



SENATE OF THE FEDERAL REPUBLIC OF NIGERIA VOTES AND PROCEEDINGS

Thursday, 8th June, 2017

1. The Senate met at 10:45 a.m. The Deputy Senate President read Prayers.

2. **Votes and Proceedings:**

The Senate examined the Votes and Proceedings of Wednesday, 7th June, 2017.

Question was put and the Votes and Proceedings were approved.

3. **Announcements:**

(a) **Special Session:**

The Deputy Senate President reminded the Distinguished Senators that there will be a Special Session of the Senate to mark the Second Year Anniversary of the 8th Senate on Friday, 9th June, 2017 at 10:00 am. prompt. Please endeavour to be punctual.

(b) **Acknowledgment:**

The Deputy Senate President acknowledged the presence of the following who were in the gallery to observe Senate Proceedings:

- (i) Members of the National Association of Niger State Students, Minna, Niger State;
- (ii) Staff and Students of Goldspring International School, Gwagwalada, Abuja; and
- (iii) Staff and Students of Kingdom Heritage Model School, Kubwa, Abuja.

4. **Committee on Judiciary, Human Rights and Legal Matters:**

Report on the Whistle Blowers Protection Bill, 2017 (SB. 158):

Motion made: That the Senate do receive the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Whistle Blowers Protection Bill, 2017 (*Senator David Umaru — Niger East*).

Question put and agreed to.

Report Laid.

5. **Committee on Tertiary Institutions and TETFUND:**

Report on the Federal University of Maritime Studies, Oron Bill, 2017 (SB. 309):

Motion made: That the Senate do receive the Report of the Committee on Tertiary Institutions and TETFUND on the Federal University of Maritime Studies, Oron Bill, 2017 (*Senator Jibrin I. Barau — Kano North*).

Question put and agreed to.

Report Laid.

6. Committee on Tertiary Institutions and TETFUND:

Report on the National Open University of Nigeria Act (Amendment) Bill, 2017 (SB. 066):

Motion made: That the Senate do receive the Report of the Committee on Tertiary Institutions and TETFUND on the National Open University of Nigeria Act (Amendment) Bill, 2017 (*Senator Jibrin I. Barau — Kano North*).

Question put and agreed to.

Report Laid.

7. Committee on Ethics, Privileges and Public Petitions:

Motion made: That the Senate do receive the Reports of the Committee on Ethics, Privileges and Public Petitions in respect of:

- a. Mr. Charles Uwaecheie against Conoil Nigeria Plc for Non-payment of his Entitlements after a Forced Resignation;
- b. Barrister Owette Emmanuel Chukwudi against the Independent National Electoral Commission (INEC) for his Compulsory Retirement and Non-payment of his Entitlements;
- c. Sir Godfrey Ohuabunwa (KSC) on behalf of the association of Licensed Set Top Box (STB) Manufacturers of Nigeria against the National Broadcasting Commission (NBC) for alleged Non-payment of the Set Top Boxes manufactured and delivered;
- d. Opiatoha K'Idoma against the Federal Character Commission and the Federal University of Agriculture, Makurdi for an alleged abuse of the Principles of federal character in the appointment of Principal Officers of the Federal University of Agriculture, Makurdi; and
- e. Lt. Col. Thomas Edirin Arigbe against the Nigerian Army for wrongful retirement from the Army (*Senator Obinna J. Ogba — Ebonyi Central*).

Question put and agreed to.

Reports Laid.

8. Committee on Trade and Investment:

Report on the Federal Competition and Consumer Protection Bill, 2017 (SB. 257):

Motion made: That the Senate do resolve into the Committee of the Whole to consider the Report of the Committee on Trade and Investment on the Federal Competition and Consumer Protection Bill, 2017 (*Adjourned Consideration 6th June, 2017, Clause 40*) (*Senate Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

RESUMED CONSIDERATION OF A BILL FOR AN ACT TO REPEAL THE CONSUMER PROTECTION ACT, CAP C25, LFN, 2004; ESTABLISH THE FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION AND THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL FOR THE DEVELOPMENT AND PROMOTION OF FAIR, EFFICIENT AND COMPETITIVE MARKETS IN THE NIGERIAN ECONOMY, FACILITATE ACCESS BY ALL CITIZENS TO SAFE PRODUCTS, SECURE THE PROTECTION OF RIGHTS FOR ALL CONSUMERS IN NIGERIA AND FOR OTHER RELATED MATTERS, 2017.

Clause 41: Tenure of Office

A member of the Tribunal shall hold office for a non-renewable term of six years from the date of assumption of office or upon the attainment of sixty-five years of age, whichever is earlier.

Committee's Recommendation:

That the provision in Clause 41 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 41 do stand part of the Bill, put and agreed to.

Clause 42: Disqualification from membership of the Tribunal

A person shall not be qualified to serve on the Tribunal if the person is —

- (a) an undischarged bankrupt;
- (b) under any order of a competent court, declared mentally unfit;
- (c) a convicted felon under the laws of Nigeria;
- (d) found guilty of serious misconduct incapacitating the person from carrying out the functions of the office; or
- (e) found to have been engaging in any activity that may undermine the integrity of the Tribunal.

Committee's Recommendation:

That the provision in Clause 42 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 42 do stand part of the Bill, put and agreed to.

Clause 43: Resignation and Removal

- (1) A member of the Tribunal may by a written notice, addressed to the President, resign from office, provided that the member shall, unless permitted by the President to relinquish office sooner, continue to hold office until the expiry of three months from the date of receipt of the notice conveying the resignation or until a person duly appointed as successor assumes office or until the expiry of the term of office, whichever is earlier
- (2) A member of the Tribunal may be removed from office by the President—
 - (a) on grounds of gross misconduct, after due inquiry has been made by the National Judicial Council and the member concerned informed of the reasons for the removal and given an opportunity of being heard in respect of the reasons;
 - (b) on grounds of incapacity on account of ill health; or
 - (c) upon conviction for a criminal offence
 - (d) has been declared bankrupt
- (3) Any exercise of the powers of the President under this section shall be based on the recommendation of the National Judicial Council.

Committee's Recommendation:

That the provision in Clause 43 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 43 do stand part of the Bill, put and agreed to.

Clause 44: Filling of Vacancies

Where for reason other than temporary absence, any vacancy occurs in the Tribunal, a replacement may be appointed in accordance with the provisions of subsection (2) of section 40 of this Act to fill the vacancy.

Committee's Recommendation:

That the provision in Clause 44 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 44 do stand part of the Bill, put and agreed to.

Clause 45: Order constituting the Tribunal to be final:

The question as to the validity of the appointment of any person as a member of the Tribunal shall not be the cause of any litigation in any court or tribunal and no act or proceedings before the Tribunal shall be called into question in any manner on the ground merely of any defect in the constitution of the Tribunal.

Committee's Recommendation:

Leave out the provision in Clause 45 (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Clause 46: Registrar of the Tribunal

The Tribunal shall appoint a Registrar who shall be a person qualified to serve as the Registrar of a High Court, and shall —

- (a) subject to the general control of the Chairman, be responsible for keeping records of the proceedings of the Tribunal;
- (b) be the head of the Registry and responsible for —
 - (i) the day to day administration of the Tribunal; and
 - (ii) the direction and control of all other employees of the Tribunal.

Committee's Recommendation:

That the provision in Clause 46 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 46 do stand part of the Bill, put and agreed to.

Clause 47: Other staff of the Tribunal

- (1) The Tribunal shall appoint such other employees as deemed necessary for the efficient performance of the functions of the Tribunal and the remuneration of persons so employed shall be determined by the National Salaries, Incomes and Wages Commission.
- (2) Employment in the Tribunal shall be subject to the provisions of the Pension Reform Act and, accordingly, officers and employees of the Tribunal shall be entitled to pensions and other retirement benefits as are prescribed under the Pension Reform Act.

Committee's Recommendation:

That the provision in Clause 47 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 47 do stand part of the Bill, put and agreed to.

Clause 48: Jurisdiction of the Tribunal

The Tribunal shall have power to —

- (a) hear appeals from or review any decision of the Commission taken in the course of the implementation of any of the provisions of this Act as may be referred to it;
- (b) hear appeals from or review any decision from the exercise of the powers of any sector specific regulatory authority in a regulated industry in respect of competition and consumer protection matters;
- (c) issue such orders as may be required of it under this Act; and
- (d) make any ruling or such other orders as may be necessary or incidental to the performance of its functions under this Act.

Committee's Recommendation:

That the provision in Clause 48 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 48 do stand part of the Bill, put and agreed to.

Clause 49: Management of the Work of the Tribunal

- (1) The Chairman of the Tribunal shall be responsible for the management and assignment of cases before the Tribunal to the other members of the Tribunal.
- (2) For the purpose of subsection (1) of this section, members of the Tribunal shall be constituted into Panels of at least three members.
- (3) Further to the provision of subsection (2) of this section, the Chairman shall ensure that at least one member of each Panel has requisite legal training, experience and good knowledge of competition and consumer protection matters
- (4) The Chairman shall designate a member to preside over proceedings of a Panel at any sitting.
- (5) Where as a result of withdrawal from a hearing for the reason stated in section 50 of this Act, or for any other reason, a member of a Panel is unable to complete the proceedings in a matter assigned to that Panel, the Chairman shall —
 - (a) direct that the hearing of that matter proceed before the remaining members of the Panel, subject to the requirements of subsection (4) of this section; or
 - (b) terminate the proceedings before that Panel and constitute another Panel, which may include any member of the original panel and direct that Panel to conduct a new hearing.

- (6) The decision of a Panel on a matter referred to it must be in writing and include reasons for that decision.
- (7) The Tribunal may extend or reduce a period prescribed for the taken or doing of any action required to be done under this Part ('the prescribed period').
- (8) A decision of a Panel contemplated in subsection (6) of this section or of a majority of the members of a Panel shall be the decision of the Tribunal.

Committee's Recommendation:

That the provision in Clause 49 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 49 do stand part of the Bill, put and agreed to.

Clause 50: Disclosure of Interest by Members of a Panel

- (1) A member of the Tribunal shall not be entitled to sit on a Panel if during the hearing; it appears to the Tribunal that the matter concerns a financial or other interest of that member.
- (2) A member affected by the provision of subsection (1) of this section shall—
 - (a) immediately and fully disclose the fact and nature of the interest to the Chairman and to the presiding member at that hearing; and
 - (b) withdraw from any further involvement in that hearing.

Committee's Recommendation:

That the provision in Clause 50 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 50 do stand part of the Bill, put and agreed to.

Clause 51: Procedural Rules of the Tribunal

- (1) The Tribunal may make rules regulating its procedures.
- (2) The Tribunal shall, for the purpose of discharging its function under this Act, have power to —
 - (a) summon and enforce the attendance of any person including the power to examine a person under oath;
 - (b) require the discovery and production of documents;
 - (c) call for and examine witnesses under oath;
 - (d) receive evidence on affidavits; and
 - (e) do anything which, in the opinion of the Tribunal, shall be deemed necessary to issue a final and reasoned decision on the merits of the matter before it.

Committee's Recommendation:

That the provision in Clause 51 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 51 do stand part of the Bill, put and agreed to.

Clause 52: Powers of the Tribunal to Impose Penalties

- (1) The Tribunal may impose administrative penalties only —
 - (a) for a prohibited practice under this Act; or
 - (b) for the contravention of, or failure to comply with, an interim order of the Tribunal.
- (2) An administrative penalty imposed under subsection (1) of this section shall not exceed ten per cent of the undertaking's annual turnover in Nigeria and its exports from Nigeria during the preceding financial year.
- (3) When determining an appropriate penalty under subsection (1) of this section, the Tribunal shall consider the —
 - (a) the nature, duration, gravity and extent of the contravention;
 - (b) any loss or damage suffered as a result of the contravention;
 - (c) the behaviour of the defaulting party;
 - (d) the market circumstances in which the contravention took place;
 - (e) the level of profit derived from the contravention;
 - (f) the degree to which the defaulting party has co-operated with the Commission and the Tribunal; or
 - (g) whether the defaulting party has previously been found to be in contravention of any of the provisions of this Act.

Committee's Recommendation:

That the provision in Clause 52 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 52 do stand part of the Bill, put and agreed to.

Clause 53: Powers of the Tribunal to Order sale of Assets

- (1) The Tribunal may make an order directing any undertaking to sell any portion or all of its shares, interest or assets if the practice prohibited under this Act —
 - (a) cannot adequately be remedied under any other provision of this Act; or
 - (b) is substantially a repeat by that undertaking of conduct previously found by the Tribunal to be a prohibited practice.
- (2) An order made under subsection (1) of this section may provide for time-frame for compliance and any other terms that the Tribunal considers appropriate, having regard to the commercial interests of the parties concerned.

Committee's Recommendation:

That the provision in Clause 53 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 53 do stand part of the Bill, put and agreed to.

Clause 54: Access to Records of the Tribunal

The Tribunal shall provide the parties to the proceedings before it and other members of the public reasonable access to the record of its proceedings, subject to any requirement to protect confidential information as required under the provisions of this Act and regulations made under this Act or any other enactment.

Committee's Recommendation:

That the provision in Clause 54 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 54 do stand part of the Bill, put and agreed to.

Clause 55: Registration and Enforcement of the Decisions of the Tribunal

- (1) An order, ruling, award or judgment of the Tribunal shall be binding on the parties before the Tribunal.
- (2) A ruling, award or judgment of the Tribunal shall be registered with the Federal High Court for the purpose of enforcement only.

Committee's Recommendation:

That the provision in Clause 55 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 55 do stand part of the Bill, put and agreed to.

Clause 56: Judicial Review by the Federal High Court

Any party to a proceeding dissatisfied with a ruling, award or judgment of the Tribunal may apply for judicial review to the Federal High Court.

Committee's Recommendation:

That the provision in Clause 56 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 56 do stand part of the Bill, put and agreed to.

Clause 57: Right to legal representation

- (1) Any party to a proceeding before the Tribunal may either appear in person or authorize one or more legal practitioners or any of its officers to represent the party before the Tribunal.
- (2) Where a party or its representative is unable for good cause to attend a hearing before the Tribunal, the Tribunal may adjourn the hearing for such reasonable time as it deems fit, or admit that representation be made by some other person duly authorised by the party; or accept the representation by way of a written address.

Committee's Recommendation:

That the provision in Clause 57 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 57 do stand part of the Bill, put and agreed to.

Clause 58: Payment of allowances and other conditions of employment of the members of the Tribunal

The Chairman and other members of the Tribunal shall be paid such allowances, emoluments and benefits as the Federal Government may from time to time approve.

Committee's Recommendation:

That the provision in Clause 58 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 58 do stand part of the Bill, put and agreed to.

Clause 59: Funding of the Tribunal

- (1) The Tribunal shall establish and maintain a Fund, which shall be applied towards the discharge of its functions under this Act.
- (2) There shall be paid and credited into to the Fund established under subsection (1) of this section -
 - (a) annual subventions and budgetary allocations from the Federal Government with respect to recurrent and capital expenditures;
 - (b) fees collected for services rendered by the Tribunal under this act; and such other sums of money as may be provided by the Federal Government for the Tribunal
- (3) The Tribunal shall at the end of each accounting year submit its budget for the following year to the Minister.
- (4) The Minister shall ensure that adequate budgetary provision is made for the payment of emoluments and allowances of members and staff of the Tribunal including all other expenditures of the Tribunal for the efficient performance of the duties and responsibilities of the Tribunal under this Act.

Committee's Recommendation:

That the provision in Clause 59 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 59 do stand part of the Bill, put and agreed to.

PART VIII — RESTRICTIVE AGREEMENTS**Clause 60: Prohibition of Agreements in Restraint of Competition**

- (1) Any agreement among undertakings or a decision of an association of undertakings that has the purpose, actual or likely effect of preventing, restricting or distorting competition in any market shall be unlawful and, subject to section 61 of this Act, void and of no legal effect whatsoever
- (2) The prohibited acts under subsection (1) of this section include in particular—
 - (a) directly or indirectly fixing a purchase or selling price of goods or services, subject to section 108 of this Act;
 - (b) dividing markets by allocating customers, suppliers, territories or specific types of goods or services;
 - (c) limiting or controlling production or distribution of any goods or services, markets, technical development or investment, subject to section 109 of this Act;
 - (d) engaging in collusive tendering, subject to section 110 of this Act;

- (e) making the conclusion of an agreement subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such agreement.

Committee's Recommendation:

That the provision in Clause 60 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 60 do stand part of the Bill, put and agreed to.

Clause 61: *Agreements authorized by the Commission*

The provision of section 60 of this Act shall not apply to an agreement among undertakings, or a decision of an association of undertakings, or a category of agreements or decisions of associations of undertakings, the entry into which is authorized by the Commission, provided that the Commission is satisfied that the agreement or decision —

- (a) contributes to the improvement of production or distribution of goods, or services or the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- (b) imposes on the undertakings concerned only such restrictions as are indispensable to the attainment of the objectives referred to in paragraph (a) of this section; and
- (c) does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

Committee's Recommendation:

That the provision in Clause 61 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 61 do stand part of the Bill, put and agreed to.

Clause 62: *Prohibition of agreements containing exclusionary provisions*

An undertaking or association of undertakings shall not request another undertaking or association of undertakings to refuse to sell or purchase any goods or services with the intention of harming certain undertakings.

Committee's Recommendation:

That the provision in Clause 62 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 62 do stand part of the Bill, put and agreed to.

Clause 63: *Agreements by suppliers:*

- (1) It is unlawful for any two or more undertakings to enter into any agreement whereby they undertake to-
 - (a) withhold supplies of goods or services from dealers (whether parties to the agreement or not) who resell or have resold any goods or services in breach of any condition as to the price at which those goods or services may be resold; or

- (b) refuse to supply goods or services to the dealers referred to in paragraph (a) of this subsection except on terms and conditions that are less favourable than those applicable to other dealers carrying on business in similar circumstances.
- (2) It is unlawful for any two or more undertakings to enter into, or carry out, any agreement authorizing the recovery of penalties, however described, by or on behalf of the parties to the agreement from dealers who resell or have resold goods or services in breach of any condition described in paragraph (a) of subsection (1) of this section.

Committee's Recommendation:

That the provision in Clause 63 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 63 do stand part of the Bill, put and agreed to.

Clause 64: Prohibition of minimum resale price maintenance

- (1) Any term or condition of an agreement for the sale of any goods or services is void to the extent that it purports to establish or provide for the establishment of minimum prices to be charged on the resale of the goods or services in Nigeria.
- (2) Subject to the provisions of subsections (3) and (4) of this section, it is unlawful for an undertaking or its agent to —
 - (a) include in an agreement for the sale of goods or services, a term or condition which is void by virtue of this Act; or
 - (b) notify dealers or otherwise publish on or in relation to any goods or services, price stated or calculated to be understood as the minimum price which may be charged on the resale of the goods or services in Nigeria.
- (3) The provisions of paragraph (a) of subsection (2) of this section does not affect the enforceability of an agreement except in respect of the term or condition which is void by virtue of this Act.
- (4) Nothing in this section shall be construed as precluding an undertaking or an association or person acting on the undertaking's behalf, from notifying to dealers or otherwise publishing prices recommended as appropriate for the resale of goods or services supplied or to be supplied by that undertaking.

Committee's Recommendation:

That the provision in Clause 64 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 64 do stand part of the Bill, put and agreed to.

Clause 65: Patented products

- (1) The provisions of section 64 of this Act shall apply to patented goods, including goods made by a patented process.

- (2) Notice of any term or condition which is void by virtue of the provisions of section 64 of this Act, or which would be so void if included in an agreement relating to the sale of patented goods, is of no effect for the purpose of limiting the right of a dealer to dispose of those goods without infringement of the patent.
- (3) Nothing contained in this Act or this section shall affect the validity, as between the parties to an agreement and their successors, of any term or condition of —
 - (a) a licence granted by the proprietor of a patent or a licensee under any such licence; or
 - (b) any assignment of a patent so far as it regulates the price at which goods produced or processed by the licensee or assignee may be sold by him.

Committee's Recommendation:

That the provision in Clause 65 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 65 do stand part of the Bill, put and agreed to.

Clause 66: Maintenance of minimum resale prices

- (1) It is unlawful for an undertaking to withhold supplies of any goods or services from a dealer seeking to obtain them for resale on the ground that the dealer —
 - (a) has sold goods or services obtained either directly or indirectly from that undertaking at a price below the resale price or has supplied them either directly or indirectly to a third party who had so done; or
 - (b) is likely, if the goods or services are supplied to that dealer, to sell them at a price below the resale price, or supply them either directly or indirectly to a third party who would be likely to do so.
- (2) In this section, "the resale price" in relation to a sale of any description, means the price —
 - (a) notified to the dealer or otherwise published by or on behalf of a supplier of the goods or services in question, whether lawfully or not, as the price or minimum price which is to be charged on or is recommended as appropriate for a sale of that description; or
 - (b) prescribed or purporting to be prescribed for that purpose by an agreement between the dealer and any such supplier.
- (3) Where, under this section, it would be unlawful for an undertaking to withhold supplies of goods or services, it is also unlawful for the undertaking to cause or procure any other undertaking to do so.

Committee's Recommendation:

That the provision in Clause 66 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 66 do stand part of the Bill, put and agreed to.

Clause 67: Withholding of products from a dealer by a supplier

- (1) For the purposes of this Part, an undertaking shall be treated as withholding goods or services from a dealer if —
 - (a) the undertaking refuses to supply those goods or services to the order of the dealer,
 - (b) the undertaking refuses to supply those goods or services to the dealer except at prices or on terms or conditions as to credit, discount or other matters which are significantly less favourable than those at or on which the undertaking normally supplies those goods or services to other dealers carrying on business in similar circumstances; or
 - (c) although the undertaking enters into an agreement to supply goods or services to the dealer, the undertaking treats the dealer in a manner significantly less favourable than that in which it normally treats other such dealers in respect of times or methods of delivery or other matters arising in the execution of the agreement.
- (2) An undertaking shall not be treated as withholding goods or services on any ground mentioned in this Part if, in addition to that ground, the undertaking has other grounds which, standing alone, would have led the undertaking to withhold those goods or services.
- (3) Subject to subsection (5) of this section, where in proceedings brought against an undertaking in respect of a contravention of the provisions of subsection (1) of section 66 of this Act, the matters specified in subsection (4) of this section are proved, it shall be presumed, unless the contrary is proved, that the goods or services concerned were withheld on the ground that the dealer had acted or was likely to act as described in subsection (1) of section 66 of this Act.
- (4) The matters referred to in subsection (3) are as follows —
 - (a) supplies of goods or services were withheld from a dealer;
 - (b) during a period ending immediately before the supplies were so withheld, the undertaking was doing business with the dealer or was supplying goods or services of the same description to other dealers carrying on business in similar circumstances; and
 - (c) the dealer, to the undertaking's knowledge, had within the preceding six months, acted as described in paragraph (a) of subsection (1) of section 9 of this Act or had indicated its intention to act in relation to the goods or services in question.
- (5) The provisions of subsections (3) and (4) of this section shall not apply where the proof that goods or services were withheld consists only of evidence of requirements imposed by the undertaking in respect of the time at which or the form in which payment was to be made for goods or services supplied or to be supplied.

