or services and manipulate prices. These activities include actions that excessively diminish competition in various aspects such as production, sale, and transportation of goods or services.<sup>4</sup>
- b. Presenting materially misleading representations to the public regarding the prices of goods or services. Making false or incorrect representations, engaging in misleading practices, providing erroneous information about the nature, properties, advantages, or uses of goods or services, and making deceptive statements about the manner, conditions, or prices of supply. Additionally, there are restrictions on issuing statements, warranties, or guarantees that are not based on adequate testing, as well as making false representations about the kind, standard, quality, quantity, or supplier of services.<sup>5</sup>
- c. Engaging in coercive and/or unfair practices in connection with its marketing, supply,

negotiation, execution, or enforcement of agreements for goods or services.<sup>6</sup>

According to the Commission, BAT submitted an application for co-operation and assistance under the Commission's Cooperation & Assistance Rules & Procedures, 2021 (CARP). The application was approved, leading to a reduction in the penalty imposed on BAT. Additionally, as a result of this co-operation, criminal charges against a BAT employee, bordering on obstructing the Commission's execution of its search warrant, were dropped.<sup>7</sup>

BAT, in co-operation with the Commission, has agreed to undergo a 24-month compliance and monitoring period supervised by the Commission. This aims to ensure modifications to behavioural and business practices and align with prevailing competition laws, regulations, and tobacco control efforts.

As part of this, BAT will engage in mandatory public health and tobacco control advocacy in compliance with legislation and regulations, serving as mitigation for evidence of undermining national tobacco control policies. Additionally, BAT is required to provide Written Assurances to the Commission as per Section 153 of the Act.

## **Conclusion**

This Commission's initiative underscores its commitment to ensuring access to quality goods and services. The focus is on guaranteeing that received goods align with their intended purpose, meet high-quality standards, and are free of defects.<sup>8</sup> As a proactive measure, businesses are encouraged to ensure regulatory compliance and seek guidance from legal professionals at every stage of their activities to prevent mishaps and ensure ongoing adherence to regulations.

<sup>3</sup> Section 17 (4) of the FCCPA empowers the FCCPC to examine witnesses, administer oaths, etc.

<sup>4</sup> Section 108 of the FCCPA

<sup>5</sup> Section 123 of the FCCPA

<sup>6</sup> Section 124 of the FCCPA

<sup>7</sup> It is under the discretion of the FCCPA to mitigate penalties where a business co-operates and this is enshrined in Clause 11 of the Federal Competition and Consumer Protection Commission's Administrative Penalties Regulations, 2020

<sup>8</sup> Section 131 FCCPA