Committee's Recommendation:

That the provision in Clause 67 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 67 do stand part of the Bill, put and agreed to.

Clause 68: Complaints to and issuance of notice by the Commission on restrictive agreements

- (1) Where the Commission determines that an agreement or decision contravenes the provisions of this Act, it shall serve an order on the parties concerned stating the reasons for its decision and requiring the parties to cease their anti-competition practices.
- (2) Any person who has suffered a loss as a result of any restrictive agreement or decision may make a complaint to the Commission and the Commission may, if it is satisfied that the circumstances of the case so warrant, exercise any of the powers granted to it under this Act as it deems fit, including making interim orders mandating the cessation of the restrictive agreement pending the conclusion of investigation.
- (3) Any person who may have suffered loss as a result of this agreements or not satisfied with the decision of the Commission may apply to the tribunal for review

Committee's Recommendation:

That the provision in Clause 68 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 68 do stand part of the Bill, put and agreed to.

Clause 69: Exceptions

- (1) Nothing in this Act prohibits —
 - (a) combinations or activities of employees for the reasonable protection of employees.
 - (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing minimum terms and conditions of employment;
 - (c) activities of professional associations designed to develop or enforce professional code of conduct.
 - (d) a contract or an arrangement among partners, none of whom is a body corporate, in so far as it contains provisions in relation to the terms of the partnership or the conduct of the partnership business or in relation to competition between the partnership and a party to the contract, arrangement or understanding while that party is, or after that party ceases to be a partner;
 - (e) a contract of service or a contract for the provision of services in so far as it contains provisions by which a person, not being a body corporate, agrees to accept restrictions as to the work, whether as an employee or otherwise, in which that person may engage during or after the termination of the contract. This period shall be no longer than two (2) years;
 - (f) a contract for the sale of a business or shares in the capital of a body corporate carrying on business in so far as it contains a provision that is solely for the protection of the purchases in respect of the goodwill of the body corporate; or

- (g) any act done to give effect to a provision of a contract or an arrangement referred to in paragraphs (a) to (f) of this subsection.
- (2) With respect to professional services subject to the regulation of professional bodies, the Commission may issue guidelines for the application of certain provisions of this Act to the supply of services or conduct of business by members of such professional associations; and
 - (i) for the purposes of this subsection, the Commission shall from time to time publish a list of professional bodies to whom this subsection (2) applies.
 - (ii) any privileges or exemptions granted by the Commission under this subsection shall be consistent with the provisions of this Act.
- (3) The Commission shall as considered appropriate develop and publish procedural rules to be applied to group inquiries

Committee's Recommendation:

That the provision in Clause 69 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 69 do stand part of the Bill, put and agreed to.

Clause 70: Offences and penalties under this Part

- (1) An undertaking that makes or enters into an agreement or decision declared unlawful under this Part commits an offence and liable on conviction —
 - (a) where the undertaking is a natural person, to imprisonment not exceeding a term of five years, or to a fine not exceeding Fifty Million Naira or to both fine and imprisonment;
 - (b) where the undertaking is a body corporate, it shall be liable on conviction to a fine not exceeding ten per cent of its turnover in the preceding business year;
- (2) Where the offence is committed by a body corporate, each director of the body corporate shall be liable to be proceeded against and on conviction dealt with as specified in paragraph (a) of subsection (1) of this section.
- (3) An undertaking that fails to obey an order served by the Commission under subsection (1) of section 68 of this Act commits an offence and —
 - (a) where the undertaking is a natural person, it shall be liable on conviction to imprisonment for a term not exceeding three years, or to payment of a fine not exceeding fifty million Naira or to both fine and imprisonment; and
 - (b) where the undertaking is a body corporate, liable on conviction to a fine not exceeding ten per cent of its turnover in the preceding business year.
- (4) Where the offence is committed by a body corporate, each director of the body corporate shall be liable to be proceeded against and on conviction dealt with as specified in paragraph (a) of subsection (1) of this section.

Committee's Recommendation:

That the provision in Clause 70 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 70 do stand part of the Bill, put and agreed to.

PART IX — ABUSE OF A DOMINANT POSITION**Clause 71: Dominant position and abuse of dominant position in the relevant market**

- (1) For the purpose of this Act, an undertaking will be generally considered to be in a dominant position if it is able to act without taking account of the reaction of its customers, consumers or competitors.
- (2) A dominant position in a relevant market exists where an undertaking enjoys a position of economic strength enabling it to prevent effective competition being maintained on the relevant market and having the power to behave to an appreciable extent independently of its competitors, customers and ultimately of the consumers.
- (3) The Commission shall from time to time publish the size of market share that may constitute dominant position in particular markets.

Committee's Recommendation:

That the provision in Clause 71 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 71 do stand part of the Bill, put and agreed to.

Clause 72: Criteria for identifying the relevant market

For the purpose of delineating the relevant market under this Act, the criteria that shall be taken into account include —

- (a) the geographical boundaries that identify groups of sellers and buyers of goods or services within which competition is likely to be restrained;
- (b) the goods or services which are regarded as interchangeable or substitutable by the consumer by reason of their characteristics, prices and the intended use; and
- (c) the suppliers to which consumers may turn to in the short term, if the abuse of dominance leads to a significant increase in price or to other detrimental effect upon the consumer.

Committee's Recommendation:

That the provision in Clause 72 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 72 do stand part of the Bill, put and agreed to.

Clause 73: Abuse of a dominant position prohibited

- (1) Subject to the provisions of subsection (3) of this section, any abuse by one or more undertakings of a dominant position in a market is prohibited.
- (2) For the purposes of this Act, an abuse of dominant position occurs where one or more undertakings in a dominant position —
 - (a) charge an excessive price to the detriment of consumers:

- (b) refuse to give a competitor access to an essential facility when it is economically feasible to do so;
- (c) engage in an exclusionary act, other than an act listed in paragraph (d), if the anti-competitive effect of that act outweighs its technological, efficiency or other pro-competitive gain; or
- (d) engage in any of the following exclusionary acts, unless the firm concerned can show technological, efficiency or other pro-competitiveness gains which outweigh the anti-competitive effect of its act —
 - (i) requiring or inducing a supplier or customer to not deal with a competitor;
 - (ii) refusing to supply scarce goods to a competitor when supplying those goods is economically feasible;
 - (iii) selling goods or services on condition that the buyer purchases separate goods or services unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to object of a contract;
 - (iv) selling goods or services below their marginal or average cost; or
 - (v) buying up a scarce supply of intermediate goods or resources required by a competitor
- (3) For the purpose of assessing market dominance, account shall be taken in particular of —
 - (a) the market share of the undertaking or undertakings concerned in the relevant market;
 - (b) its or their financial power;
 - (c) its or their access to supplies or markets;
 - (d) its or their links with other undertakings;
 - (e) legal or factual barriers to market entry by other undertakings;
 - (f) actual or potential competition by undertakings established within or outside the scope of application of this Act;
 - (g) its or their ability to shift supply or demand to other goods or services; and
 - (h) as well as the ability of the opposite market side to resort to other undertakings
- (4) An undertaking shall not be treated as abusing a dominant position if its conduct —

- (a) contributes to the improvement of production or distribution of goods or services or the promotion of technological or economic progress, while allowing consumers a fair share of the resulting benefit;
 - (b) is indispensable to the attainment of the objectives referred to in paragraph (a) of this subsection; and
 - (c) does not afford the undertaking the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.
- (5) An undertaking may be considered as abusing its dominant position with regard to paragraph (c) of subsection (3) of this section if the Commission is satisfied that its activities —
 - (a) have the effect of unreasonably lessening competition in a market; and
 - (b) impede the transfer or dissemination of technology.
- (6) For the purposes of this Act —
 - (a) "exclusive dealing" means any practice whereby an undertaking —
 - (i) as a condition of supplying goods or services to a customer, requires the customer —
 - (a) to deal only or primarily in goods or services supplied or designed by the undertaking or its nominee; or
 - (b) to refrain from dealing in a specified class or kind of goods or services, except as supplied by the undertaking or its nominee; or
 - (ii) induces a customer to meet a condition referred to in subparagraph (i) of paragraph (a) of this subsection by offering to supply goods or services to the customer on more favourable terms or conditions if the customer agrees to meet that condition;
 - (b) "exclusive dealing" also means any practice whereby an undertaking, as a condition of purchasing a specified class or kind of goods or services from a supplier, requires the supplier to refrain from supplying the same class or kind of goods or services to other undertakings; and
 - (c) "market restriction" means any practice whereby an undertaking, as a condition of supplying goods or services to a customer, requires that customer to distribute the goods or services only in a defined market or exacts a penalty of any kind from the customer if the customer distributes the goods or services outside a defined market.

Committee's Recommendation:

That the provision in Clause 73 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 73 do stand part of the Bill, put and agreed to.

Clause 74: Consequences of abuse of a dominant position

- (1) Where the Commission finds that an undertaking has abused or is abusing its dominant position in a market, the Commission shall prepare a report indicating the practices that constitutes the abuse and shall —
 - (a) notify the undertaking of its findings accompanied by a copy of the report; and
 - (b) direct the undertaking to immediately cease the abusive practice.
- (2) The provisions of this section shall not apply to exclusive dealing arrangements or market restrictions between or among affiliated or interconnected undertakings.
- (3) An undertaking that abuses its dominant position in a market commits an offence under this Act and shall on conviction be liable to a fine of not less than ten per cent of its turnover in the preceding business year or such higher percentage as the court may determine under the circumstances of the particular case.

Committee's Recommendation:

That the provision in Clause 74 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 74 do stand part of the Bill, put and agreed to.

Clause 75: Penalties for failure to comply with a cease order

- (1) An undertaking that fails to cease an abusive practice after receiving an order of the Commission to that effect commits an offence and on conviction liable to a fine not exceeding ten per cent of its turnover in the preceding business year or to such higher percentage as the court may determine given the circumstances of the particular case.
- (2) Any director of an undertaking found liable for an offence under subsection (1) of this section shall on conviction be liable to imprisonment for a term not exceeding three years, or to payment of a fine not exceeding Fifty Million Naira or to both fine and imprisonment.

Committee's Recommendation:

That the provision in Clause 75 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 75 do stand part of the Bill, put and agreed to.

Clause 76: Suspension of punishment

Where upon receipt of the directive under subsection (1) of section 74 of this Act, the undertaking or undertakings concerned submits or submit to the Commission the measures it or they propose to take to cease the abusive practice and a timetable for giving effect to the measures, and the Commission is satisfied as to the measures, the Commission may decide not to proceed with the institution of necessary action that will lead to the punishment and penalties prescribed in section 75 of this Act against the undertaking or undertakings.

Committee's Recommendation:

That the provision in Clause 76 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 76 do stand part of the Bill, put and agreed to.

PART X — MONOPOLY**Clause 77: Power of the Commission to investigate a monopoly situation**

Where it appears to the Commission that there are grounds for believing that a monopoly situation may exist in relation to the production or distribution of goods or services of any description, or in relation to import or exports of goods or services of any description from Nigeria, it shall cause an investigation to be held into a particular sector of the economy or into a particular type of agreements across various sectors to determine the extent of the situation in relation to the market.

Committee's Recommendation:

That the provision in Clause 77 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 77 do stand part of the Bill, put and agreed to.

Clause 78: Determination of a monopoly situation by the Commission

For the purposes of this Part, a monopoly situation shall be taken to exist in relation to —

- (a) the supply of goods of any description,
- (b) the supply of services of any description, or
- (c) the import and export of goods and services of any description from Nigeria, to the extent it has an effect on competition in a market in Nigeria

Committee's Recommendation:

That the provision in Clause 78 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 78 do stand part of the Bill, put and agreed to.

Clause 79: General powers of the Commission to obtain information

When conducting a monopoly investigation under section 77 of this Act, the Commission may —

- (a) exercise any of its powers, as contained under section 30 of this Act.
- (b) require any person or body corporate to furnish the Commission with such information as the Commission may consider necessary for the purposes of conducting such investigation.

Committee's Recommendation:

That the provision in Clause 79 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 79 do stand part of the Bill, put and agreed to.

Clause 80: Supplementary provisions as to the requirement to furnish information

Any power conferred on the Commission under the provisions of this Act to require a person or body corporate to furnish information shall be exercisable by notice in writing served on that person or body corporate.

Committee's Recommendation:

That the provision in Clause 80 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 80 do stand part of the Bill, put and agreed to.

Clause 81: Penalties for refusal to furnish information to the Commission

- (1) A person or body corporate who refuses or willfully neglects to furnish to the Commission information required under this Act commits an offence and is liable on conviction to a fine not exceeding ten million Naira.

Amendment Proposed:

Leave out the word "willfully, in line 1, and insert the word "intentionally" instead thereof (*Senator Bala Ibn Na'Allah — Kebbi South*).

Question that the amendment made, put and agreed to.

- (2) A person who furnishes information or makes a statement required by the Commission under this Act knowing that such statement is false in any material respect or recklessly makes a statement which is false in any material way, commits an offence and liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding two million Naira or to both fine and imprisonment (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*).

Question that Clause 81 as amended do stand part of the Bill, put and agreed to.

Clause 82: Order for monopoly investigation

An order for a monopoly investigation under section 77 of this Act shall —

- (a) specify the description of goods or services to which the order relates;
- (b) state whether it relates to supply, Import or export of goods and services
- (c) specify the part of Nigeria in respect of which the investigation is to be limited where it is to be limited to a part of Nigeria.

Committee's Recommendation:

That the provision in Clause 82 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 82 do stand part of the Bill, put and agreed to.

Clause 83: Request for a monopoly investigation

- (1) Any person or body corporate may make a request for a monopoly investigation to the Commission.
- (2) A monopoly investigation may be referred to the Commission by a court, agency of the government of the Federation or any State or Local Government of the Federation.

- (3) a request made in terms of subsection (1) shall be accompanied by an affidavit deposing to the facts giving rise to the request.
- (4) In responding to a request or referral referred to in subsections (1) and (2) of this section, the Commission may limit its report to —
 - (a) whether a monopoly situation exists in relation to the matters set out in the request or reference;
 - (b) where a monopoly situation is determined to exist, which of the provisions of this Act are applicable;
 - (c) the undertaking or undertakings in whose favour the monopoly situation exists;
 - (d) the acts taken by way of anti-competition practices or otherwise by the undertaking or undertakings concerned to exploit or maintain the monopoly situation or to further an anti-competitive practice; and
 - (e) any action or omission on the part of the undertaking or undertakings concerned attributable to the existence of the monopoly situation and, if so, by what manner it is so attributable.

Committee's Recommendation:

That the provision in Clause 83 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*). —
Agreed to.

Question that Clause 83 do stand part of the Bill, put and agreed to.

Clause 84: Notification of a request for a monopoly investigation

Where the Commission gives a direction under this Act with respect to a request for or a referral of a monopoly investigation, the Commission shall notify all relevant parties in writing and shall place a notice of such direction on the website of the Commission.

Committee's Recommendation:

That the provision in Clause 84 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 84 do stand part of the Bill, put and agreed to.

Clause 85: Report on a monopoly investigation

- (1) The Commission shall prepare a report on completed monopoly investigations.
- (2) In making a report on a monopoly investigation, the Commission shall include in the report definite conclusions on the questions or issues that prompted the investigation, together with an account of the Commission's reasons for those conclusions.
- (3) Where the Commission finds that a monopoly situation exists and that facts found by the Commission in pursuance of its investigation operate or may be expected to operate against the public interest, its report shall specify those facts and the particular effects which in the Commission's opinion, those facts have or may be expected to have.

- (4) The Commission —
- (a) shall, as part of any investigation under this Part, consider the actions to be taken to remedy or prevent any adverse effects resulting from a monopoly situation; and
 - (b) may, if it thinks fit, include in its report on a monopoly investigation recommendations in support of the actions to be taken.
- (5) The phrase "action to be taken" in paragraphs (a) and (b) of subsection (4) of this section means the action to be taken —
- (a) by the Minister or any other Minister of the Government of the Federation or any department or agency of Government where the resulting adverse effects affects the sphere of responsibility or the statutory function of any Minister or of any of the departments or agencies of Government; or
 - (b) by the undertaking or undertakings in whose favour the monopoly situation in question exists.

Committee's Recommendation:

That the provision in Clause 85 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 85 do stand part of the Bill, put and agreed to.

Clause 86: Time frame for a report on a monopoly investigation

- (1) Upon the commencement of a monopoly investigation under this Part, the Commission shall specify a period within which the Commission is to report on the monopoly investigation.
- (2) Where a report of the Commission is not made before the end of the period specified by the Commission under subsection (1) of this section, or if one or more extended periods allowed for making the report under subsection (3) of this section is not met before the end of that extended period or of the last of those extended periods, as the case may be, the investigation shall cease to have effect and no action or, if action has already been taken, no further action shall be taken in relation to that investigation.
- (3) Where a monopoly investigation cuts across the sphere of responsibilities of more than one Minister and the period of reporting on an investigation has already been extended once or more than once under any direction issued under this subsection, a joint directive of all the Ministers concerned may be issued allowing the Commission such extended period to report on the reference as may be specified in the direction.

Committee's Recommendation:

That the provision in Clause 86 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 86 do stand part of the Bill, put and agreed to.

Clause 87: Powers of the Tribunal in relation to a report on a monopoly investigation

- (1) The provisions of this section shall have effect where a report of the Commission on a monopoly investigation is referred to the Tribunal with the conclusions of the Commission that —

- (a) a monopoly situation exists and that facts found by the Commission in its investigations operate or may be expected to operate, against the public interest; and
 - (b) a report of the Commission herein shall specify particular adverse effects adverse of the monopoly situation to the public interest.
- (2) The Tribunal may, based on the findings of the Commission pursuant to subsection (1) of this section exercise any of its powers under this Act or make such orders as considered necessary for the purpose of remedying or preventing the adverse effects specified in the report.
- (3) An order of the Tribunal made under subsection (2) of this section may, in particular, —
 - (a) declare an agreement to be unlawful to such extent and in such circumstances as may be provided by this Act or regulations made under this Act;
 - (b) require any party to any such agreement as may be specified or described in the order to terminate the agreement within such time as may be so specified, either wholly or to such extent as may be specified;
 - (c) require a person supplying goods or services to publish a list of prices, with or without such further information as may be specified or described in the order;
 - (d) prohibit or restrict the acquisition by any undertaking of the whole or part of another undertaking; or
 - (e) provide for the division of any undertaking by the sale of any part of its shares, assets or otherwise for which purpose all the activities carried on by way of business by any one undertaking or by any two or more interconnected undertakings may be treated as a single business or for the division of any group of interconnected undertakings and for all such matters as may be necessary to effect or take account of the division, including —
 - (i) the transfer or vesting of property rights, liabilities or obligation;
 - (ii) the adjustment of contracts, whether by discharge or reduction of any liability or obligation or otherwise;
 - (iii) the creation, allotment, surrender or cancellation of shares, stock or securities;
 - (iv) the formation or winding up of an undertaking or association, corporate or unincorporated, or the amendment of the memorandum and articles or other instruments regulating any undertaking or association;
 - (v) the extent to which and the circumstances in which provisions of the order affecting an undertaking or association in its share capital, constitution or other matters may be altered by the undertaking or association

and the registration under any enactment of the order by undertakings or associations so affected; or

- (vi) the continuation with any necessary change of parties of any legal proceedings.

- (4) The reference in paragraph (e) of subsection (3) of this section to the division of an undertaking shall be construed as including a reference to the separation by the sale of any part of any shares or assets concerned of undertakings which are under joint control.
- (5) In determining whether or not and to what extent or in what manner to exercise any of the powers referred to in subsection (2) of this section, the Tribunal shall take into account the objectives of this Act.
- (6) Where a report made pursuant to subsection (1) of this section specifies that the undertaking in whose favour the monopoly situation exists is a body corporate fulfilling the following conditions, that is —
- (a) that the affairs of the body corporate are managed by its members, and
- (b) that by virtue of any enactment, those members are appointed by a supervising Minister of that body corporate, the Tribunal shall, if requested, receive representations from the Minister who appointed members of that body corporate and shall consider such representations before making any orders or exercising any powers.
- (7) In relation to any such undertaking as is mentioned in subsection (6) of this section, the powers exercisable by virtue of subsection (2) of this section shall not include the powers specified in paragraph (e) of subsection (3) of this section.

Committee's Recommendation:

That the provision in Clause 87 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 87 do stand part of the Bill, put and agreed to.

Clause 88: General provisions relating to orders made under this Part

- (1) The provisions of this section shall apply to an order made under section 87 of this Act.
- (2) An order made under section 87 of this Act declaring anything to be unlawful shall apply to all undertakings or to such undertakings as may be specified or described in the order.
- (3) Nothing in any order made under section 87 of this Act shall have effect so as to apply to any undertaking in relation to its conduct outside Nigeria, unless that undertaking is —
- (a) a citizen of Nigeria; or
- (b) a body corporate incorporated under the Companies and Allied Matters Act, CAP C20 Laws of the Federation of Nigeria, 2004 and carrying on business in Nigeria, either alone or in partnership with one or more other undertakings.

- (4) An order to which this section applies may be extended so as to prohibit the carrying out of any agreement already in existence on the date on which the order is made.
- (5) Nothing in any order to which this section applies shall have the effect as to restrict any act for the purpose of restraining an infringement of a Nigerian patent or so as to restrict any undertaking as to the conditions which it attaches to a licence to do anything the doing of which would, but for the licence, be an infringement of a Nigerian patent.
- (6) The Tribunal shall include in an order made under section 87 of this Act the power to give any directive to a person, body corporate or association specified in the order —
 - (a) to take such steps within its competence as may be specified or described in the direction for the purpose of carrying out, or securing compliance with the order; or
 - (b) to do or refrain from doing anything so specified or described which the person, body corporate or association may be required by the order to do or refrain from doing, and may authorize the Minister in charge of the person, body corporate or association to vary or revoke any directives so given.
- (7) Prior to making any order under section 87 of this Act, the Tribunal shall publish, in such manner as it deems appropriate, a notice —
 - (a) stating its intention to make the order;
 - (b) indicating the nature of the provisions to be embodied in the order; and
 - (c) requesting any person, body corporate or association whose interest is likely to be affected by the order and who is desirous of making representations in respect of the order to do so in writing within thirty days from the date publication of the notice for consideration by the Tribunal

Committee's Recommendation:

That the provision in Clause 88 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 88 do stand part of the Bill, put and agreed to.

PART XI — PRICE REGULATION

Clause 89: Declaration of price regulation

- (1) For the purpose of regulating and facilitating competition only, the President may, from time to time, by order published in the Federal Gazette, declare that the prices for goods or services specified in the order shall be controlled in accordance with the provisions of this Act.
- (2) The President shall not make an order under subsection (1) of this section unless the President is satisfied that —
 - (a) goods or services to which the order relates are or will be supplied or acquired in a market in which competition is limited or is likely to be lessened;

- (b) it is necessary or desirable for the prices of those goods or services to be controlled in accordance with this Act in the interest of users, consumers, or, as the case may be, suppliers; and
 - (c) any such declaration of price regulation is narrowly designed, both in terms of duration and the list of goods and services affected, as is necessary to remedy the effects of the absence of competition in the relevant market.
- (3) An order shall not be made under subsection (1) of this section prior to the submission to the President of a report of the Commission assessing the state of competition in the relevant market and providing recommendations on the desirability and likely effects of implementing price regulation or other remedies.
- (4) Any order made under subsection (1) of this section shall identify the goods or services to which it pertains by —
 - (a) a description of the goods or services;
 - (b) a description of the kind or class of the goods or services;
 - (c) a description of the market to which the goods or services belong; and
 - (d) the specification of the sector of the economy affected or likely to be affected.
- (5) Any order made under subsection (1) of this section shall specify the date on which it shall expire.

Committee's Recommendation:

That the provision in Clause 89 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 89 do stand part of the Bill, put and agreed to.

Clause 90: Commission to report to the President on price regulation

- (1) The President may, by notice in writing, require the Commission to report by such date as the President shall specify in the notice, on the need to amend, vary or revoke an order made under section 89 of this Act.
- (2) Upon the issuance of a notice to the Commission under subsection (1) of this section —
 - (a) the Commission shall cause to be published in such manner as the Commission may consider appropriate, including the mass media, a notice —
 - (i) stating that the requirement has been made and specifying the matter to which it pertains; and
 - (ii) inviting interested persons to present their views on that matter to the Commission, and specifying the time and manner within which they may do so; and
 - (b) the Commission shall not submit a report to the President until it has given a reasonable opportunity to interested persons to furnish their views in accordance with the requirement of paragraph (a) (ii) of this subsection.

- (3) The Commission may at its discretion recommend to the President to amend, vary or revoke an order made under section 89 of this Act.
- (4) The President shall cause a copy of every report submitted by the Commission under this section to be published in such manner as considered appropriate.

Committee's Recommendation:

That the provision in Clause 90 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 90 do stand part of the Bill, put and agreed to.

Clause 91: Regulated goods or services to be supplied in accordance with authorized prices

- (1) For the purpose of this Part, "regulated goods" or "regulated services" mean goods or services in respect of which there is for the time being in force an order made under section 89 of this Act.
- (2) Within a reasonable period after an order under section 89 of this Act is made, the Commission shall set and cause to be published an authorized price of the regulated goods or services that are the subject of the order.
- (3) Following the publication of an authorized price by the Commission pursuant to subsection (2) of this section, an undertaking shall not supply the regulated goods or services in Nigeria other than for the authorized price.
- (4) Any provision of an agreement in violation of the provisions subsection (3) of this section is unenforceable.
- (5) A person who violates any of the provisions of this Part commits an offence and liable on conviction to a fine not exceeding Fifty Million Naira.
- (6) A body corporate that violates any of the provisions of this Part commits an offence and liable on conviction to a fine not exceeding ten per cent of the turnover of the body corporate in the business year preceding the date of the commission of the offence.
- (7) Each director of the body corporate referred to in subsection (6) of this section shall be liable to be proceeded against and on conviction dealt with as specified in subsection (5) of this section.

Committee's Recommendation:

That the provision in Clause 91 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 91 do stand part of the Bill, put and agreed to.

Clause 92: Retention of accounting and costing records by suppliers or distributors

- (1) Any undertaking that supplies or distributes regulated goods or services shall retain all accounting and costing records on the regulated goods or services as the Commission may from time to time specify either in relation to suppliers or distributors of those goods or services generally or in relation to a particular supplier or distributor of the goods or services.

- (2) Any undertaking that supplies or distributes regulated goods or services shall retain the records referred to in subsection (1) of this section for a period of three years from the date of the revocation or expiry of the order in respect of the regulated goods or services to which they relate.

Committee's Recommendation:

That the provision in Clause 92 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 92 do stand part of the Bill, put and agreed to.

PART XII — MERGERS

Clause 93: Merger defined

- (1) For the purposes of this Act —
- (a) a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking; and
 - (b) a merger contemplated in paragraph (a) of this subsection may be achieved in any manner, including through —
 - (i) the purchase or lease of the shares, an interest or assets of the other undertaking in question;
 - (ii) the amalgamation or other combination with the other undertaking in question; or
 - (iii) a joint venture.
- (2) For the purposes of subsection (1) of this section, an undertaking has control over the business of another undertaking if it —
- (a) beneficially owns more than one half of the issued share capital or assets of the undertaking;
 - (b) is entitled to cast a majority of the votes that may be cast at a general meeting of the undertaking or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that undertaking;
 - (c) is able to appoint or to veto the appointment of a majority of the directors of the undertaking;
 - (d) is a holding company, and the undertaking is a subsidiary of that company as contemplated under the Companies and Allied Matters Act, CAP C20, LFN, 2004;
 - (e) in the case of an undertaking that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;
 - (f) has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f) of this subsection.

- (g) has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f) of this subsection.
- (3) For the purposes of subsection (1) of this section, an undertaking shall not be deemed to exercise control over the business of another undertaking where —
 - (a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies can show that the disposal was not reasonably possible within the period set;
 - (b) control is acquired by an office-holder according to the laws of the Federation relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.
- (4) Within 60 days after publishing a notice as required under subsection (3) of this section, the Commission shall publish in the Federal Gazette a notice —
 - (a) a "small merger" means a merger with a value at or below the threshold stipulated by the Commission by regulations;
 - (b) a "large merger" means a merger with a value above the threshold stipulated by the Commission by regulations.

Committee's Recommendation:

That the provision in Clause 93 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 93 do stand part of the Bill, put and agreed to.

Clause 94: Commission to approve mergers.

- (1) Subject to the notification threshold to be determined from time to time as set out in this Part, a proposed merger shall not be implemented unless it has first been notified to and approved by the Commission.
- (2) The Commission shall by regulations determine—
 - (a) a threshold of annual turnover for purposes of determining the categories of mergers contemplated in subsection (4) of section 93 of this Act; and
 - (b) a method for the calculation of annual turnover to be applied in relation to the threshold determined under paragraph (a) of this subsection.

- (3) Prior to making a determination contemplated in subsection (2) of this section, the Commission shall publish in the Federal Gazette a notice-
 - (a) setting out the proposed threshold and method of calculation for purposes of this section; and
 - (b) inviting written submissions on that proposal.
- (4) Within 30 days after publishing a notice as required under subsection (3) of this section, the Commission shall publish in the Federal Gazette a notice-
 - (a) setting out the threshold and method of calculation for purposes of this section; and
 - (b) the effective date of the threshold.

Committee's Recommendation:

That the provision in Clause 94 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 94 do stand part of the Bill, put and agreed to.

Clause 95: Consideration by the Commission of Effect of a Merger on Competition

- (1) When considering a merger or a proposed merger, the Commission shall determine whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out in subsection (2) of this section.
- (2) When determining whether or not a merger or a proposed merger is likely to substantially prevent or lessen competition, the Commission shall assess the strength of competition in the relevant market and the probability that the undertakings in the market, after the merger, will behave competitively or co-operatively, taking into account any factor that is relevant to competition in that market, including —
 - (a) the actual and potential level of import competition in the market;
 - (b) the ease of entry into the market, including tariff and regulatory barriers;
 - (c) the level and trends of concentration, and history of collusion in the market;
 - (d) the degree of countervailing power in the market;
 - (e) the dynamic characteristics of the market, including growth, innovation, and product differentiation;
 - (f) the nature and extent of vertical integration in the market;
 - (g) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and
 - (h) whether the merger or proposed merger will result in the removal of an effective competitor.

- (3) Where it appears that a merger or proposed merger is likely to substantially prevent or lessen competition, the Commission shall determine —
 - (a) whether or not the merger or proposed merger is likely to result in any technological efficiency or other pro-competitive advantage which will be greater than, and offset, the effects of any prevention or lessening of competition, while allowing consumers a fair share of the resulting benefit; and
 - (b) whether the merger or proposed merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (4) of this section.
- (4) When determining whether a merger or proposed merger can or cannot be justified on grounds of public interest, the Commission shall consider the effect that the merger or proposed merger will have on —
 - (a) a particular industrial sector or region;
 - (b) the ability of small and medium scale enterprises to become competitive. and
 - (c) the ability of national industries to compete in international markets.

Committee's Recommendation:

That the provision in Clause 95 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 95 do stand part of the Bill, put and agreed to.

Clause 96: Notification Requirements for a Small Merger

- (1) A party to a small merger —
 - (a) is not required to notify the Commission of that merger unless the Commission requires it to do so in accordance with the provision of subsection (3) of this section; and
 - (b) may implement that merger without approval, unless it is required to notify the Commission in accordance with the provisions of subsection (3) of this section.
- (2) A party to a small merger may voluntarily notify the Commission of that merger at any time.
- (3) Within six months after a small merger is implemented, the Commission may require the parties to that merger to notify it of the merger in the prescribed manner and form if, in the opinion of the Commission, having regard to the provisions of section 95 of this Act, the merger may substantially prevent or lessen competition.
- (4) The notification of the merger referred to in subsection (3) of this section shall be published within five business days after receipt by the Commission.
- (5) A party to a merger to which subsection (4) of this section applies may take no further steps to implement that merger until the merger has been approved by the Commission with or without conditions.

- (6) Within twenty business days after parties to a small merger have fulfilled the notification requirement referred to in subsection (3) of this section, the Commission may extend the period in which it has to consider the merger by a single period not exceeding forty business days and, in that case, the Commission shall —
- (a) issue an extension notice to any party who notified it of the merger; or
 - (b) after having considered the merger as required under section 95 of this Act, issue a report in the prescribed form —
 - (i) approving the merger;
 - (ii) approving the merger subject to any conditions;
 - (iii) prohibiting implementation of the merger, if it has not been implemented; or
 - (iv) declaring the merger to be prohibited.
- (7) Where upon the expiry of the twenty business days provided for in subsection (6) of this section, the Commission has not issued the extension notice referred to in paragraph (a) of the subsection or, upon the expiry of an extension period referred to in that subsection, the Commission has not issued a report referred to in paragraph (b) of the subsection, the merger shall be deemed to have been approved.
- (8) The Commission shall —
- (a) publish a notice of any decision it makes pursuant to this section in the Federal Gazette; and
 - (b) issue written reasons for the decision if —
 - (i) it prohibits or conditionally approves a merger; or
 - (ii) requested to do so by a party to a merger.

Committee's Recommendation:

That the provision in Clause 96 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 96 do stand part of the Bill, put and agreed to.

Clause 97: Notification of a Large Merger

- (1) A party to a large merger shall notify the Commission of the merger in the prescribed manner and form.
- (2) The notification of the merger referred to in subsection (1) of this section shall be published within five business days after receipt by the Commission.
- (3) The primary acquiring undertaking and the primary target undertaking shall each provide a copy of the notice contemplated in subsection (1) of this section to —
 - (a) any registered trade union that represents the employees in the acquiring and target undertakings respectively; or

- (b) the employees or representatives of the employees of the acquiring and target undertakings, if there are no such registered trade unions.
- (4) The parties to a large merger shall not implement the merger unless approved, with or without conditions, by the Commission in accordance with the provisions of this Act.
- (5) Any action undertaken by any party in violation of the provisions of this section shall be void and of no legal effect.
- (6) The Commission may exercise any of the powers available to it under this Act to render null and void any violation of the provisions of this section
- (7) An undertaking that violates the provision of this section commits an offence and liable on conviction to a fine not exceeding ten per cent of turnover of the undertaking in the business year preceding the date of the commission of the offence or to such other percentage as the court may determine having regard to the circumstances of the case

Committee's Recommendation:

That the provision in Clause 97 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 97 do stand part of the Bill, put and agreed to.

Clause 98: Power of the Commission to Extend the Period of Consideration of a Larger Merger.

- (1) Within sixty business days after the parties to a large merger have fulfilled all notification requirements referred to in section 97 of this Act, the Commission —
 - (a) may extend the period in which it has to consider the proposed merger to one hundred and twenty business days and issue an extension notice to all parties to the merger; or
 - (b) after having considered the merger in accordance with the provisions of this Act, issue a report in the prescribed form —
 - (i) approving the merger;
 - (ii) approving the merger subject to conditions; or
 - (iii) prohibiting implementation of the merger.
- (2) Where upon the expiry of the sixty business day period provided for in subsection (1) of this section, the Commission has not issued an extension notice as provided for in that subsection or, upon the expiry of an extension period contemplated in paragraph (a) of subsection (1) of this section, the Commission has not issued a report referred to in paragraph (b) subsection (1) of this section, the merger shall be regarded as having been approved, subject to the provision of section 100 of this Act.
- (3) Subject to the provisions of this Part, the Commission shall —
 - (a) give to the parties applying for approval of a large merger its decision and cause a notice of the decision to be published in at least two national newspapers; and

- (b) issue written reasons for its decision where —
 - (i) it prohibits or conditionally approves the merger; or
 - (ii) it is requested to do so by a party to the merger.

Committee's Recommendation:

That the provision in Clause 98 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 98 do stand part of the Bill, put and agreed to.

Clause 99: Investigation of a Proposed Merger

The Commission may direct any of its officers to investigate a merger, and may require any person or undertaking to provide information in respect of the merger.

Committee's Recommendation:

That the provision in Clause 99 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 99 do stand part of the Bill, put and agreed to.

Clause 100: Revocation of Merger Approval

- (1) The Commission may revoke its own decision to approve or conditionally approve a small or large merger if —
 - (a) the decision was based on incorrect information for which a party to the merger is responsible;
 - (b) the approval was obtained by deceit;
 - (c) the parties fail to implement the merger within twelve months after the approval was granted; or
 - (d) an undertaking concerned has breached an obligation attached to the decision of the Commission approving the merger.
- (2) Where the Commission revokes its decision approving a merger under subsection (1) of this section, it may prohibit that merger even though any time limit set out under the relevant provision of this Part may have elapsed and the merger was approved on account of the failure of the Commission to reach a decision within the period prescribed under this Act.

Committee's Recommendation:

That the provision in Clause 100 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 100 do stand part of the Bill, put and agreed to.

Clause 101: Powers of the Minister

- (1) The Minister shall be entitled to make representations to the Commission with respect to any merger which is under consideration by the Commission.

- (2) Subject to the overriding objectives of this Act, the Commission shall have special regard to the representations made by the Minister in arriving at the decision on a merger notification.
- (3) Further to the provisions of subsections (1) and (2) of this section, the Minister may participate as a party in any merger proceedings before the Commission in the prescribed manner.

Committee's Recommendation:

That the provision in Clause 101 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 101 do stand part of the Bill, put and agreed to.

Clause 102: Power to Hear Persons in Merger Proceedings

- (1) In making a determination in respect of a merger notification, the Commission may hear any person, other than parties to the merger, who in the opinion of the Commission is able to assist in making a determination or the merger notification.
- (2) Before making a determination in relation to a merger or a proposed merger, the Commission may decide to hold a hearing publicly or in private and shall appoint a date, time and place for holding the hearing and give notice of the date, time, and place so appointed and of the matters to be considered at the hearing to the persons entitled to be present at the hearing.

Committee's Recommendation:

That the provision in Clause 102 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 102 do stand part of the Bill, put and agreed to.

Clause 103: Provisions of Documents on Proposed Merger to the Commission

- (1) Any undertaking making a merger notification shall furnish to the Commission such documents and information as may be required in the consideration of the merger or proposed merger to enable the Commission exercise their functions under this Act.
- (2) Any undertaking who has given notice in respect of a merger or proposed merger may at any time, by notice in writing to the Commission, advise the Commission that it does not wish to proceed with the implementation of the merger and the Commission shall accordingly not give a decision on the notification.

Committee's Recommendation:

That the provision in Clause 103 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 103 do stand part of the Bill, put and agreed to.

Clause 104: Appeals

A person aggrieved by the Commission's decision under this Part may file an application for review before the Tribunal and where the decision relates to a decision of the Tribunal, to the Federal High Court.

Committee's Recommendation:

That the provision in Clause 104 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 104 do stand part of the Bill, put and agreed to.

PART XIII — REGULATED INDUSTRIES**Clause 105: Supremacy of the Federal Competition and Consumer Protection Act**

- (1) Notwithstanding the provisions of any other law but subject to the provisions of the Constitution of the Federal Republic of Nigeria, in all matters relating to competition and consumer protection, the provisions of this Act shall override the provisions of any other law.
- (2) The provision of subsection (1) above does not confer superiority on the commission created herein over other sector regulators

Committee's Recommendation:

That the provision in Clause 105 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 105 do stand part of the Bill, put and agreed to.

Clause 106: Designation of Regulated Industries

- (1) In so far as this Act applies to an industry or sector of an industry that is subjected to the authority of another government agency by the provisions of any other law, in matters or conducts which affect competition and consumer protection, this Act shall be construed as establishing a concurrent jurisdiction between the commission and the relevant government agency
- (2) In the exercise of the concurrent jurisdiction as provided under subsection (1), the sector regulators shall have primary jurisdiction over competition and consumer protection matters in its sector.
- (3) the Commission shall exercise secondary jurisdiction in relation to —
 - (i) addressing general industry violations or abuses in the sectors
 - (ii) setting broad benchmarks for effective competition regulation and consumer protection in the sectors
 - (iii) addressing complaints where sector regulators have failed to take action in accordance with their regulations; and
 - (iv) providing policy and technical support
- (4) The Commission shall negotiate agreements with all government agencies whose mandate include the enforcement of competition and consumer protection for the purpose of coordinating and harmonising the exercise of jurisdiction over competition and consumer protection matters within the relevant industry or sector, and to ensure the consistent application of the provisions of this Act.

- (5) An agreement in terms of subsection (4) must —
- (a) identify and establish efficient procedures for the management of areas of concurrent jurisdiction;
 - (b) promote cooperation between the regulatory agency and the Commission;
 - (c) preserve the structure of the concurrent jurisdiction as provided in subsections (2) and (3) of this Act.
 - (d) provide for the exchange of information and the protection of confidential information; and
 - (e) be published in the Federal Gazette.
- (6) A government agency or regulatory authority, which in accordance with the provision of an existing law or regulation has jurisdiction in respect of an industry or sector, shall commence negotiation of agreements with the Commission as anticipated in subsection (4) of this section and shall conclude such negotiations within one year thereof, and in respect of matters within its jurisdiction, may exercise its jurisdiction by way of such an agreement.
- (7) Where the negotiations contemplated by subsection (4), (5) and (6) above are inconclusive, the areas of disagreement shall be referred to the President who shall by order clarify the jurisdictional boundaries of the regulators.

Committee's Recommendation:

That the provision in Clause 106 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 106 do stand part of the Bill, put and agreed to.

Clause 107: Exemption of Regulated Industries

- (1) Whenever it is alleged that a provision of this Act has been contravened by an undertaking acting or operating within any regulated industry designated pursuant to section 106 of this Act, the undertaking against whom such allegation is made must demonstrate that the conduct in question was ordered or required by a regulatory agency possessing jurisdiction over that regulated industry.
- (2) where the understanding against whom an allegation referred to in subsection (1) of this section is made, demonstrates that the conduct in question was ordered or required by a regulatory agency possessing jurisdiction over the regulated industry, the commission may, subject to the agreement referred to in section 106, proceed with the issuance of a cease-and-desist order prohibiting the undertaking concerned from further violations of the provisions of this Act.

Committee's Recommendation:

That the provision in Clause 107 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 107 do stand part of the Bill, put and agreed to.

PAR XIV — SPECIFIC OFFENCES AGAINST COMPETITION

Clause 108: Price-Fixing

- (1) An undertaking shall not directly or indirectly —
 - (a) by agreement, threat, promise or any other means, attempt to influence or conspire to influence upward or discourage the reduction of, the price at which any other undertaking supplies, offers to supply or advertises any goods or services; or
 - (b) refuse to supply goods or services to or otherwise discriminate against any undertaking because of the pricing policy of that undertaking.
- (2) The provision of paragraph (a) of subsection (1) of this section shall not apply if the undertaking attempting to influence the conduct of another undertaking and that other undertaking are interconnected undertakings as defined by this Act or, as the case may be, principal and agent.
- (3) For the purposes of paragraph (a) of subsection (1) of this section, the publication by an undertaking, other than a retailer, of any notice or advertisement that mentions a resale price of any goods or services constitutes an attempt to influence upward the selling price of those goods or services, unless the resale price is so expressed as to make it clear to a reasonable person that the goods or services may be sold at a lower price.
- (4) An undertaking that violates any of the provisions of this section commits of an offence and —
 - (a) where the undertaking is a natural person, liable on conviction to imprisonment for a term not exceeding three years or to payment of a fine not exceeding ten million Naira or to both fine and imprisonment;
 - (b) where the undertaking is a body corporate, liable on conviction to a fine not exceeding ten per cent of its turnover in the preceding business year; and
 - (c) in the case of a corporate body referred to in paragraph (b) of this subsection, each director of the body corporate is liable to be proceeded against and on conviction dealt with as specified in paragraph (a) of this subsection.

Committee's Recommendation:

That the provision in Clause 108 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 108 do stand part of the Bill, put and agreed to.

Clause 109: Conspiracy

- (1) An undertaking shall not conspire, combine, agree or arrange with another undertaking to —
 - (a) limit unduly the facilities for transporting, producing, manufacturing, storing or dealing in or supplying any goods or services;

- (b) 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;
 - (c) unduly reduce competition in the production, manufacture, purchase, barter, sale, supply, rental or transportation of any goods or services or in the price of personal or property insurance;
 - (d) otherwise unduly restrain or injure competition.
- (2) Nothing in subsection (1) of this section applies to a conspiracy, combination, agreement or arrangement which relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public —
 - (a) in the practice of a trade or profession relating to the service; or
 - (b) in the collection and dissemination of information relating to the service.
- (3) An undertaking that violates any provision of this section commits an offence and —
 - (a) where the undertaking is a natural person, liable on conviction to imprisonment for a term not exceeding three years, or to payment of a fine not exceeding ten million Naira or to both fine and imprisonment;
 - (b) where the undertaking is a body corporate, liable on conviction to a fine not exceeding ten per cent of its turnover in the preceding business year; and in the case of a body corporate referred to in paragraph (b) of this subsection, each director of the body corporate is liable to be proceeded against and on conviction dealt with as specified in paragraph (a) of this subsection.

Committee's Recommendation:

That the provision in Clause 109 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 109 do stand part of the Bill, put and agreed to.

Clause 110: Bid-Rigging

- (1) Subject to subsection (2) of this section, it is unlawful for two or more undertakings to enter into an agreement whereby —
 - (a) one or more of them agree not to submit a bid in response to a call or request for bids or tenders; or
 - (b) as bidders or tenderers, they submit, in response to a call or request, bids or tenders that are arrived at by agreement between or among themselves.
- (2) This section shall not apply in respect of an agreement that is entered into or a submission that is arrived at only by undertakings each of which, in respect of every one of the others, is an affiliate.
- (3) An undertaking that violates any provision of this section commits an offence and —

- (a) where the undertaking is a natural person, liable on conviction to imprisonment for a term not exceeding three years, or to payment of a fine not exceeding tenmillion Naira or to both fine and imprisonment;
- (b) where the undertaking is a body corporate, liable on conviction to a fine not exceeding ten per cent of its turnover in the preceding business year; and
- (c) in the case of a body corporate referred to in paragraph (b) of this subsection, each director of the body corporate is liable to be proceeded against and on conviction dealt with as specified in paragraph (a) of this subsection.

Committee's Recommendation:

That the provision in Clause 110 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 110 do stand part of the Bill, put and agreed to.

Clause 111: Obstruction of Investigation or Inquiry

Any person, who, in any manner, impedes, prevents or obstructs any investigation or inquiry by the Commission under this Act commits an offence and is liable, on summary conviction, to imprisonment for a term of not less than twoyears or to a fine of not less than two million Naira or to both fine and imprisonment.

Committee's Recommendation:

That the provision in Clause 111 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 111 do stand part of the Bill, put and agreed to.

Clause 112: Offence Against Records

- (1) An undertaking that —
 - (a) refuses to produce any document or to supply any information when required to do so by the Commission under this Act,
 - (b) destroys or alters any document or causes a document to be destroyed or altered; or
 - (c) intentionally withholds the production of a document within his possession or control, commits an offence under this Act.
- (2) An undertaking that commits an offence under subsection (1) of this section is —
 - (a) where the undertaking is a natural person, liable on conviction to imprisonment for a term not exceeding three years, or to payment of a fine not exceeding ten millionNaira or to both fine and imprisonment.
 - (b) where the undertaking is a body corporate, it shall be liable on conviction to a fine not exceeding ten per cent of its turnover in the preceding business year; and

- (c) (2) in the case of a body corporate referred to in paragraph (b) of this subsection, each director of the body corporate is liable to be proceeded against and on conviction dealt with as specified in paragraph (a) of this subsection.

Committee's Recommendation:

That the provision in Clause 112 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 112 do stand part of the Bill, put and agreed to.

Clause 113: Giving of False or Misleading Information

An undertaking that gives to the Commission or an authorized officer of the Commission, any information which the undertaking knows to be false or misleading commits an offence and —

- (a) where the undertaking is a natural person, liable on conviction to imprisonment for a term not exceeding two years, or to payment of a fine not exceeding ten million Naira or to both fine and imprisonment;
- (b) where the undertaking is a body corporate, liable on conviction to a fine not exceeding ten per cent of its turnover in the preceding business year; and
- (c) in the case of a body corporate referred to in paragraph (b) of this subsection, each director of the body corporate is liable to be proceeded against and on conviction dealt with as specified in paragraph (a) of this subsection.

Committee's Recommendation:

That the provision in Clause 113 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 113 do stand part of the Bill, put and agreed to.

Clause 114: Failure to attend or give evidence

- (1) A person who has been required to appear before the Commission and —
 - (i) without reasonable excuse, refuses or fails to appear; or
 - (ii) refuses to take an oath or to make an affirmation as a witness or to answer a question put to him or her, commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three years, or to a fine not exceeding ten million Naira or to both fine and imprisonment.
- (2) The Commission may prosecute or refer violations of criminal offences created under this Act to the office of the Attorney General of the Federation for prosecution.

Committee's Recommendation:

That the provision in Clause 114 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 114 do stand part of the Bill, put and agreed to.

PART XV — CONSUMERS RIGHTS

Clause 115: Right to Information in Plain and Understandable Language.

- (1) The producer of a notice, document or visual representation that is required under this Act or any other law, to be produced, provided or displayed to a consumer shall produce, provide or display that notice, document or visual representation —
 - (a) in the prescribed form, if any, for that notice, document or visual representation; or
 - (b) in plain language, if no form has been prescribed for that notice, document or visual representation.
- (2) For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance, and import of the notice, document or visual representation without undue effort, having regard to—
 - (a) the context, comprehensiveness and consistency of the notice, document or visual representation;
 - (b) the organization, form and style of the notice, document or visual representation;
 - (c) the vocabulary, usage and sentence structure of the notice, document or visual representation; and
 - (d) the use of any illustrations, examples, headings or other aids to reading and understanding.
- (3) The Commission may publish guidelines on methods for assessing whether a notice, document or visual representation satisfies the requirements of subsection (1) and (2) of this section.

Committee's Recommendation:

That the provision in Clause 115 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 115 do stand part of the Bill, put and agreed to.

Clause 116: Disclosure of Price of Goods or Services:

- (1) An undertaking shall not display any goods or services for sale without adequately displaying, in the case of goods; or otherwise communicating to the consumer in the case of services, the price of goods of those goods or services
- (2) For the purposes of this subsection, a price is adequately displayed to a consumer if, in relation to any particular goods or services, a written indication of the price, expressed in the currency of the Federal Republic of Nigeria, is annexed or affixed to, written, printed, stamped or located upon, or otherwise applied to the goods or services or to any band, ticket, covering, label, package, reel, shelf, or other thing used in connection with the goods or services, or on which the goods or services are mounted

for display or exposed for sale; or published in relation to the goods or services in a catalogue, brochure, newspaper, circular or similar publication available to the consumer, or to the public generally.

- (3) 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.

Committee's Recommendation:

That the provision in Clause 116 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 116 do stand part of the Bill, put and agreed to.

Clause 117: Product Labeling and Trade Descriptions

- (1) For the purposes of this section, a trade description is applied to goods if it is —
- (i) applied to the goods, or to any covering, label or reel in or on which the goods are packaged, or attached to the goods;
 - (ii) displayed together with, or in proximity to, the goods in a manner that is likely to lead to the belief that the goods are designated or described by that description; or
 - (iii) is contained in any sign, advertisement, catalogue, brochure, circular, list, invoice, business letter, business paper, or other commercial communication on the basis of which a consumer may request or order the goods.
- (2) An undertaking shall not knowingly apply to any goods a trade description that is likely to mislead consumers as to any matter implied or expressed in that trade description or alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers.
- (3) An undertaking shall not supply, offer to supply or display any goods if the undertaking knows, reasonably could determine, or has reason to suspect, that —
- (i) a trade description applied to those goods is likely to mislead consumers as to any matter implied or expressed in that trade description; or
 - (ii) a trade description or trade mark applied to those goods has been altered.

Committee's Recommendation:

That the provision in Clause 117 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 117 do stand part of the Bill, put and agreed to.

Clause 118: Disclosure of Re-conditioned or Second-hand Goods

An undertaking that offers or agrees to supply, or supplies, any goods that have been used or are second-hand or have been re-conditioned, re-built or re-made,

shall apply a conspicuous notice to those goods stating clearly that they have been used or are second-hand or have been re-conditioned, re-built or re-made.

Committee's Recommendation:

That the provision in Clause 118 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 118 do stand part of the Bill, put and agreed to.

Clause 119: Sales Records

Except where it is impracticable to do so, an undertaking shall provide a written record of each transaction to any consumer to whom goods or services are sold or supplied, and include in that record at least the following information —

- (a) the undertaking's full name, or registered business name;
- (b) the address of the premises at which, or from which, the goods or services were sold or supplied;
- (c) the date on which the transaction occurred;
- (d) a name or description of any goods or services supplied or to be supplied;
- (e) the unit price of any particular goods or services supplied or to be supplied;
- (f) the quantity of any particular goods or services supplied or to be supplied;
- (g) the total price of the transaction, before any applicable taxes;
- (h) the amount of any applicable taxes; and
- (i) the total price of the transaction, including any applicable taxes.

Committee's Recommendation:

That the provision in Clause 119 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 119 do stand part of the Bill, put and agreed to.

Clause 120: Consumer's Right to Select Suppliers

An undertaking shall not require, as a condition of offering to supply or supplying any goods or services, or as a condition of entering into an agreement or transaction, that a consumer must —

- (a) purchase any other particular goods or services from that undertaking,
- (b) enter into an additional agreement or transaction with the same undertaking or a designated third party, or
- (c) agree to purchase any particular goods or services from a designated third party, unless the undertaking can demonstrate that the convenience to the consumer in having those goods or services bundled outweighs the limitation of the consumer's right to choice, or that the bundling of those goods or services results in economic benefit for the consumer.

Committee's Recommendation:

That the provision in Clause 120 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 120 do stand part of the Bill, put and agreed to.

Clause 121: Consumer's Right to Cancel Advance Reservation, Booking or Order

- (1) A consumer shall have the right to cancel any advance booking, reservation or order for any goods or services, subject to a reasonable charge for cancellation of the order or reservation by the supplier or services provider.
- (2) For the purposes of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to —
 - (i) the nature of the goods or services that were reserved, booked or ordered;
 - (ii) the length of notice of cancellation provided by the consumer;
 - (iii) the reasonable potential for the supplier or service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice, and the time of the cancelled reservation, booking or order; and
 - (iv) the general practice of the relevant industry.
- (3) A supplier or service provider may not impose any cancellation fee in respect of a booking, reservation or order if the consumer is unable to honour the booking, reservation or order because of the death or hospitalization of the person for whom, or for whose benefit the booking, reservation or order was made.

Committee's Recommendation:

That the provision in Clause 121 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 121 do stand part of the Bill, put and agreed to.

Clause 122: Consumer's Right to Choose or Examine Goods

- (a) Notwithstanding any statement or notice to the contrary, a consumer or potential consumer is not responsible for any loss or damage to any goods displayed by a supplier, unless the loss or damage results from action by the consumer amounting to gross negligence or recklessness, malicious behaviour or criminal conduct.
- (b) Where goods are displayed in or sold from open stock, a consumer has the right to select or reject any particular item from that stock before completing the transaction.
- (c) Where a consumer has agreed to purchase goods solely on the basis of a description or sample, or both, provided by the supplier, the goods delivered to the consumer must in all material respects and characteristics correspond to that which an ordinary alert consumer would have been entitled to expect based on the description, or on a reasonable examination of the sample, as the case may be.

- (d) Where the supply of goods is by sample, as well as by description, it is not sufficient that any of the goods correspond with the sample, if the goods do not also correspond with the description.

Committee's Recommendation:

That the provision in Clause 122 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 122 do stand part of the Bill, put and agreed to.

Clause 123: Consumer's Right to Return Goods

In addition to the consumer's right to return unsafe or defective goods under any law or enactment, the consumer may return goods to the supplier and receive a full refund of any consideration paid for those goods, if the supplier has delivered—

- (a) goods intended to satisfy a particular purpose communicated to the supplier and within a reasonable time after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose; or
- (b) goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of the goods within a reasonable time after delivery to the consumer for the reason that the goods do not correspond with description, sample or that they are not of the type and quality reasonably contemplated in the sales agreement.

Committee's Recommendation:

That the provision in Clause 123 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 123 do stand part of the Bill, put and agreed to.

Clause 124: General Standards for the Marketing of Goods and Services

- (1) A producer, importer, distributor, retailer, trader or service provider shall not, in pursuance of trade and for the purpose of promoting or marketing, directly or indirectly, goods or services —
- (a) make any representation to a consumer —
- (i) in a manner that is likely to imply any false or incorrect representation concerning those goods or services;
- (ii) that is reasonably misleading or likely to be misleading in any material respect concerning those goods and services;
- (iii) in a manner that is erroneous, fraudulent or deceptive in any way, including in respect of —
- (1) the nature, properties, advantages or uses of the goods or services;
- (2) the manner in, or conditions on, which those goods or services may be supplied;
- (3) the price at which the goods or services may be supplied, or the existence of, or relationship of the price to, any previous price, or competitor's price for comparable or similar goods or services; or

- (4) the sponsoring of any event; or
 - (5) any other material aspect of the goods or services;
 - (iv) in the form of a statement, warranty or guarantee of performance, efficacy or length of life of products that is not based on an adequate and proper test of the goods or services, the proof of which lies on the person making the representation;
 - (v) in a form that purports to be a warranty or a guarantee of any goods or services, or a promise to replace, maintain or repeat an article or any part thereof or to repeat or continue service until it has achieved a specified result, if the form of purported warranty, guarantee or promise is materially misleading or there is no reasonable prospect that it will be carried out;
 - (b) falsely represent to the public in the form of a statement, warranty or guarantee that services are of a particular kind, standard, quality or quantity, or are supplied by any particular undertaking or any undertaking of a particular trade, qualification or skill;
 - (c) make a materially misleading representation to the public concerning the price at which particular goods or services or like goods or services have been, are or will be ordinarily supplied.
- (2) For the purposes of this Act, the following types of representations shall be deemed to be made to the public by and only by the undertaking who caused it to be expressed, made or contained, that is to say, a representation that is —
- (a) expressed on goods or services offered or displayed for sale;
 - (b) expressed on anything attached to, inserted in or accompanying goods offered or displayed for sale, their wrapper or container, or anything on which the goods are mounted for display or sale;
 - (c) expressed on a display in the place where the goods or services are sold;
 - (d) made in the course of selling goods or services to the ultimate consumer;
 - (e) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner made available to a member of the public.
- (3) Where the undertaking referred to in subsection (2) of this section is outside of Nigeria, the representation shall be deemed to be made —
- (a) in a case described in paragraphs (a), (b) or (e) of subsection (2) of this section, by the undertaking that imported the goods or services; and
 - (b) in the case described in paragraph (c) of subsection (2) of this section, by the undertaking that imported the display into Nigeria.

Committee's Recommendation:

That the provision in Clause 124 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 124 do stand part of the Bill, put and agreed to.

Clause 125: Right to Fair Dealings

- (1) An undertaking or any person acting on its behalf shall not use physical force, coercion, undue influence or pressure, harassment, unfair tactics or any other similar conduct against any person in connection with —
 - (i) marketing of any goods or services;
 - (ii) supply of goods or services to a consumer;
 - (iii) negotiation, conclusion, execution or enforcement of an agreement to supply any goods or services to a consumer;
 - (iv) demand for, or collection of, payment for goods or services by a consumer; or
 - (v) the conduct of a legitimate business transaction.
- (2) In addition to any conduct contemplated in subsection (1) of this section, it shall be unlawful for an undertaking or any person acting on its behalf knowingly to take advantage of the fact that a potential consumer was substantially unable to protect the consumer's own interests because of physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor.

Committee's Recommendation:

That the provision in Clause 125 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 125 do stand part of the Bill, put and agreed to.

Clause 126: False, Misleading or Deceptive Representations

- (1) Where in the marketing of any goods or services an undertaking or any person acting on its behalf by words or conduct,—
 - (a) directly or indirectly expresses or implies a false, misleading or deceptive representation concerning a material fact to a consumer or prospective consumer; or
 - (b) fails to correct an apparent misapprehension on the part of a consumer or prospective consumer, amounting to a false, misleading or deceptive representation or permit or require any other person to do so; the undertaking shall be liable for damages to any person damaged thereby, and shall be ordered to make monetary restitution.
- (2) A person acting on behalf of a supplier of any goods or services must not
 - (a) falsely represent that the person has any sponsorship, approval or affiliation; or
 - (b) engage in any conduct that the supplier is prohibited from engaging in under subsection (1) of this section.

Committee's Recommendation:

That the provision in Clause 126 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 126 do stand part of the Bill, put and agreed to.

Clause 127: Representation Test and Publication Testimonials

- (1) An undertaking shall not, for the purpose of promoting, directly or indirectly, the supply or use of any goods or services or any business interest, make a representation to the public that a test as to the performance, efficacy or length of life of the goods or services has been made by any person or publish a testimonial with respect to the products, unless it can establish the matters specified in subsection (2) of this section
- (2) The matters referred to in subsection (1) of this section are —
 - (a) that the representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, as the case may be; or
 - (b) that before the representation or testimonial was made or published, it was approved and permission to make or publish it was given in writing by the person who made the test or gave the testimonial, as the case may be, and it accords with the representation or testimonial previously made, published or approved.

Committee's Recommendation:

That the provision in Clause 127 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 127 do stand part of the Bill, put and agreed to.

Clause 128: Unfair, Unreasonable or Unjust Contract Terms

- (1) An undertaking shall not —
 - (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;
 - (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 such terms as a condition of entering into a transaction.
- (2) Without limiting the generality of the provision of subsection (1) of this section, a transaction or agreement, a term or condition of a transaction or agreement, or a notice to which a term or condition is purportedly subject, is unfair, unreasonable or unjust if —

- (a) it is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied;
- (b) the terms of the transaction or agreement are so adverse to the consumer as to be inequitable;
- (c) the consumer relied upon a false, misleading or deceptive representation or a statement of opinion provided by or on behalf of the undertaking that supplied the goods or services concerned, to the detriment of the consumer; or
- (d) the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer.

Committee's Recommendation:

That the provision in Clause 128 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 128 do stand part of the Bill, put and agreed to.

Clause 129: Notice Required for Certain Terms and Conditions

Any notice to consumers or potential consumers, or provision of a consumer agreement, which purports to —

- (a) limit in any way the risk or liability of an undertaking supplying goods or services or any other person,
- (b) constitute an assumption of risk or liability by the consumer,
- (c) impose an obligation on the consumer to indemnify an undertaking supplying goods or services or any other person for any cause, or
- (d) be an acknowledgement of any fact by the consumer, must be drawn to the attention of the consumer in a conspicuous manner and form that is likely to attract the attention of an ordinarily alert consumer having regard to the circumstances. Before the consumer enters into the transaction, or is required or expected to offer consideration for the transaction or agreement, the consumer shall be given adequate opportunity in the circumstances to receive and comprehend the provision or notice.

Committee's Recommendation:

That the provision in Clause 129 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 129 do stand part of the Bill, put and agreed to.

Clause 130: Prohibited Transactions, Agreements, Terms or Conditions

- (1) An undertaking shall not make a transaction or agreement subject to any term or condition if —
 - (a) its general purpose or effect is to defeat the purposes and policy of this Act, mislead or deceive the consumer, or subject a consumer to fraudulent conduct;

- (b) it directly or indirectly purports to waive or deprive a consumer of a right to return defective goods or any right set out in this Act, avoid the undertaking's obligation or duty in terms of this Act, set aside or override the effect of any provision of this Act; authorize the undertaking to do anything that is unlawful in terms of this Act, or fail to do anything that is required under this Act;
 - (c) it purports to limit or exempt the undertaking from liability for any loss directly or indirectly attributable to the gross negligence of the undertaking or any person acting for or controlled by the undertaking; or constitute an assumption of risk or liability by a consumer for the said loss; or impose an obligation on a consumer to pay for damage to, or otherwise assume the risk of handling any goods displayed by the supplier;
 - (d) it falsely expresses an acknowledgement by the consumer that before an agreement was made, no representations or warranties were made in connection with the agreement by the undertaking or a person acting on behalf of the undertaking; or the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer; and
 - (e) it expresses an agreement by the consumer to deposit with the undertaking, or with any other person at the direction of the undertaking, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or provide a personal identification code or number to be used to access an account.
- (2) A purported transaction or agreement, provision, term or condition of a transaction or agreement, or notice to which a transaction or agreement is purported to be subject, is void to the extent that it contravenes the provisions of this section.

Committee's Recommendation:

That the provision in Clause 130 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 130 do stand part of the Bill, put and agreed to.

Clause 131: Rights Pertaining to the Quality and Safety of Goods and Services

- (1) When an undertaking agrees to perform any services for or on behalf of a consumer, the consumer has a right to —
 - (a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;
 - (b) performance of the services in a manner and quality that reasonable persons are generally entitled to expect;
 - (c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and

- (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the undertaking for the purpose of performing the services, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the undertaking and the consumer before or during the performance of the services.
- (2) Where an undertaking fails to perform a service to the standards contemplated in subsection (1) of this subsection, the consumer may require the undertaking to either —
 - (i) remedy any defect in the quality of the services performed or goods supplied; or
 - (ii) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

Committee's Recommendation:

That the provision in Clause 131 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 131 do stand part of the Bill, put and agreed to.

Clause 132: Consumers' Rights to Safe, Good Quality Goods

- (1) Every consumer has a right to receive goods that —
 - (a) are reasonably suitable for the purposes for which they are generally intended;
 - (b) are of good quality, in good working order and free of defects;
 - (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
 - (d) comply with any applicable standards set by industry sector regulators
- (2) In addition to the right set out in subsection (1) of this section, if a consumer has specifically informed an undertaking of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the undertaking ordinarily offers to supply such goods or acts in a manner consistent with being knowledgeable about the use of those goods, the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.

Committee's Recommendation:

That the provision in Clause 132 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 132 do stand part of the Bill, put and agreed to.

Clause 133: Implied Warranty of Quality

- (1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied warranty that the goods comply with the requirements and standards contemplated in subsections (1) and (2) of section 132 of this Act.
- (2) Within three months after the delivery of any goods to a consumer, the consumer may return the goods to the undertaking that supplied those goods, without penalty and at the undertaking's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in subsection (1) of section 132 of this Act and the undertaking must either repair or replace the failed, unsafe or defective goods or refund to the consumer the price paid by the consumer for the goods.

Committee's Recommendation:

That the provision in Clause 133 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 133 do stand part of the Bill, put and agreed to.

Clause 134: Safety Monitoring and Recall

- (1) The Commission shall promote the development, adoption and application of industry-wide codes of practice providing for effective and efficient systems to —
 - (a) receive notice of consumer complaints or reports of product failures, defects or hazards; the return of any goods because of a failure, defect or hazard; personal injury, illness or damage to property caused wholly or partially as a result of a product failure, defect or hazard; and other indication of failure, defect or hazard;
 - (b) monitor the sources of information contemplated in paragraph (a), and analyze the information received with the object of detecting or identifying any previously undetected or unrecognized potential risk to the public from the use of or exposure to those goods;
 - (c) conduct investigations into the nature, causes, extent and degree of the risk to the public;
 - (d) notify consumers of the nature, causes, extent and degree of the risk pertaining to those goods; and
 - (e) if particular goods are unsafe, recall those goods for repair, replacement or refund.
- (2) Where the Commission has reasonable grounds to believe that any goods may be unsafe, or that there is a potential risk to the public from the continued use of or exposure to the goods, and the undertaking that produced, distributed or imported those goods has not taken any steps required by an applicable code contemplated in subsection (1) of this section, the Commission, by written notice, may require that undertaking to recall the goods on any terms required by the Commission.

Committee's Recommendation:

That the provision in Clause 134 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 134 do stand part of the Bill, put and agreed to.

PART XVI — DUTIES OF MANUFACTURERS, IMPORTERS, DISTRIBUTORS
AND SUPPLIERS OF GOODS AND SERVICES

Clause 135: Duty to Label Goods Properly

A manufacturer, importer or distributor of goods shall label or describe the goods in a manner that will be easily traceable to the manufacturer, importer or distributor.

Committee's Recommendation:

That the provision in Clause 135 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 135 do stand part of the Bill, put and agreed to.

Clause 136: Duty to Withdraw Hazardous Goods from the Market

- (1) Upon becoming aware of any unforeseen hazard arising from the use of goods already placed on the market, the manufacturer or distributor of such goods shall notify the general public immediately of such risk or danger and cause such goods to be withdrawn from the market.
- (2) An undertaking that violates the provisions of section 135 of this Act or subsection (1) this section commits an offence and —
 - (a) where the undertaking is a natural person, is liable on conviction to imprisonment for a term not exceeding three years or to payment of a fine not exceeding Ten Million Naira or to both fine and imprisonment; and
 - (b) where the undertaking is a body corporate, is liable on conviction to a fine not exceeding ten per cent of its turnover in the preceding business year;
- (3) In the case of a body corporate referred to in paragraph (b) of subsection (2) of this section, each director of the body corporate is liable to be proceeded against and on conviction dealt with as specified in paragraph (a) of subsection (2) this subsection. (1) Where a consumer suffers loss or injury by the violation of any person of provisions of section 135 of this Act or subsection (1) of this section, the consumer shall have a right to be awarded compensation by the Commission.

Committee's Recommendation:

That the provision in Clause 136 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 136 do stand part of the Bill, put and agreed to.

Clause 137: Liability for Defective Goods

- (1) Where any damage is caused wholly or partly by defective goods or the supply of a service, the undertaking that supplied the goods or service shall be liable for the damage.
- (2) For the purpose of this Act, damage includes personal injury and damage to the consumer's property.

- (3) An undertaking that supplied the defective goods or service shall be liable whether or not the user or consumer bought the goods or service from or entered into any contractual agreement with the undertaking.
- (4) A person affected by the defective goods or service has with the right to sue under this section.
- (5) The liability of any undertaking under this section shall not be excluded or restricted.

Committee's Recommendation:

That the provision in Clause 137 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 137 do stand part of the Bill, put and agreed to.

Clause 138: Liability Arising from Sale or Supply of Goods not to be Excluded

- (1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage arises from the goods proving defective while in consumer use or results from the negligence of an undertaking concerned in the manufacture or distribution of the goods, liability for the loss or damage cannot be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods.
- (2) For the purpose of this section —
 - (a) goods are to be regarded as "in consumer use" when a person is using them or has them in his or her possession for use, otherwise than exclusively for the purposes of a business; and
 - (b) anything in writing is a guarantee if it contains or purports to contain some promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

Committee's Recommendation:

That the provision in Clause 138 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 138 do stand part of the Bill, put and agreed to.

Clause 139: Liability for Breach of Implied Obligations by Law

- (1) Liability for breach of the obligations arising from a seller's implied undertaking as to title shall not be excluded or restricted by reference to any contract term.
- (2) As against a person dealing as a consumer, liability for breach of the obligations arising from seller's implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose, shall not be excluded or restricted by reference to any contract term.
- (3) As against a person dealing otherwise than as a consumer, the liability specified in subsection (2) of this section may be excluded or restricted by reference to a contract term only in so far as the term satisfies the requirement of reasonableness.

Committee's Recommendation:

That the provision in Clause 139 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 139 do stand part of the Bill, put and agreed to.

Clause 140: Miscellaneous Contracts Under Which Goods Pass

- (1) Where the possession or ownership of goods pass under or in pursuance of a contract, subsections (2), (3) and (4) of this section apply as regards the effect, if any, to be given to contract terms excluding or restricting liability for breach of obligation arising by implication of law from the nature of the contract.
- (2) As against a person dealing as a consumer, liability in respect of the goods' correspondence with description or sample or quality or fitness for any particular purpose shall not be excluded or restricted by reference to any contract term.
- (3) As against a person dealing otherwise than as a consumer, liability may be excluded or restricted by reference to a contract term only in so far as the term satisfies the requirement of reasonableness.
- (4) Liability in respect of —
 - (a) the right to transfer ownership of the goods or give possession, or
 - (b) the assurance of quiet possession to a person taking goods pursuant to a contract, shall not be excluded or restricted by reference to any contract term, except in so far as the term satisfies the requirement of reasonableness.

Committee's Recommendation:

That the provision in Clause 140 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 140 do stand part of the Bill, put and agreed to.

Clause 141: Liability for Misrepresentation

Where a contract contains a term which excludes or restricts any liability to which a part of a contract may be subject by reason of any misrepresentation made before the contract was made, or any remedy available to another party to the contract by reason of such a misrepresentation, that term shall have no effect.

Committee's Recommendation:

That the provision in Clause 141 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 141 do stand part of the Bill, put and agreed to.

Clause 142: Evasion by Means of Secondary Contract

- (1) A person is not bound by any contract term prejudicing or taking away the person's rights arising under, or in connection with, the performance of another contract, so far as those rights extend to the enforcement of another's liability which this Act prevents that other from excluding or restricting.

- (2) This Act prevents —
 - (a) the exclusion or restriction of any liability;
 - (b) making any liability or its enforcement subject to restrictive or onerous conditions;
 - (c) excluding or restricting any right or remedy in respect of the liability or subjecting a person to any prejudice in consequence of the person pursuing any such right or remedy; and
 - (d) excluding or restricting rules of evidence or procedure.
- (3) An agreement in writing to submit present or future differences to arbitration is not to be treated under this Act as excluding or restricting any liability.

Committee's Recommendation:

That the provision in Clause 142 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 142 do stand part of the Bill, put and agreed to.

Clause 143: Supply of Services

- (1) A contract is a contract for the supply of a service for the purposes of this Act whether or not goods are also transferred or to be transferred, or bailed or to be bailed by way of hire, under the contract and whatever is the nature of the consideration for which the service is to be carried out.
- (2) For the purposes of this Act, a contract for apprenticeship is not a contract for the supply of a service.
- (3) In a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.

Committee's Recommendation:

That the provision in Clause 143 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 143 do stand part of the Bill, put and agreed to.

Clause 144: Implied Term about Time for Execution of Contract

Where under a contract for the supply of a service by a supplier acting in the course of a business, the time for the service to be carried out is not fixed by the contract, left to be fixed in a manner agreed by the contract or determined by the course of dealing between the parties, it is implied that the supplier will carry out the service within a reasonable time.

Committee's Recommendation:

That the provision in Clause 144 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 144 do stand part of the Bill, put and agreed to.

Clause 145: Exclusion of Implied Terms

- (1) Where a right, duty or liability would arise under a contract for the supply of a service, it may be negated or varied by express agreement or by the course of dealing between the parties or by such usage as binds both parties to the contract provided that an express term does not negate a term implied by this section unless inconsistent with it.
- (2) A supplier of service shall not, where dealing with a consumer, exclude or restrict its liability for breach of any term implied under sections 143 (3) and 144 of this Act.
- (3) Nothing in this section shall prejudice any rule of law which imposes on the supplier a duty stricter than that imposed by sections 143 and 144 of this Act.

Committee's Recommendation:

That the provision in Clause 145 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 145 do stand part of the Bill, put and agreed to.

Clause 146: Onus of Proof

Where it is alleged that goods or services are defective, the onus of proof shall lie on the undertaking that supplied the goods or services.

Committee's Recommendation:

That the provision in Clause 146 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 146 do stand part of the Bill, put and agreed to.

PART XVII — ENFORCEMENT OF CONSUMERS' RIGHTS**Clause 147: Enforcement of Rights by a Consumer**

- (1) A consumer may seek to enforce any right under this Act, a transaction or agreement, or otherwise resolve any dispute with an undertaking that supplied goods or services to the consumer by —
 - (a) referring the matter directly to the undertaking that supplied the goods or services;
 - (b) referring the matter to the applicable industry sector regulator with jurisdiction, if the undertaking is subject to the jurisdiction of any such sector regulator;
 - (c) filing a complaint directly with the Commission; or
- (2) Notwithstanding the provisions above, an aggrieved consumer can directly approach a court with appropriate jurisdiction to seek redress

Committee's Recommendation:

That the provision in Clause 147 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 147 do stand part of the Bill, put and agreed to.

Clause 148: Conclusion by industry sector regulator

Where an industry sector regulator concludes that there is no reasonable probability of the parties resolving their dispute through the process provided for in the relevant industry code, the industry sector regulator may terminate the process by notice to the parties and the party who referred the matter to the industry sector regulator may then file a complaint with the Commission.

Committee's Recommendation:

That the provision in Clause 148 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 148 do stand part of the Bill, put and agreed to.

Clause 149: Enforcement of Rights by the Commission

- (1) A consumer shall file a complaint with the Commission in the prescribed manner and form, alleging that an undertaking has acted in a manner inconsistent with the provisions of this Act.
- (2) The Commission shall directly initiate a complaint concerning any allegedly prohibited conduct on its own motion, an industry sector regulator or an accredited consumer protection group.
- (3) Upon initiating or receiving a complaint under this Act, the Commission may —
 - (a) issue a notice of non-referral to the complainant in the prescribed form, if the complaint appears to be frivolous or vexatious or does not allege any facts which would constitute grounds for a remedy under this Act;
 - (b) refer the complaint to an industry sector regulator with jurisdiction over the matter for investigation and or resolution;
 - (c) direct an inspector to investigate the complaint as quickly as practicable.
- (4) At any time during investigation, the Commission may designate one or more persons to assist the inspector conducting the investigation.
- (5) After receiving a report of an investigation into a complaint, the Commission shall —
 - (a) issue a notice of non-referral to the complainant in the prescribed form;
 - (b) make an order; or
 - (c) issue a compliance notice.

Committee's Recommendation:

That the provision in Clause 149 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 149 do stand part of the Bill, put and agreed to.

Clause 150: Consent Order

- (1) Where a matter has been investigated by the Commission, and the Commission and the respondent agree on the proposed terms of an appropriate order, the agreed terms shall be made an order of the Commission.
- (2) The Commission may, if it deems fit, register the order in a court of competent jurisdiction and the court, without hearing any evidence, may confirm that agreement as a consent order.
- (3) An order of the Commission or a consent order confirmed pursuant to the provision of this section may include an award of damages to the complainant.

Committee's Recommendation:

That the provision in Clause 150 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — *Agreed to.*

Question that Clause 150 do stand part of the Bill, put and agreed to.

Clause 151: Compliance Notice

- (1) The Commission may issue a compliance notice in the prescribed form to an undertaking or association of undertakings whom the Commission on reasonable grounds believes has engaged in prohibited conduct provided that before issuing a notice to a member of a regulated industry, the Commission shall consult with the industry sector regulator that issued a licence to that regulated entity.
- (2) A compliance notice shall set out —
 - (a) the undertaking or association of undertakings to whom the notice applies;
 - (b) the provisions of this Act that have not been complied with;
 - (c) details of the nature and extent of the non-compliance;
 - (d) any steps that are required to be taken and the period within which those steps must be taken; and
 - (e) the penalty that may be imposed under this Act if those steps are not taken.
- (3) A compliance notice issued pursuant to the provisions of this section remains in force until it is set aside by a court, or until the Commission issues a compliance certificate upon being satisfied that there has been sufficient compliance with the compliance notice.
- (4) If an undertaking or association of undertakings to whom a compliance notice has been issued fails to comply with the notice, the Commission shall —
 - (a) shut down or close any premises from which the notice continues to be breached until the breach or non-compliance is remedied;
 - (b) impose the appropriate administrative fine; or

- (c) refer the matter to a court of competent jurisdiction for prosecution.

Committee's Recommendation:

That the provision in Clause 151 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 151 do stand part of the Bill, put and agreed to.

Clause 152: Redress by Civil Society Groups

- (1) The Commission may collaborate with, facilitate, or otherwise support any of the following activities carried out by a consumer protection group:
 - (a) consumer advice and education activities and publications;
 - (b) research, market monitoring, surveillance and reporting;
 - (c) promotion of consumers' rights and advocacy of consumers' interests;
 - (d) representation of consumers, either specifically or generally, in court;
 - (e) alternative dispute resolution through mediation or conciliation; and
 - (f) participation in national and international associations, conferences or forums concerned with consumer protection matters.
- (2) An accredited consumer protection group may —
 - (a) commence or undertake any act to protect the interests of a consumer individually, or of consumers collectively, in any matter or before any forum contemplated in this Act; and
 - (b) intervene in any matter before any forum contemplated in this Act, if the interests of consumers represented by that group are not otherwise adequately represented in that forum.
- (3) In addition to any other authority set out in this Act, an accredited consumer protection group may direct a generally stated concern or complaint to the Commission in respect of any matter within the purpose of this Act.
- (4) The Commission may accredit a consumer protection group if that group—
 - (a) functions predominantly to promote or represent the interests of all or a specific category of consumers generally;
 - (b) is committed to achieving the purposes of this Act; and
 - (c) engages in, or makes a realistic proposal to engage in, actions to promote and advance the consumers' interests.
- (5) The Commission may impose reasonable conditions for the accreditation of a consumer protection group to provide the objectives of this Act and shall monitor the effectiveness of any such accredited consumer protection

group and may reasonably require any accredited consumer protection group to provide information necessary for monitoring purposes.

Committee's Recommendation:

That the provision in Clause 152 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 152 do stand part of the Bill, put and agreed to.

Clause 153: Redress by the Court

Where upon an investigation by the Commission of a complaint by a consumer, it is proved that —

- (a) the consumer's right has been violated, or
- (b) that a wrong has been committed by the way of trade, provision of services, supply of information or advertisement thereby causing injury or loss to the consumer, the consumer shall in addition to the redress which the Commission may impose, have a right of civil action for compensation or restitution in a court of competent jurisdiction.

Committee's Recommendation:

That the provision in Clause 153 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 153 do stand part of the Bill, put and agreed to.

Clause 154: Power to Obtain Satisfactory Written Assurance

- (1) Where it appears to the Commission that an undertaking has in the course of business persisted in a course of conduct which is detrimental to the interests of consumers, the Commission shall use its best endeavors to obtain from the undertaking concerned a satisfactory written assurance that it will refrain from a continuation of that course of conduct.
- (2) Where the Commission is unable to obtain from the undertaking in question the assurance referred to in subsection (1) of this section, or if that undertaking has given such assurance and it appears to the Commission or the States office that the undertaking has failed to observe the assurance, the Commission shall cause proceedings to be commenced against such undertaking in a court of competent jurisdiction to refrain the undertaking from continuing that course of conduct.
- (3) The Commission shall have power to order a temporary closure of any premises or facilities reasonably believed to be carrying on in a manner detrimental to the interest of consumers until the Commission is satisfied otherwise or pending the commencement of action.

Committee's Recommendation:

That the provision in Clause 154 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 154 do stand part of the Bill, put and agreed to.

Clause 155: Compensation Order

- (1) A court by or before which an undertaking is convicted of an offence under this Act may in addition to dealing with such undertaking in any

other way make an order requiring the undertaking to pay compensation for any personal injury, loss or damage resulting from that offence of such amount as it may deem fit or as assessed by competent professional authority.

Amendment Proposed:

Leave out the words "by or" in line 1, (Senator Bala Ibn Na'Allah — Kebbi South).

Question that the amendment be made, put and agreed to.

- (2) In determining whether to make a compensation order against any undertaking, and in determining the amount to be paid by any undertaking under such an order, the court shall have regard to the means of the undertaking in so far as they appear or are known to the court (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*).

Question that Clause 155 as amended do stand part of the Bill, put and agreed to.

Clause 156: Contravention of Consumer Rights

Except where otherwise provided for in this Act, any person who contravenes any consumer rights commits an offence under this Act; and

- (a) in the case of a natural person, liable on conviction to imprisonment for a term not exceeding five years, or to payment of fine not exceeding ten million Naira or to both fine and imprisonment;
- (b) in the case of a body corporate, liable on conviction to a fine of not less than One Hundred Million Naira or ten per cent of its turnover in the preceding business year, whichever is higher; and
- (c) in the case of a body corporate referred to in paragraph (b) of this section, each director of the body corporate is liable to be proceeded against and dealt with as specified in paragraph (a) of this section.

Committee's Recommendation:

That the provision in Clause 156 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — *Agreed to.*

Question that Clause 156 do stand part of the Bill, put and agreed to.

PART XVIII — MISCELLANEOUS PROVISIONS

Clause 157: Limitation of Suits Against the Commission and the Tribunal

- (1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any member or employee of the Commission or the Tribunal.
- (2) Further to the provisions of subsection (1) of this section, no suit shall lie or be instituted in any court against any member of the Commission, the Secretary or any other officer or employee of the Commission or the Chairman, members, staff, officers or employees of the Tribunal for any act done in pursuance or execution of the provisions of this Act or any other enactment or law, or of any public duty or authority in respect of any alleged neglect or default in the execution of the provision of this Act or such enactment or law, duty or authority unless —

- (a) it is commenced within three months next after the act, neglect or default complained of; or
 - (b) in the case of a continuation of damage or injury, within six months next after the cessation thereof.
- (3) No suit shall be commenced against any member of the Commission, the Secretary or any other officer or employee of the Commission or the Chairman, members, staff, officers or employees of the Tribunal before the expiration of a period of thirty days after written notice of intention to commence suit shall have been served upon the Commission or Tribunal by the intending plaintiff, or the agent or other lawful representative of the plaintiff.
- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state, the —
- (a) cause of action;
 - (b) particulars of the claim;
 - (c) name and address of the intending plaintiff; and
 - (d) relief sought by the plaintiff.

Committee's Recommendation:

That the provision in Clause 157 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 157 do stand part of the Bill, put and agreed to.

Clause 158: Issuance of Notices by or on Behalf of Commission

- (1) Any notice given by the Commission under or for the purpose of this Act shall be —
 - (a) given in writing, under the seal of the Commission signed by the Executive Chairman, or by one or more of the members of the Commission, or by any person purporting to act under the direction of the Commission; and
 - (b) served in accordance with section 159 of this Act on the person or persons primarily concerned therewith or on any person or persons deemed by the Commission to represent the person or persons primarily concerned therewith.
- (2) All documents purporting to be signed by or on behalf of the Commission or to be sealed with the seal of the Commission shall, in all courts and in all proceedings under this Act, be deemed to have been so signed or sealed with due authority unless the contrary is established.

Committee's Recommendation:

That the provision in Clause 158 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 158 do stand part of the Bill, put and agreed to.

Clause 159: Service of Notices

- (1) Any notice or other document required or authorized to be served on or given to any person for the purpose of this Act may be served or given by delivering it to that person, or by leaving it at that person's usual or last known place of residence or business or at the address specified by that person in any notice, application, or other document made, given or tendered to the Commission under this Act, or by posting it by registered mail to the person at that place of residence or business or at that address.
- (2) Where any notice or other document is sent to a person by registered mail, then, unless the contrary is shown, it shall be deemed to have been delivered to the person when it would have been delivered in the ordinary course of posting a mail, unless the contrary is established.
- (3) In proving the delivery contemplated under subsection (2) of this section, it shall be sufficient to prove that there is return post office slip showing actual delivery.
- (4) Where, for any purpose under this Act, a notice or document is required to be served on an undertaking, the notice or document may be served on the secretary, executive officer, manager, or other officer holding a similar position in the undertaking and for the purpose of this Act, service on an association or body shall, unless otherwise directed by the Commission, be deemed to be service on all persons or undertakings who are members of the association or body or who are represented on the association or body by those members.

Committee's Recommendation:

That the provision in Clause 159 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 159 do stand part of the Bill, put and agreed to.

Clause 160: Offences under this Part

- (1) Subject to the provisions of this Act, a person shall not —
 - (a) without reasonable excuse, refuse or fail to comply with a notice issued under section 158 and section 159 of this Act;
 - (b) in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
 - (c) resist, obstruct, or delay an employee of the Commission acting pursuant to a warrant issued under subsection (3) of section 30 of this Act.
- (2) A person shall not attempt to deceive or knowingly mislead the Commission in relation to any matter before it.
- (3) A person, having been required to appear before the Commission pursuant to the provision of subsection (2) of section 29 of this Act, shall not without reasonable excuse refuse —
 - (a) or fail to appear before the Commission to give evidence;
 - (b) to take an oath or make an affirmation as a witness; or

- (c) to produce to the Commission any book or document that required to be produced by the Commission.
- (4) Subject to the provision of subsection (3) of this section, a person who violates any of the provisions of this section commits an offence and is liable on summary conviction —
 - (a) in the case of an natural person, to a fine not exceeding one million Naira or to a term of imprisonment not exceeding three months, or to both fine and imprisonment; and
 - (b) in the case of a body corporate, to a fine not exceeding Ten Million Naira.

Committee's Recommendation:

That the provision in Clause 160 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 160 do stand part of the Bill, put and agreed to.

Clause 161: Decisions of the Commission to be in Writing

- (1) Any finding or decision given by the Commission under or for the purpose of this Act shall be sufficiently given if in writing under the seal of the Commission or if signed by one or more members of the Commission or by an officer or employee of the Commission authorized for that purpose.
- (2) A copy of a finding or decision of the Commission, certified to be a true copy by an officer or employee of the Commission authorized in that behalf to certify copies of determinations or decisions of the Commission shall be received in all courts as evidence of the determination or decision.
- (3) A document purporting to be a copy of a determination or decision of the Commission and certified to be a true copy in accordance with subsection (2) of this section shall, unless the contrary is established, be deemed to be such a copy and to be so certified.

Committee's Recommendation:

That the provision in Clause 161 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 161 do stand part of the Bill, put and agreed to.

Clause 162: Delegation by the Commission

- (1) The Commission may delegate any of its powers subject to such conditions and restrictions as it may think fit, and the delegation may be made either generally or in relation to any particular matter or class of matters.
- (2) A person to whom the Commission delegates its power shall be either a member or an officer of the Commission.
- (3) Subject to any general or special directions given or conditions or restrictions imposed by the Commission, any person to whom any power or function is delegated may exercise the power or function in the same manner and with the same effect as if it had been conferred directly by this Act.

- (4) Any person purporting to act pursuant to any delegation pursuant to this section shall be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.
- (5) Delegation of any power or function pursuant to this section shall not prevent the exercise of that power or function by the Commission.
- (6) Until it is revoked or amended, every delegation shall continue in force according to its terms.

Committee's Recommendation:

That the provision in Clause 162 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 162 do stand part of the Bill, put and agreed to.

Clause 163: Civil or Criminal Proceedings in Respect of any Action of the Commission

- (1) No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that the Commission acted without reasonable care or in bad faith.
- (2) No civil proceedings shall lie against any member of the Commission, or any officer or employee of the Commission, for anything that member, officer or employee may do or say or fail to do or say in the course of carrying out of the functions of the Commission, unless it is shown that the person acted without reasonable care or in bad faith.
- (3) A person shall not be excused from —
 - (a) complying with any requirement to furnish information, produce documents, or give evidence under this Act,
 - (b) appearing before the Commission,
 - (c) answering any question or producing any document, on the ground that to do so might tend to incriminate that person or another person.
- (4) Except as may be required under any law, rule or regulation, no court or person shall be entitled to require any member of the Commission, or any officer or employee of the Commission or any other person present at any meeting of the Commission, to divulge or communicate any information furnished or obtained, documents produced, obtained or tendered, or evidence given, in connection with the functions of the Commission.
- (5) Anything said, or any information furnished, or any document produced or tendered, or any evidence given by any person to the Commission shall be privileged in the same manner as if that statement, information, document, or evidence were made, furnished, produced, or given in proceedings in a court.

Committee's Recommendation:

That the provision in Clause 163 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 163 do stand part of the Bill, put and agreed to.

Clause 164: Power to make Regulations

- (1) The Commission may make regulations and issue guidelines and notices for the effective implementation and operation of the provisions of this Act, and in particular, prescribing —
 - (a) the procedures to be followed under this Act with regard to applications, notices to and proceedings of the Commission;
 - (b) the forms of applications and related documents required for the purposes of this Act;
 - (c) fees, administrative penalties, charges or levies and such other related matters; and
 - (d) how information required can be obtained or access to confidential information.
- (2) The regulations, guidelines and notices referred to in subsection (1) of this section may include procedural and enforcement rules, and regulations or guidelines —
 - (a) for the application of Part VIII of this Act prohibiting restrictive agreements;
 - (b) for the application of Part IX of this Act prohibiting abuse of a dominant position;
 - (c) on monopoly investigations under Part X of this Act;
 - (d) on the assessment of Mergers under Part XII of this Act;
 - (e) on the consumer protection regulation under Parts XV-XVII of this Act;
 - (f) on market definition;
 - (g) on leniency programme; and
 - (h) any other regulations, guidelines and notices as may be needed for the implementation of this Act.

Committee's Recommendation:

That the provision in Clause 164 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 164 do stand part of the Bill, put and agreed to.

Clause 165: Application of Other Enactments

The provisions of any other enactment, including the Investment and Securities Act, No. 29 of 2007 Laws of the Federation of Nigeria, regulations or subsidiary laws in force relating to or connected with the subject matter of this Act shall be read with such modifications as are necessary to bring them in conformity with the provisions of this Act.

Committee's Recommendation:

That the provision in Clause 165 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 165 do stand part of the Bill, put and agreed to.

Clause 166: Repeals and Savings

- (1) The Consumer Protection Council Act, CAP C25, Laws of the Federation of Nigeria, 2004 is repealed.
- (2) Without prejudice to section 6 of the Interpretation Act, the repeal of the Act specified in subsection (1) of this section, shall not affect anything done under or pursuant to the Act.
- (3) There shall be vested in the Commission established under section 3 of this Act and without further assurance other than this Act, all assets, funds, resources and other immovable properties which before the commencement of this Act were vested in the Consumer Protection Council established under the repealed enactment.
- (4) All rights, interest, obligations and liabilities of the Consumer Protection Council under the repealed enactment in place before the commencement of this Act under any contract or instrument, or in law or equity shall by virtue to this Act be assigned to and vested in the Commission established under this Act.
- (5) Any contract or instrument referred to in subsection (4) of this section shall be of the same force and effect against or in favour of the Commission established under this Act and shall be enforceable as fully and effectively as if, instead of the Consumer Protection Council under the repealed enactment, the Commission established under this Act had been named or had been a party.
- (6) The Commission established under this Act shall be subject to all obligations and liabilities to which the Consumer Protection Council under the repealed enactment was subject to before the commencement of this Act.
- (7) Any proceeding or course of action pending or existing before the commencement of this Act against the Consumer Protection Council under the repealed enactment in respect of any right, interest, obligation or liability of the Consumer Protection Council under the repealed enactment may be continued, or as the case may require, be commenced and the determination of any court of law or other authority or person may be enforced by or against the Commission established by this Act to the same extent that such course of action or determination might have continued, or enforced by or against the Consumer Protection Council under the repealed enactment.
- (8) Any regulation, order, by-law or notice made or issued or deemed to be made or issued by, or for the purposes, of the Consumer Protection Council under the repealed enactment existing before the commencement of this Act shall be deemed to have been made or issued by or for the purposes of the Commission established under this Act and shall continue in force until revoked or amended, subject to such modifications as may be applicable to the Commission established under this Act.

- (9) As from the commencement of this Act, any disciplinary proceeding pending or existing against any staff or employee of the Consumer Protection Council shall be continued and completed by the Commission established under this Act.

Committee's Recommendation:

That the provision in Clause 166 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 166 do stand part of the Bill, put and agreed to.

Clause 167: Transitional Provisions

Subject to the provisions of this Act, the Minister shall within 3 months of establishment of this commission ensure —

- (a) Appointment of Commissioners as provided in this Act.
- (b) Transfer of all employees and staff of Consumer Protection Commission (CPC) to the Commission as provided for in this Act.

Committee's Recommendation:

That the provision in Clause 167 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 167 do stand part of the Bill, put and agreed to.

Clause 168: Interpretation

- (1) In this Act, unless the context otherwise requires.

"acquiring undertaking" means an undertaking that —

- (a) as a result of a merger within the meaning of section 93 of this Act would directly or indirectly acquire, or establish, direct or indirect control over the whole or part of the business of another undertaking; or
- (b) as a result of a merger within the meaning of section 93 of this Act has direct or indirect control over the whole or part of the business of an undertaking referred to in paragraph (a);

Question: That the words "acquiring undertaking" defined in the Interpretation to this Act, put and agreed to.

"Act" means the Federal Competition and Consumer Protection Act, 2013

Question: That the word "Act" defined in the Interpretation to this Act, put and agreed to.

"agent" means a person who is authorized to act for another person, ("the principal") through employment or by contract, whether express or implied;

Question: That the word "agent" defined in the Interpretation to this Act, put and agreed to.

"agreement" includes a contract, arrangement, understanding, written or oral, and a concerted practice;

Question: That the word "agreement" defined in the Interpretation to this Act, put and agreed to.

"authorized officer" means any person appointed as such by the Commission for the purposes of implementation of the provisions of this Act;

Question: That the words " authorized officer" defined in the Interpretation to this Act, put and agreed to.

"business" includes any activity that is carried on for gain or reward; or in the course of which goods or services are acquired or supplied or any interest in land is acquired or disposed of, otherwise than free of charge;

Question: That the word " business" defined in the Interpretation to this Act, put and agreed to.

"business secret" means trade, business or industrial information that belongs to a person which has a particular economic value and is not generally available to or known by others;

Question: That the words " business secret" defined in the Interpretation to this Act, put and agreed to.

"close corporation" means a corporation whose shares are not publicly traded and are held by a limited number of persons;

Question: That the words " close corporation" defined in the Interpretation to this Act, put and agreed to.

"Code of Conduct" means a set of moral principles or rules of conduct or behavior drawn up by the Commission for the Commission its employee and a person acting through the authority of the Commission;

Question: That the words " Code of Conduct" defined in the Interpretation to this Act, put and agreed to.

"company" includes any entity registered under the Nigeria Companies and Allied Matters Act or the laws of any other country;

Question: That the word " company" defined in the Interpretation to this Act, put and agreed to.

"complainant" means a person who initiates a complaint;

Question: That the word " complainant" defined in the Interpretation to this Act, put and agreed to.

"Commission" means the Federal Competition and Consumer Protection Commission established under section 3 of this Act and 'members of the Commission 'means the Executive Chairman and the Commissioners of the Commission;

Question: That the word " Commission" defined in the Interpretation to this Act, put and agreed to.

"concerted practice" means a practice involving direct or indirect contacts between competitors falling short of an actual agreement;

Question: That the words " concerted practice" defined in the Interpretation to this Act, put and agreed to.

"consumer" includes —

- (a) 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
- (b) any person to whom a service is rendered;

Question: That the word "consumer" defined in the Interpretation to this Act, put and agreed to.

"Court" means the Federal High Court of Nigeria;

Question: That the word "Court" defined in the Interpretation to this Act, put and agreed to.

"dealer" means a person who buys goods or services for resale;

Question: That the word "Dealer" defined in the Interpretation to this Act, put and agreed to.

"document" means a document in any form, whether signed or otherwise authenticated by its maker or not, and includes —

- (a) any writing on any material;
- (b) any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored;
- (c) any label, marking, or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;
- (d) any book, map, plan, graph, or drawing; and
- (e) any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduction;

Question: That the word "document" defined in the Interpretation to this Act, put and agreed to.

"enterprise" means any person involved in business;

Question: That the word "enterprise" defined in the Interpretation to this Act, put and agreed to.

"Executive Chairman" means the Executive Chairman of the Commission;

Question: That the word "Executive" defined in the Interpretation to this Act, put and agreed to.

"Federal" refers to the Federal Republic of Nigeria;

Question: That the word "Federal" defined in the Interpretation to this Act, put and agreed to.

"function" includes powers and duties;

Question: That the word "function" defined in the Interpretation to this Act, put and agreed to.

"give effect to", in relation to a provision of a contract, arrangement or understanding, includes —

- (a) doing an act in pursuance of or in accordance with that provision; and
- (b) enforce or purport to enforce that provision;

Question: That the words "give effect to" defined in the Interpretation to this Act, put and agreed to.

"goods" —

- (a) when used with respect to particular goods, includes any other goods that are reasonably capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical and temporal constraints;
- (b) includes —
 - (i) ship, aircraft, and vehicles;
 - (ii) minerals, trees, and crops, whether on, under, or attached to land or not;
 - (iii) gas and electricity;

Question: That the word "goods" defined in the Interpretation to this Act, put and agreed to.

"government of the Federation" means the Federal, States and any of the Local Governments of the Federation;

Question: That the words "government of the federation" defined in the Interpretation to this Act, put and agreed to.

"Judge" means Judge of the Federal High Court;

Question: That the word "Judge" defined in the Interpretation to this Act, put and agreed to.

"merger" means a transaction falling under the definition of section 93 of this Act;

Question: That the word "merger" defined in the Interpretation to this Act, put and agreed to.

"Minister" means, unless otherwise stated, the Minister responsible for trade matters;

Question: That the word "Minister" defined in the Interpretation to this Act, put and agreed to.

"President" means the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria;

Question: That the word "President" defined in the Interpretation to this Act, put and agreed to.

"person", includes any natural or legal person, whether incorporated or not;

Question: That the word "Person" defined in the Interpretation to this Act, put and agreed to.

"prescribed" means prescribed by regulations under this Act or by the Commission;

Question: That the word "Prescribed" defined in the Interpretation to this Act, put and agreed to.

"price" includes any charge or fee or valuable consideration in any form, whether direct or indirect; and includes any consideration that in effect relates to the acquisition or supply of goods or services or the acquisition or disposition of any interest in land, although ostensibly relating to any other matter or thing;

Question: That the word "Price" defined in the Interpretation to this Act, put and agreed to.

"principal" means a person who authorizes or empowers another person to act as its representative or agent;

Question: That the word "Principal" defined in the Interpretation to this Act, put and agreed to.

"products" includes goods or services;

Question: That the word "Products" defined in the Interpretation to this Act, put and agreed to.

"Public Service Rules" means the version of the Public Service Rules currently in force;

Question: That the words "Public Service Rules" defined in the Interpretation to this Act, put and agreed to.

"respondent" means a person against whom a complaint is made;

Question: That the word "respondent" defined in the Interpretation to this Act, put and agreed to.

"restrictive practices" means practices in restraint of trade or which otherwise hinder competition;

Question: That the words "restrictive practice" defined in the Interpretation to this Act, put and agreed to.

"retailer" means a person who sells goods or services to consumers;

Question: That the word "retailer" defined in the Interpretation to this Act, put and agreed to.

"repealed enactment" includes sections 118, 119, 120, 121, 122, 123, 124, 125, 126, 127 and 128 of the Investments and Securities Act, No 29 of 2007 (as amended) and the Consumer Protection Council Act, CAP C25 Laws of the Federation of Nigeria, 2004

Question: That the words "repealed enactment" defined in the Interpretation to this Act, put and agreed to.

"service" includes —

- (a) a service of any description, whether industrial, trade, professional or other;
- (b) the sale of goods, where the goods are sold in conjunction with the rendering of a service;

Question: That the word “ Service” defined in the Interpretation to this Act, put and agreed to.

"sale" includes advertisement for sale, display for sale, and offer for sale, and "sell", "selling", and "sold" have corresponding meanings;

Question: That the words “ sale, sell, selling and sold” defined in the Interpretation to this Act, put and agreed to.

"share" means a share in the share capital of a company or other body corporate, whether or not it carries the right to vote at general meetings, and includes —

- (a) a beneficial interest in any such share;
- (b) a power to exercise, or control the exercise of, a right to vote attaching to any such share that carries the right to vote at meetings of the company;
- (c) a power to acquire or dispose of, or control the acquisition or disposition of, any such share;
- (d) a perpetual debenture and perpetual debenture stock;

Question: That the word “ share” defined in the Interpretation to this Act, put and agreed to.

"State office" means an official position, division or agency of a local, state or federal government'

Question: That the words “ State office” defined in the Interpretation to this Act, put and agreed to.

"supplier" means a person who supplies goods or services to another person;

Question: That the word “ supplier” defined in the Interpretation to this Act, put and agreed to.

"supply", in relation to goods, includes supply, or re-supply by way of gift, sale, exchange, rent, lease, hire, or hire purchase; and in relation to services, includes provide, grant, or confer and "supply" as a noun, and

Question: That the word “ supply” defined in the Interpretation to this Act, put and agreed to.

"supplied" have corresponding meanings;

Question: That the word “ supplied” defined in the Interpretation to this Act, put and agreed to.

"target undertaking" means an undertaking, which —

- (a) as a result of a merger within the meaning of section 93 of this Act, the whole or part of whose business would be directly or indirectly controlled by an acquiring undertaking; or
- (b) as a result of a merger within the meaning of section 93 of this Act would directly or indirectly transfer control of the whole or part of, its business to an acquiring undertaking;

Question: That the words “ target undertaking” defined in the Interpretation to this Act, put and agreed to.

"turnover" means the amount of money taken by the business in a determined period;

Question: That the word "turnover" defined in the Interpretation to this Act, put and agreed to.

"trade" includes any business, industry, profession, occupation, activity of commerce or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land;

Question: That the word "trade" defined in the Interpretation to this Act, put and agreed to.

"Tribunal" means the Competition and Consumer Protection Tribunal established under section 39 of this Act;

Question: That the word "Tribunal" defined in the Interpretation to this Act, put and agreed to.

"undertaking" includes any person involved in the production of, or the trade in, goods, or the provision of services.

Question: That the word "undertaking" defined in the Interpretation to this Act, put and agreed to.

- (2) In this Act, a reference to "engaging in conduct" shall be read as a reference to doing or refusing to do any act, including the entering into, or the giving effect to a provision of, a contract or arrangement.

Question: That the words "engaging in conduct" defined in the Interpretation to this Act, put and agreed to.

- (3) In this Act —

- (a) a reference to the "acquisition of goods" includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance of a supply of the goods;
- (b) a reference to "the supply or acquisition of goods or services" includes a reference to agreeing to supply or acquire goods or services;
- (c) a reference to "the supply or acquisition of goods" includes a reference to the supply or acquisition of goods together with other property or services or both;
- (d) a reference to "the supply or acquisition of services" includes a reference to the supply or acquisition of services together with property or other services or both.

Question: That the words "acquisition of goods" defined in the Interpretation to this Act, put and agreed to.

- (4) For the purposes of this Act, any two undertakings or associations of undertakings are to be treated as "affiliated" if —
- (a) one of them is an undertaking of which the other is a subsidiary; as such subsidiary is understood pursuant to the provisions of the Companies and Allied Matters Act, CAP C20, Laws of the Federation of Nigeria, 2004;
 - (b) both of them are subsidiaries (within the meaning of those sections) of the same undertaking; or

- (c) both of them are affiliated with undertakings that, in accordance with paragraph (a) or paragraph (b) of this subsection, are affiliated;

Question: That the word “affiliated” defined in the Interpretation to this Act, put and agreed to.

- (5) In this Act, “competition” means workable or effective competition in relation to the supply and demand of goods or services in any given market and unless the context otherwise requires, references to the lessening of competition include references to the hindering or preventing of competition.

Question: That the word “competition” defined in the Interpretation to this Act, put and agreed to.

- (6) For the purposes of this Act, the effect on competition in a market shall be determined by reference to all factors that affect competition in that market, including competition from goods or services supplied or likely to be supplied by undertakings not resident or not carrying on business in Nigeria.
- (7) For the purposes of this Act —
 - (a) a provision of a contract or arrangement shall be deemed to have had, or to have, a particular purpose if —
 - (i) the provision was or is included in the contract or arrangement or is required to be given, for that purpose or purposes that included or include that purpose; and
 - (ii) that purpose was or is a substantial purpose;
 - (b) a person shall be deemed to have engaged, or to engage, in conduct for a particular purpose or a particular reason if that person engaged or engages in that conduct for that purpose or reason or for purposes or reasons that included or include that purpose or reason, and that purpose or reason was or is a substantial purpose or reason.
- (8) In this Act —
 - (a) a reference to a contract shall be construed as including a reference to a lease of, or a license in respect of, any land or a building or part of a building, and shall be so construed notwithstanding any express reference in this Act to any such lease or license, but shall not mean a reference to the memorandum of association or articles of association of a company;
 - (b) a reference to making or entering into a contract, in relation to such a lease or license, shall be read as a reference to granting or taking the lease or license;
 - (c) a reference to a party to a contract, in relation to such a lease or license, shall be read as including a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or license.
- (9) For the purposes of this Act, any “contract” or arrangement entered into by an association or body shall be deemed to have been entered into by all the persons or undertakings who are members of the association or body;

Question: That the word “contract” defined in the Interpretation to this Act, put and agreed to.

- (10) Nothing in subsection (9) of this section shall apply to —
- (a) any member of an association or body who expressly notifies the association or body in writing that he disassociates himself from the contract, or arrangement or any provision thereof and who does so disassociate himself;
 - (b) any member an association or body who establishes that he had no knowledge and could not reasonably have been expected to have had knowledge of the contract, arrangement, or understanding.
- (11) In this Act, reference to —
- (a) Federal Government means the Federal Government of the Federal Republic of Nigeria;
 - (b) State Government means the Government of one or any of the States that constitute the territories of the Federal Republic of Nigeria, as recognized by the Constitution of the Federal Republic of Nigeria, 1999 (as altered);
- (12) Every reference in this Act to the term "market" is a reference to a relevant market in Nigeria for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them and the meaning of the term relevant market shall be based on examination of demand substitutability, supply substitutability and potential competition.

Question: That the word "market" defined in the Interpretation to this Act, put and agreed to.

- (13) For the purpose of this Act, the term —
- (a) "regulatory agency" shall mean any government agency established to regulate the terms and conditions for demand and supply of goods and services in any given industry and in this respect, the regulatory agency in question is one established either by Federal or any State Government;

Question: That the words "regulatory agency" defined in the Interpretation to this Act, put and agreed to.

- (b) "regulated industry" shall mean an industry which is under the regulatory authority of a regulatory agency

Question: That the words "regulated industry" defined in the Interpretation to this Act, put and agreed to.

- (14) For the purpose of this Act, the term "professional association" shall mean associations mentioned in Schedule I of this Act.

Question: That the words "professional association" defined in the Interpretation to this Act, put and agreed to.

Committee's Recommendation:

That the provision in Clause 168 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) —
Agreed to.

Question that Clause 168 do stand part of the Bill, put and agreed to.

Clause 169: Short Title

This Act shall be cited as the Federal Competition and Consumer Protection Act, 2017.

Committee's Recommendation:

That the provision in Clause 169 be retained (*Senator Fatimat O. Raji-Rasaki — Ekiti Central*) — Agreed to.

Question that Clause 169 do stand part of the Bill, put and agreed to.

SCHEDULE
TRANSITIONAL PROVISIONS

Transfer of Assets

- (1) All Assets and funds which immediately before the commencement of this Act were vested in the Consumer Protection Council (hereinafter referred to as "the Council") shall by virtue of this Act be vested in the Federal Competition and Consumer Protection Commission herein after referred to as "the Commission").
- (2) All bonds, hypothecations, securities, deeds, contracts, instruments, documents, and working arrangements with respect to the assets transferred, that subsisted immediately before the commencement of this Act and to which the Council was a party shall be as fully effective and enforceable against or in favour of the Commission as if, instead of the Council, the Commission had been named therein.
- (3) Any cause of action or proceeding which existed or was pending with respect to the assets transferred by or against the Council immediately before commencement of this Act, shall be enforced or continued, as the case may be, by or against or in favour of the Commission in the same way that it might have been enforced or continued by or against the Council had this Act not been passed.
- (4) No action or other proceeding shall be commenced against the Commission in respect of an employee or asset that has been transferred to the Commission, if had there been no transfer, the time for commencing the action or other proceeding would have expired.
- (5) Nothing in this Act and nothing done as a result of a transfer under sub-paragraph (1) of this paragraph shall create any new cause of action in favour of —
 - (a) a holder of a debt instrument that was issued by the Council before the commencement of this Act;
 - (b) a party to a contract with the Council that was entered into before the commencement of this Act.
- (6) Any guarantee or surety-ship given or made by the Federal Government or any other person in respect of any debt or obligation of the Council, and which was effective immediately before the transfer of the principal debt or obligation, shall remain fully effective against the guarantor or surety on and after the transfer date in relation to the payment of the debt or the performance of the obligation, as the case may be, by the Commission, to which the principal debt or obligation was transferred.

Transfer of Employees

- (1) Upon the commencement of this Act, such number of persons employed by the Council, as may be required by the Commission shall be deemed to be staff of the Commission and

shall be transferred to the service of the Commission on a merit and value basis and on terms not less favourable than those enjoyed immediately prior to the transfer

- (2) The service rendered by an employee transferred pursuant to sub-paragraph (1) of this paragraph to the Council shall be deemed to be service with the Commission for the purpose of determining employment related entitlements as specified in the relevant laws of employment in Nigeria.
- (3) Until such time as conditions of service are drawn up by the Commission —
 - (a) the terms and conditions of service applicable to employees of the Council shall continue to apply to every person transferred to the Commission as if every such person were still in the service of the Council; and
 - (b) the Commission shall continue to contribute towards any pension scheme to which the Council was contributing in respect of persons in the employment of the Council prior to the transfer date.
- (4) Nothing in this paragraph shall operate so as to prevent any employee of the Council from resigning or being dismissed from service.
- (5) Nothing in this paragraph shall operate so as to create an entitlement for any employee of the Council to become an employee of the Commission.

Directions to the Council

- (1) The Minister may give the members of the Board of the Council directions in writing in order to ensure the proper transfer of the assets of the Council to the Commission and the Council shall without delay, comply with every such direction.
- (2) Without derogating from sub-paragraph (1) of this paragraph, directions given under that sub-paragraph may provide for —
 - (a) the cessation of all or any of the functions of the Council;
 - (b) the termination of any contract entered into between the Council and any person, provided that no such direction shall authorize the Council to commit an unlawful breach of any such contract; and
 - (c) the production of any report and the provision of any information concerning the conduct of the Council or the members of the board of the Council or anything done by or on behalf of the Council or the members of the Council.

Question that the provision of the First Schedule stand part of the Bill — Agreed to.

Chairman to report Bill.

(SENATE IN PLENARY)

The Deputy Senate President reported that the Senate in the Committee of the Whole resumed consideration of the Report of the Committee on Trade and Investment on the Federal Competition and Consumer Protection Bill; 2017 and approved as follows:

Clauses 41- 80 — As Recommended

Clause 81 — As Amended

Clauses 82- 154	—	As Recommended
Clause 155	—	As Amended
Clauses 156- 169	—	As Recommended
Schedule	—	As Recommended

Question: That the Senate do approve the Report of the Committee of the Whole — *Resolved in the Affirmative.*

Motion made: That the Bill be now Read the Third Time (*Senate Leader*).

Question put and agreed to.

Bill accordingly Read the Third Time and Passed.

9. Committee on Judiciary, Human Rights and Legal Matters:

Report on the Witness Protection Programme (Establishment, etc.) Bill, 2017 (SB. 157):

Motion made: That the Senate do consider the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Witness Protection Programme (Establishment, etc.) Bill, 2017 (*Senator David Umaru — Niger East*).

Question put and agreed to.

Report presented.

Motion made: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

CONSIDERATION OF A BILL FOR AN ACT TO ESTABLISH A WITNESS PROTECTION PROGRAMME FOR THE PROTECTION OF PERSONS WHO PROVIDE INFORMATION, EVIDENCE OR ANY OTHER ASSISTANCE TO LAW ENFORCEMENT AGENCIES DURING INQUIRIES, INVESTIGATIONS OR PROSECUTIONS AND FOR RELATED MATTERS.

Clause 1: Purpose of the Bill.

The purpose of this Bill is to promote law enforcement by providing protection to persons who provide information, evidence or any other form of assistance to law enforcement agencies during —

- (a) Inquiries;
- (b) Investigations;
- (c) Prosecution; or
- (d) Such other activities that are carried out by the law enforcement agencies or international criminal court, or tribunal in respect of which an agreement or arrangement has been entered into under this act.

Committee's Recommendation:

That the provision in Clause 1 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 1 do stand part of the Bill, put and agreed to.

Clause 2: Establishment of a Witness Protection Programme.

- (1) There is established a Witness Protection Programme for the protection of persons who provide information, evidence or any other assistance to law enforcement agencies (in this Bill referred to as "the programme").
- (2) The programme shall be administered by the Attorney General of the Federation.

Committee's Recommendation:

That the provision in Clause 2 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 2 do stand part of the Bill, put and agreed to.

Clause 3: Admission to the Programme.

Subject to this Act, the Attorney General may determine whether a witness should be admitted to the Programme and the type of protection to be provided to any protectee in the Programme.

Committee's Recommendation:

That the provision in Clause 3 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 3 do stand part of the Bill, put and agreed to.

Clause 4: Procedure for Admission to the Programme.

- (1) A witness shall not be admitted to the Programme unless —
 - (a) a recommendation for the admission has been made by a law enforcement agency or an international criminal court or tribunal;
 - (b) the Attorney General has been provided by the witness with such information, in accordance with any regulations made for the purpose, concerning the personal history of the witness as will enable the Attorney General to consider the factors referred to in Section 10 of this Bill in respect of the witness; and
 - (c) an agreement has been entered into by or on behalf of the witness with the Attorney General setting out the obligations of both parties.
- (2) Notwithstanding subsection (1), the Attorney General may, in a case of emergency, and for not more than ninety days, provide protection to a person who has not entered into a protection agreement.

Committee's Recommendation:

That the provision in Clause 4 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 4 do stand part of the Bill, put and agreed to.

Clause 5: Consideration of Factors.

The following factors shall be considered in determining whether a witness may be admitted to the Programme —

- (a) the nature of the risk to the security of the witness;
- (b) the danger to the community if the witness is admitted to the Programme or not;
- (c) the nature of the inquiry, investigation or prosecution involving the witness and the importance of the witness in the matter;
- (d) the value of the information or evidence given or agreed to be given or of the participation by the witness;
- (e) the likelihood of the witness being able to adjust to the Programme, having regard to the witness's maturity, judgment and other personal characteristics and the family relationships of the witness;
- (f) the cost of maintaining the witness in the Programme;
- (g) alternate methods of protecting the witness without admitting the witness to the Programme; and
- (h) such other factors as the Attorney General may consider relevant.

Committee's Recommendation:

That the provision in Clause 5 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 5 do stand part of the Bill, put and agreed to.

Clause 6: Terms of Protection Agreement.

A protection agreement shall include an obligation —

- (a) On the part of the Attorney General, to take such reasonable steps as are necessary to provide the protection referred to in the agreement to the protectee; and
- (b) On the part of the protectee —
 - (i) to give the information or evidence or participate as required in relation to the inquiry, investigation or prosecution to which the protection provided under the agreement relates;
 - (ii) to meet all financial obligations incurred by the protectee that are not by the terms of the agreement payable by the Attorney General;
 - (iii) to meet all legal obligations incurred by the protectee;
 - (iv) to refrain from activities that constitute an offence against any existing law or that may compromise the security of the protectee, another protectee or of the Programme; and
 - (v) to accept and give effect to reasonable requests and directions made by the Attorney General in relation to the protection provided to the protectee and the obligations of the protectee.

Committee's Recommendation:

That the provision in Clause 6 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 6 do stand part of the Bill, put and agreed to.

Clause 7: Termination of Protection.

- (1) The Attorney General may terminate the protection provided to a protectee if he has evidence that there has been —
 - (a) a material misrepresentation or a failure to disclose information relevant to the admission of the protectee to the Programme; or
 - (b) a deliberate and material contravention of the obligations of the protectee under the protection agreement.
- (2) The Attorney General shall, before terminating the protection provided to a protectee, take reasonable steps to notify the protectee and allow the protectee to make representations concerning the matter.

Committee's Recommendation:

That the provision in Clause 7 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 7 do stand part of the Bill, put and agreed to.

Clause 8: Procedure for Refusal or Termination of Admission.

The Attorney General, where a decision is taken to refuse or terminate the admission of a witness to the programme, shall —

- (a) Provide the law enforcement agency or international criminal court or tribunal that recommended the admission or, in the case of a witness recommended by the law enforcement, the witness, with written reasons to enable the agency, court, tribunal or witness to understand the basis for the decision; and
- (b) Provide the protectee with written reasons to enable the protectee to understand the basis for the decision.

Committee's Recommendation:

That the provision in Clause 8 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 8 do stand part of the Bill, put and agreed to.

Clause 9: Disclosures Prohibited.

- (1) Subject to this section, no person shall knowingly disclose, directly or indirectly, information about the location or a change of identity of a protectee or former protectee.
- (2) Subsection (1), shall not apply to a —
 - (a) to a protectee or former protectee who discloses information about the protectee or former protectee if the disclosure does not endanger the safety of another protectee or former protectee and does not compromise the integrity of the Programme; or
 - (b) to a person who discloses information that was disclosed to the person by a protectee or former protectee if the disclosure does not endanger the safety of the protectee or former protectee or another protectee or former protectee and does not compromise the integrity of the Programme.

- (3) Information about the location of a protectee or former protectee may be disclosed by the Attorney General —
- (a) with the consent of the protectee or former protectee;
 - (b) if the protectee or former protectee has previously disclosed the information or acted in a manner that results in the disclosure;
 - (c) if the disclosure is essential in the public interest for purposes such as —
 - (i) the investigation of a serious offence where there is reason to believe that the protectee or former protectee can provide material information or evidence in relation to, or has been involved in the commission of, the offence;
 - (ii) the prevention of the commission of a serious offence;
 - (iii) national security or national defence; or
 - (iv) in criminal proceedings where the disclosure is essential to establish the innocence of a person.
- (4) A disclosure of information made to a person under this section does not authorize the person to disclose the information to anyone else.
- (5) The Attorney General shall, before disclosing information about a person in the circumstances referred to in paragraph(3) (b), (c) or (d), take reasonable steps to notify the person and allow the person to make representations concerning the matter.
- (6) Subsection (5) shall not apply if in the opinion of the Attorney General, notifying the person may impede the investigation of an offence.

Committee's Recommendation:

That the provision in Clause 9 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 9 do stand part of the Bill, put and agreed to.

Clause 10: Factors to be Considered when Making Disclosure.

The following factors shall be considered in determining whether information about a person may be disclosed under section 9 —

- (a) the reasons for the disclosure;
- (b) the danger or adverse consequences of the disclosure in relation to the person and the integrity of the Programme;
- (c) the likelihood that the information will be used solely for the purpose for which the disclosure is made;
- (d) whether the need for the disclosure can be effectively met by another means; and
- (e) whether there are effective means available to prevent further disclosure of the information.

Committee's Recommendation:

That the provision in Clause 10 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 10 do stand part of the Bill, put and agreed to.

Clause 11: Parties with Whom the Attorney General may Enter into Agreement.

- (1) The Attorney General may enter into an agreement —
 - (a) with a law enforcement agency to enable a witness who is involved in activities of the law enforcement agency to be admitted to the Programme;
 - (b) with any state or local Government authority in order to obtain documents and other information that may be required for the protection of a protectee.
- (2) The Attorney General may enter into a reciprocal arrangement with the government of a foreign jurisdiction to enable a witness who is involved in activities of a law enforcement agency in that jurisdiction to be admitted to the Programme, but no such person may be admitted to Nigeria pursuant to any such arrangement without the consent of the Minister of Interior.
- (3) The Attorney General may enter into an arrangement with an international criminal court or tribunal to enable a witness who is involved in activities of that court or tribunal to be admitted to the Programme, but no such person may be admitted to Nigeria pursuant to any such arrangement without the consent of the Minister of Interior.

Committee's Recommendation:

That the provision in Clause 11 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 11 do stand part of the Bill, put and agreed to.

Clause 12: Powers of the Attorney General.

The powers of the Attorney General under this Act may be exercised either personally or on his behalf by any staff authorised to do so.

Committee's Recommendation:

That the provision in Clause 12 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 12 do stand part of the Bill, put and agreed to.

Clause 13: Annual Report.

The Attorney General shall, not later than June 30 of each year, cause to be submitted to the National Assembly a report on the operation of the programme.

Committee's Recommendation:

That the provision in Clause 13 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 13 do stand part of the Bill, put and agreed to.

Clause 14: Regulations.

The Attorney General may make regulations for the purpose of giving effect to this Act, including but not limited to the generality of the foregoing regulations —

- (a) Retained

- (b) respecting the terms that must be included in protection agreements or in agreements or arrangements entered into under section 11; and
- (c) governing the procedures to be followed in order to involve a protectee in legal proceedings.

Committee's Recommendation:

That the provision in Clause 14 be retained (*Senator David M. Umaru — Niger East*) — Agreed to.

Question that Clause 14 do stand part of the Bill, put and agreed to.

Clause 15: Offences.

Any person who contravenes the provisions of this Act, shall be guilty of an offence and be liable on conviction to a fine of N100, 000 or to imprisonment for a term of five years, or to both (*Senator David M. Umaru — Niger East*).

Amendment Proposed:

Leave out the Provision in Clause 15 and insert the following instead thereof:

"Clause 15: Offences.

Any person who contravenes any of the provisions of this Act, shall be guilty of an offence and be liable on conviction to a fine of ₦500, 000 or to imprisonment for a term of two years, or to both" (*Senator Kabiru G. Marafa — Zamfara Central*).

Question that the amendment be made, put and agreed to.

Question that Clause 15 as amended do stand part of the Bill, put and agreed to.

Clause 16: Interpretation.

In this Act —

"Attorney General" means The Attorney General of the Federation and Minister of Justice;

Question: That the words "Attorney General" be as defined in the Interpretation to this Act, put and agreed to.

"Law Enforcement Agency" means all law enforcement agencies in Nigeria;

Question: That the words "Law Enforcement Agency" be as defined in the Interpretation to this Act, put and agreed to.

"Programme" means the Witness Protection Programme established by Section 2 of this Bill;

Question: That the word "Programme" be as defined in the Interpretation to this Act, put and agreed to.

"Protectee" means a person who is receiving protection under the Programme;

Question: That the word "Protectee" be as defined in the Interpretation to this Act, put and agreed to.

"Protection" in respect of a protectee, may include relocation, accommodation as well as counselling and financial support for those or any other purposes in order to ensure the security of the protectee or to facilitate the protectee's re-establishment or becoming self-sufficient;

Question: That the word "Protection" be as defined in the Interpretation to this Act, put and agreed to.

"protection agreement" means an agreement referred to in paragraph 4(1)(c) that applies in respect of a protectee;

Question: That the words "Protection agreement" be as defined in the Interpretation to this Act, put and agreed to.

"witness" means —

- (a) a person who has given or has agreed to give information or evidence, or participates or has agreed to participate in a matter, relating to an inquiry or the investigation or prosecution of an offence and who may require protection because of risk to the security of the person arising in relation to the inquiry, investigation or prosecution; or
- (b) a person who, because of their relationship to or association with a person referred to in paragraph (a), may also require protection for the reasons referred to in that paragraph.

Question: That the word "Witness" be as defined in the Interpretation to this Act, put and agreed to.

Committee's Recommendation:

That the provision in Clause 16 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 16 do stand part of the Bill, put and agreed to.

Clause 17: Citation.

This Bill may be cited as the Witness Protection Programme Bill, 2017.

Committee's Recommendation:

That the provision in Clause 17 be retained (*Senator David M. Umaru — Niger East*) — *Agreed to.*

Question that Clause 17 do stand part of the Bill, put and agreed to.

Chairman to report Bill.

(SENATE IN PLENARY)

The Deputy Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Witness Protection Programme (Establishment, etc.) Bill, 2017 and approved as follows:

Clauses 1- 14 — As Recommended

Clause 15 — As Amended

Clauses 16- 17 — As Recommended

Question: That the Senate do approve the Report of the Committee of the Whole — Resolved in the Affirmative.

Motion made: That the Bill be now Read the Third Time (Senate Leader).

Question put and agreed to.

Bill accordingly Read the Third Time and Passed.

10. Committee on Works:

Report on the Federal Roads Authority (Establishment, etc.) Bill, 2017 (SB. 219):

Motion made: That the Senate do resolve into the Committee of the Whole to consider the Report of the Committee on Works on Federal Roads Authority (Establishment, etc.) Bill, 2017 (*Adjourned Consideration 1st June, 2017, Clause 11*) (*Senate Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

RESUMED CONSIDERATION OF A BILL FOR AN ACT TO REPEAL THE FEDERAL ROADS MAINTENANCE AGENCY (ESTABLISHMENT, ETC.) ACT, 2002 (AS AMENDED), THE FEDERAL HIGHWAYS ACT 1971 AND THE CONTROL OF ADVERTISEMENT (FEDERAL HIGHWAYS) ACT 1986 AND TO ESTABLISH THE FEDERAL ROADS AUTHORITY TO PROVIDE FOR THE OWNERSHIP, REGULATION, MANAGEMENT AND DEVELOPMENT OF THE FEDERAL ROADS NETWORK AND FOR OTHER MATTERS CONNECTED THEREWITH, 2017.

Clause 12: Secretary and Other Staff of the Authority.

- (1) The Board shall appoint a Secretary who shall be the Head of the Legal Department of the Authority, to keep the corporate records of the Authority and undertake such other functions as the Board may from time to time direct.
- (2) The Secretary shall possess adequate professional qualifications, skills and experience as a legal practitioner with not less than 10 years cognate experience.
- (3) Subject to section 31 (2) of this Act the Authority shall employ such other number of persons as it considers necessary for the exercise of its powers and performance of its functions under this Act.
- (4) The Board shall determine the terms and conditions of service of the members of staff of the Authority and shall in consultation with the National Salaries, Incomes and Wages Commission, review the remuneration and allowances payable to the employees of the Authority, from time to time.

Committee's Recommendation:

That the provision in Clause 12 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 12 do stand part of the Bill, put and agreed to.

Clause 13: Service in the Authority to be Pensionable.

- (1) Service in the Authority is pensionable under the Pension Reform Act and accordingly, officers and other persons employed in the authority shall be entitled to pension and other retirement benefits in respect of their service in the Authority as prescribed in that Act.
- (2) Notwithstanding the provisions of sub-section (1) of this section, nothing in this Act shall prevent the appointment of a person to any office on terms which preclude a grant of a pension or other retirement benefits in respect of that office.

- (3) For the purposes of the application of the provisions of the Pensions Reform Act, any power exercisable by the Minister or other authority of the Government of the Federation, other than the power to make regulations under the Pensions Reform Act, is hereby vested in and shall be exercisable by the Authority and not by any other person or authority.
- (4) Employees who join the staff of the Authority from the civil service shall have all existing and outstanding civil service emoluments and pension entitlements transferred from their existing service to the Authority at the time of appointment.

PART IV — FUNCTIONS AND POWERS OF THE AUTHORITY

Committee's Recommendation:

That the provision in Clause 13 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 13 do stand part of the Bill, put and agreed to.

Clause 14: Functions of the Authority.

- (1) Subject to the provisions of this Act and the functions and powers of any regulatory agency for the roads sector as provided for under this Act or in any other Act, the Authority shall —
 - (a) own and manage Federal Road assets in accordance with the provisions of this Act;
 - (b) ensure the efficient and effective construction, rehabilitation, reconstruction and maintenance of all Federal roads;
 - (c) enter into Private Sector Participation agreements including concessions and other forms of contracts as well as the issuance of permits and licences relating thereto to any person for the purpose of executing road Private Sector Participation agreements and other forms of contracts with any person authorised for the purpose of executing relevant projects provided that the grant of a Private Sector Participation agreement shall be subject to public procurement rules as approved by the Federal Government from time to time and in accordance with the relevant laws and regulations for the procurement and operation of Private Sector Participation agreements;
 - (d) develop, determine and be responsible for the classification of roads and the technical regulation of roads including the specifications, design, standards on road development and usage;
 - (e) make policy recommendations to the Federal Government on matters relating to the management, construction, rehabilitation, reconstruction and maintenance of Federal Roads;
 - (f) carry out the procurement and enter into contracts for road works of any type with local entities with the aim of developing, encouraging, and enabling the growth of the Nigerian road contracting market and building the capacity of the private contracting sector;

- (g) carry out periodic maintenance and emergency repair of roads in accordance with policy priorities, rolling Road Maintenance and Development Plans, National Roads Fund disbursements and as the Authority may in its discretion determine;
- (h) plan and manage the development of road safety technical designs, standards and audit in collaboration with any regulatory, enforcement or other authority or agency with responsibility for roads and road safety;
- (i) plan and develop strategies to assist the relevant agencies towards ensuring efficient and effective movement of traffic on the Federal Road Network and ensure their implementation;
- (j) liaise and consult with any regulatory, enforcement or other authority or agency with responsibility for roads and road safety and other relevant Ministries, Departments and Agencies;
- (k) work in partnership with similar agencies at the state and local government levels by providing policy advice, guidance and technical support for the efficient and effective management, rehabilitation, reconstruction and maintenance of National road networks;
- (l) prescribe measures for preventing damage however caused by any person to any road or any part thereof and for recovering, in full or in part, the cost of repairing the damage from such person or his insurers;
- (m) ensure effective monitoring of the conditions of all Federal Roads for the purposes of timely implementation of road maintenance, rehabilitation and development programmes;
- (n) develop and utilize an appropriate Road Asset Management System for the day to day and strategic planning and evidence based reporting processes of the Authority;?
- (o) prepare and publish evidence based performance reports on the Authority's projects funded by the National Roads Fund and any other funding sources or other donors;
- (p) publish periodic reports of the activities, projects, contracts, plans, performance and achievements of the Authority and the condition of the Federal Road Network and make the reports available to the general public to ensure transparency and probity;
- (q) advise the Minister and any regulatory, enforcement or other authority or agency with responsibility for roads and road safety:—
 - (i) on the specifications, design, standards and classification of roads and the prohibition of any act that may lead to damage to roads;
 - (ii) on the types, sizes, and usage of vehicles on national roads and the laden and axle weight of vehicles for the purpose of protecting national roads from damage;

- (iii) on appropriate and effective methods of enforcing road traffic legislation for the purposes of preventing damage to roads and promoting road safety;
- (iv) on appropriate road signs, and other road agencies on the location of road signs on public roads;
- (v) on matters relating to safety of persons on roads;
- (vi) on appropriate levels of charges, fines, penalties, levies or any sum required to be collected in relation to any road;
- (vii) on such reviews in road user charges as are necessary for the purpose of the National Roads Fund;
- (r) advise the Minister on the development and training of human resources, research and studies necessary or required for performing its functions towards the development of the roads sector;
- (s) identify and recommend to the Minister, supplementing donor funding opportunities for the management, construction, rehabilitation, reconstruction and maintenance of Federal Roads; and
- (t) carry out other functions which in the opinion of the Board are necessary to ensure the efficient performance of the functions of the Authority.

Committee's Recommendation:

That the provision in Clause 14 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 14 do stand part of the Bill, put and agreed to.

Clause 15: Powers of the Authority.

The Authority shall, in order to fulfill its functions under this Bill, have the following powers:—

- (1) Power for granting Private Sector Participation:—
 - (a) consider applications for any form of Private Sector Participation including concessions and to issue and if necessary, extend, renew or revoke any Private Sector Participation agreements in accordance with extant laws and regulations;
 - (b) subject to extant regulations and laws carry out inquiries, tests, audits or investigations and take such other steps as may be necessary to monitor the activities of concessionaires or parties involved in Private Sector Participation and to secure and enforce compliance with the provisions of this Act or any subsidiary legislation, concession terms, agreements or conditions made pursuant to this Act;
 - (c) where it considers it to be in the public interest, compel a concessionaire or parties involved in Private Sector Participation to provide any information or any document concerning activities notwithstanding that such information or document may contain business secrets; provided that any such information or documents

shall be restricted to those that a person can be legally compelled to produce as evidence by a court of law in Nigeria;

- (d) to publish information received in the course of exercising its powers and functions under this Act or to require concessionaires and other PPPs to publish certain information if it is satisfied that the publication is consistent with the objects of this Act provided that the Authority shall consider the commercial interests of the parties to whom the information relates before publishing the information;
 - (e) undertake consultations with stakeholders including members of the public, road operators and industry participants affected by or with an interest in its directions and to consider any responses to the consultations;
 - (f) enter into contractual agreements generally and incur obligations;
 - (g) to acquire, hold, mortgage, purchase and deal howsoever with property whether moveable or immoveable, real or personal;
 - (h) subject to section 18 of this Act, borrow such sums as it may require for the performance of its functions under this Act subject to the provisions in relevant treasury and establishment circulars,
 - (i) to determine or agree with any relevant party involved in a concession or other Private Sector Participation agreement on any fees, levies, charges, rates and tariffs in relation to any concession or other Private Sector Participation arrangement, subject to the powers of the Road Sector Regulator;
 - (j) approve the award and termination of contracts;
- (2) Powers to acquire land for Federal Roads:—
- (a) the Federal Government may, in accordance with the provisions of the Lands Use Act acquire land for the purposes of this Act and when so acquired such land shall be deemed to be a Federal Road within the meaning of this Act; in this subsection, the reference to land includes reference to a road, other than a Federal Road.
 - (b) except in respect of roads which are deemed to be Federal Roads, compensation shall be paid pursuant to the Land Use Act, for land acquired under sub-section (1) (a) of this section after the commencement of this Act.
 - (c) where land at the commencement of this Act or at any time thereafter is part of a Federal Road, the ownership shall include not only the surface but also the subsoil to an indeterminable depth, and user adverse to that as a Federal Road shall operate in favour of level crossings constructed by the Nigerian Railway Corporation and then only where a train or engine is approaching and within half a kilometre of a level crossing.

- (d) it is declared for the avoidance of doubt that in the application of this section, an acquisition of land for the purposes of this Act shall be for a public purpose of the Federation within the meaning of the Land Use Act.
 - (e) The acquisition of land for the purposes of this Act includes the right to obtain control over the land and to use the land for the erection of buildings and for the supervision of the user by the public.
- (3) Power to acquire land under special enactments Where land is acquired for the purposes of this Act pursuant to sub-section (2) of this section:—
- (a) under the Land Use Act;
 - (b) if the land is customary land within the meaning of the Land Use Act and a requisition in respect of such land declares it to be required by the Federal Government for the public purposes of the Federation, the provisions of the enactment pertaining to such acquisition shall have effect accordingly, and the land shall vest in the Authority without any further assurance.
- (4) Powers incidental to intention to acquire land for Federal Roads
- (a) subject to the provisions of this section, where it appears to the Authority that land in any locality is likely to be needed for the purposes of a Federal Road, the Authority may in writing authorise any person to enter upon any land in the locality for the purpose of surveying and taking necessary levels, and for that purpose the person so authorised may:—
 - (i) dig into or bore under the subsoil and do all other acts necessary to ascertain whether the land is suitable for use as a Federal Road; and
 - (ii) clear and demarcate the boundaries of any such land.
- (5) Powers
- (i) in the case of a customary land in the manner provided by the Land Use Act where a right of occupancy is revoked; and
 - (ii) in any other case by a court having jurisdiction in respect of the place where the land is situated in respect of drainage and other works
- (b) notwithstanding the provisions of sub-section (4)(a) of this section, the Authority may for purposes of and incidental to this Act survey or otherwise demarcate in any State and thereafter lay off on a plan the middle line of a Federal Road, and notice of such survey or demarcation and laying off shall be published in the Federal Gazette, and in the Gazette of any State affected or likely to be affected; if the middle line is so laid off, the Authority may not later than twelve (12) months thereafter, exercise his power under this section within a distance of one hundred (100) metres on either side of such middle line which shall include the Road Reserve.

- (c) nothing in this section shall authorise the Authority or any person authorised by him to enter into any building or upon any enclosed court or garden attached to a dwelling house (except with the consent of the occupier thereof) unless at least seven (7) days' notice in writing of the intended entry has been given to such occupier.
- (d) compensation for damage done under this section shall in case of dispute as to amount be determined—
 - (a) the Authority may in the performance of its duties under this Act make and thereafter maintain in respect of any Federal Road, convenient decking and drainage work for the purpose of making good any interruptions caused to the use of the lands of adjoining owners or occupiers through which such Federal Road passes or is made, or of diverting storm or other water from a Federal Road.
 - (b) for all or any of the purposes in sub-section (5)(a) of this section, the Authority may enter upon land adjoining the Federal Road subject to the giving of reasonable notice to owners or occupiers and doing as little damage as possible through such entry or exit after entry; and in the course thereof the Authority may block up, divert or alter the level or course of water flowing in defined channels, natural or artificial, or otherwise contained by any means.
 - (c) nothing in this section shall require the Authority to provide convenient decking or drainage work:—
 - (i) where the owners or occupiers have failed to make representation during the time that the section of the Federal Road affected, adjoining or passing through their land was in course of construction; or
 - (ii) where owners or, as the case may be, occupiers of the adjoining land have agreed to receive and have been paid compensation; or
 - (iii) where decking and drainage work provided by the Authority is thereafter diverted or altered otherwise than by the Authority.
 - (d) in the exercise of its power under this section, the Authority may require any person having apparent control over the location of any pipe, electric wire or post to alter the level or position thereof as the case may require after reasonable notice of the requirement has been duly given; and the Authority shall in the course of road works generally cause as little inconvenience as possible to persons affected.
 - (e) the failure to comply with the requirement of the Authority as directed or given to any person under this section shall be an offence punishable on conviction by a fine of not less than Five Hundred Thousand Naira (N500,000.00) or by imprisonment for a term

not exceeding twelve (12) months, or by both such fine and imprisonment.

- (6) Powers relative to obstruction on Federal Roads
- (a) in the performance of any of its functions in relation to the development, rehabilitation or maintenance of a Federal Road under this Act if trees or other natural or man-made objects are standing in a position likely in the opinion of the Authority to obstruct the course of a Federal Road in the event of falling or being found on or near a Federal Road or likely to obstruct the use of the Federal Road, any person duly authorised in writing in that behalf by the Authority may enter an adjoining land to any necessary extent in order to fell or otherwise remove such obstruction as circumstances may require.
- (b) if the power conferred by sub-section (6)(a) of this section is exercised in respect of a tree or other natural or man-made objects on land other than a Federal Road, compensation shall be payable to the owner only where the Federal Road was in use before the tree or other natural or man-made objects became a potential source of obstruction, and the tree or other natural or man-made objects had at the time of its felling or removal a marketable value, provided that in default of agreement under this subsection the amount shall be fixed by a competent person appointed for this purpose by the Authority.
- (c) an award of compensation fixed by agreement under sub-section (6)(b) of this section shall be final and a court shall only entertain a suit to recover compensation for any tree or other natural or man-made objects felled, removed or otherwise dealt with under this section where the amount is fixed by agreement is not paid.
- (7) Power to enter adjacent land The Authority or any person authorised by him in writing, may in case of any slip or other accident happening or being apprehended in any cutting, embankment or other work under the Authority's control, enter on any land adjoining a Federal Road and do all work necessary to repair damage thereby occasioned and for the purpose of prevention or control of slips likely to occur from adjoining land on to a Federal Road.
- (8) Power to establish Pay-for-Service arrangements, collect revenues and set fees, levies, charges, rates and tariffs related thereto subject to the powers of the Road Sector Regulator in this regard under the provisions of this Act or any other Act.
- (9) power to erect tollgates:
- (i) the Authority shall have power to erect, equip and maintain tollgates on any Federal Road as and when required, upon approval of the President. without prejudice to the generality of sub-section (8)(a)(i) of this section, and notwithstanding the provisions of any other Act, the Authority may authorise any person, in return for undertaking such obligations as may be specified in a Private Sector Participation agreement or project agreement with respect to the design, construction, maintenance,

operation, improvement or financing of Federal Roads to enjoy specific rights as may be stated in the Private Sector Participation agreement or project agreement including the right to levy, collect and retain tolls, user fees, service charges, or any other fees, levies, charges, rates and tariffs in respect of the use of Federal Roads.

- (ii) the Authority may, by regulation, specify the conditions under which a member of the public will access the use of a Federal Road and a party involved in a Private Sector Participation with the Authority shall propose for the approval of the Authority, any tolls, user fees, service charges, or any other fees, levies, charges, rates and tariffs or any review of same in relation to the use of Federal Roads by reference to such circumstances or combination of circumstances or classification as the Authority may specify, after consultation with the party involved in a Private Sector Participation and any other relevant authority or party.
- (iii) the Authority may provide for tolls, user fees, service charges, or any other charges that shall be paid into the National Roads Fund, to be charged for a period specified or in a manner as may be determined by the Authority.
- (iv) regulations with respect to advertisements and the collection of revenue
 - (a) subject to the provisions of this section, the Authority may make with the approval of the Minister regulations: —
 - (i) for the control by means of permits or otherwise, of the display of advertisements on Federal Roads so far as it appears to the Authority to be expedient in the interest of amenity or public safety; and
 - (ii) for the imposition and collection of prescribed charges in respect of the display on Federal Roads of advertisements of such classes or description as may be prescribed.
 - (b) without prejudice to the generality of sub-section (9)(a) of this section, regulations made under this section may —
 - (i) provide for regulating the dimensions, appearance and position of advertisements which may be displayed on Federal Roads and sites on which advertisements may be so displayed;
 - (ii) provide for prohibiting the display on Federal Roads of advertisements of any prescribed class or description;
 - (iii) provide for enabling the authorised officials or persons to require the removal of an advertisement which is being displayed in contravention of the regulations, or the discontinuance of the use of the display of advertisements on any site which is being so used in contravention of the regulations.

- (iv) specify different provisions, and prescribe different charges, in respect of advertisements of different classes or descriptions and with respect to advertisements in different situations and generally with respect to different circumstances;
 - (v) impose in respect of any breach of the regulations any penalty, and may make provision as to the persons who are to be treated as displaying an advertisement for the purpose of any provision of the regulations which makes it an offence to display an advertisement in breach of the regulations; and
 - (vi) include such incidental or supplementary provisions as it appears to the Authority necessary or expedient for giving effect to the purposes mentioned in sub-section (9)(a) of this section.
- (d) the Federal Government may, subject to the provisions of this Act, collaborate with the Government of a State or a Local Government in respect of traffic on Federal Roads as may be expedient in the circumstances with regard to the prohibition of erection of headings and other forms of advertising within a distance of one hundred meters from the middle line of any road formation in the vicinity of a Federal Road or within the distance aforesaid from the middle line of the Federal Road.

(10) Power to Collaborate with State Government and Local Governments.

The Federal Government may, subject to the provisions of this Act, collaborate with the Government of a State or a Local Government in respect of traffic on Federal Roads as may be expedient in the circumstances.

Committee's Recommendation:

That the provision in Clause 15 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 15 do stand part of the Bill, put and agreed to.

PART V — FINANCIAL PROVISIONS

Clause 16: Fund of the Authority.

The Authority shall establish and maintain a fund which shall comprise:—

- (a) an initial take off grant or subvention as may be appropriated to the Authority by the National Assembly to cover one time transitioning and one time capacity building costs;
- (b) such moneys as may be appropriated to the Authority from time to time by the National Assembly through the national budgetary process;
- (c) allocations from the National Roads Fund;
- (d) concession fees, levies and other charges imposed by the Authority;

- (e) Public Private Participation fees, toll fees, levies and other fees, levies, charges, rates and tariffs imposed on any person by the Authority or payable under any arrangement made by the Authority; and
- (f) lease, license, rents, advertisement revenue and other internally generated revenue from services or facilities provided by the Authority

Committee's Recommendation:

That the provision in Clause 16 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 16 do stand part of the Bill, put and agreed to.

Clause 17: Application of Fund of the Authority.

The Authority may from time to time apply its funds:—

- (a) to the development of the Federal Road Network and its operations for road management, construction, rehabilitation, reconstruction and maintenance of roads deemed to be Federal Roads within the meaning of this Act;
- (b) to the development and maintenance of roads deemed to be federal roads within the meaning of this Act;
- (c) to the administration of the Authority;
- (d) to the paying of the emolument, allowances and benefits of members of the Board and for reimbursing members of the Board or of any Committee set up by the Board for such expenses as may be expressly authorized by the Board;
- (e) to the payment of the salaries fees or other remuneration or allowances and Pensions, and other benefits payable to the officers and other employees of the Authority, so however that no payment of any kind under this paragraph (except such as may be expressly authorized by the Board) shall be made to any person who is in receipt of emoluments from the Federal or State Government;
- (f) for the development and maintenance of any property vested in or owned by the Authority; and
- (g) for any other payment in connection with all or any of its functions under this Act.

Committee's Recommendation:

That the provision in Clause 17 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 17 do stand part of the Bill, put and agreed to.

Clause 18: Borrowing Powers, Gifts, etc.

- (1) The Authority may, with the consent of the Minister responsible for Finance, borrow such money as the Board may require in the exercise of its functions under this Act.

- (2) The Authority may with the consent of the Minister and in consonance with any relevant agency of government and any laws, guidelines or rules relating thereto raise and issue infrastructure bonds for the purpose of its objectives under this Act.
- (3) The Authority may accept gifts, grants of money, aid or other property from national, bilateral or multilateral organizations and upon such terms and conditions as may be agreed upon between the donor and the Authority provided that any conditions attached to such gifts are not inconsistent with the objectives and functions of the Authority under this Act.

Committee's Recommendation:

That the provision in Clause 18 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 18 do stand part of the Bill, put and agreed to.

Clause 19: Reports, Budgets and Audited Accounts.

The Board shall:—

- (a) receive and review annual reports from the management of the Authority and submit same to the President and the National Assembly, through the Minister in the first quarter of every year and the report shall be on the activities and performance of the Authority during the immediately preceding calendar year, and shall include a copy of the audited accounts of the Authority for that calendar year.
 - (b) submit not later than four (4) months to the end of each year to the Minister an estimate of the expenditure and income of the Authority for the next succeeding year; and
 - (c) keep proper accounts of the Authority in respect of each year and proper records in relation thereto and shall cause the accounts to be audited not later than three (3) months after the end of each year by professionally qualified and licensed auditors appointed by the Board with the approval of the Auditor-General of the Federation.
- (2) The Authority shall —
- (a) consult with the Ministry in respect of long term strategic development plans and policy guidance, and Budget availability, and supplementary donor financing;
 - (b) consult with the National Roads Fund in respect of finance and funding availability for routine and preventative maintenance and road safety improvement works;
 - (c) using its Road Asset Management System, prepare, maintain and monitor national development objectives, prioritization criteria and performance expectations in accordance with the provisions set out in the Schedule II of this Act; and
 - (d) develop, maintain and deliver reporting regimes that are outcome oriented, and evidence based and that meets the needs of its funding agencies.

Committee's Recommendation:

That the provision in Clause 19 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 19 do stand part of the Bill, put and agreed to.

PART VI — REGULATION OF ROAD SECTOR

Clause 20: Role of the Minister.

- (1) The Minister shall:—
 - (a) formulate, determine and monitor the general policy for the road sector in Nigeria to ensure, amongst others, the utilization of the sector as a platform for the economic and social development of Nigeria;
 - (b) provide general policy guidelines, specifications and standards for the construction, reconstruction, rehabilitation and maintenance of Federal Roads in Nigeria; and
- (2) The Minister may give directives to the Authority relating to the performance by the Authority of any of its functions under this Act provided that such directives are not inconsistent with the objectives and functions of the Authority under this Act.
- (3) The Minister shall prior to the formulation or review of policies for the roads sector, consult with and have due regard to the representations of relevant stakeholders in the sector, including, but not limited to, the Authority, industry participants and the general public.

Committee's Recommendation:

That the provision in Clause 20 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 20 do stand part of the Bill, put and agreed to.

PART VII — REGULATION OF ROAD SECTOR

Clause 21: Establishment of the Road Sector Regulator.

- (1) There shall be established by an Act of the National Assembly a regulator for the road sector to be the Road Sector Regulator
- (2) The Road Sector Regulator shall be responsible for matters relating to the economic and safety regulation and supervision of the road sector in Nigeria and shall have the functions, powers and duties as may be conferred under this Act or any other Act any of which it shall exercise particularly where it determines that there is a failure in the operation or provision of services or facilities in the road sector; or where and when for any other reason it deems it necessary or relevant, and to such extent that it shall so determine.
- (3) Where upon the commencement of this Act or at any time thereafter, a road sector or transport sector regulator is established by an Act of the National Assembly to exercise the powers and perform the functions of the Road Sector Regulator stipulated under this Act or any other Act, then that road sector regulator shall have the functions, powers and duties of the Road Sector Regulator except insofar as the Act of the National Assembly establishing the road or transport sector regulator adopts, preserves, transfers or transitions to such a body or to any other body.

Committee's Recommendation:

That the provision in Clause 21 be retained (*Senator Kabiru I. Gaya — Kano South*) — Agreed to.

Question that Clause 21 do stand part of the Bill, put and agreed to.

Clause 22: Functions of the Road Sector Regulator.

- (1) The Road Sector Regulator shall have the following functions with respect to the regulation and supervision of the road sector:—
 - (a) create a regime for the organisational supervision of the operations of the Authority or any agency within the road sector in their function as bodies managing public assets and delivering public services for which it must be accountable;
 - (b) create a regime for the economic regulation of the road sector;
 - (c) supervise regulatory activities within the road sector with regards to safety in relation to the activities of the Authority, or any agency responsible for road safety;
 - (d) liaise with the agency responsible for road safety to make regulations to ensure that the road operators, road service providers, licensees, road users, concessionaires and parties involved in Private Sector Participation or any other person utilise the roads in the safest possible manner;
 - (b) protecting and promoting the interests of customers and road users against unfair practices by the Authority, road operators and road service providers including but not limited to matters relating to charges and tariffs and for the availability and access to quality road services in accordance with the provisions of this Act;
 - (c) promoting equitable and fair competition in the road sector and protection of road operators and road service providers from abuse of market power or anti-competitive and unfair practices by other road operators and road service providers;
 - (d) monitoring and reporting on the degree to which favourable conditions for competition are present in the market for road services.
 - (e) encouraging and promoting cooperation amongst road operators, road service providers, parties involved in Private Sector Participation, concessionaires, licensees, road users, or any other person utilising the roads and providing regulatory guidelines thereon;
 - (f) examining and resolving complaints objections and disputes filed by or existing between or amongst the Authority, road operators, road service providers, parties involved in Private Sector Participation, concessionaires, licensees, road users or any other person involved in the road sector using such dispute-resolution methods as the Road Sector Regulator may determine from time to time;

- (g) advising the Authority and the Minister on the formulation of general policies for the road sector and generally on matters relating to the road sector in the exercise of the Authority's and the Minister's functions and responsibilities under this Act;
 - (h) implementing the regulatory policies issued by the federal government in respect of the road sector and executing all such other functions and responsibilities as are given to the Road Sector Regulator under this Act or are incidental or related thereto;
 - (i) facilitating the financial viability of the road sector and related services and facilitating the incentive for efficient long-term investment in Nigeria for the provision of road services and road infrastructure;
 - (j) supervising and monitoring of performance standards and indices relating to the quality of road services having regard to the best international practices and standards;
 - (k) generally advising and assisting stakeholders in the road sector with a view to the development of the industry and attaining the objectives of this Act;
 - (l) ensuring the harmonization of road standards and practices across the country; and
 - (m) facilitating liaison between road operators, road service providers, concessionaires, licensees and other persons and agencies charged with responsibility for regulating the transport sector in order to promote intermodalism.
- (2) The Road Sector Regulator shall have and perform such other functions as may be conferred upon it under any other Act.

Committee's Recommendation:

That the provision in Clause 22 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 22 do stand part of the Bill, put and agreed to.

Clause 23: Powers of the Road Sector Regulator.

- (1) The Road Sector Regulator shall, in order to fulfill its functions under this Act have the power —
 - (a) to supervise and ensure that any agency responsible for road safety carry out their responsibilities and adhere to the relevant laws and regulations guiding their activities;
 - (b) to regulate passenger and haulage fares, tariffs and charges in accordance with the provisions of this Act;
 - (c) to carry out inquiries, tests, audits or investigations, including technical and management audits and take such other steps as may be necessary to monitor the activities of the Authority, road operators, road service providers, parties involved in Private Sector Participation, concessionaires, licensees and other persons and agencies and to secure and enforce compliance with this Act;

- (d) to establish customer protection measures in accordance with the provisions of this Act;
 - (e) where it considers it to be in the public interest, to compel a road operator, road service provider, parties involved in Private Sector Participation concessionaires, licensees and other persons and agencies to provide any information or any document concerning its activities notwithstanding that such information or document may contain business secrets; provided that any such information or documents shall be restricted to those which a person can be legally compelled to produce as evidence by a court of law in Nigeria;
 - (f) to publish information received in the course of exercising its powers and functions under this Act or to require a road operator or road service provider, parties involved in Private Sector Participation, concessionaires, licensees and other persons and agencies to publish certain information if it is satisfied that the publication is consistent with the objects of this Act provided that the Road Sector Regulator shall consider the commercial interests of the parties to whom the information relates before publishing the information;
 - (g) to undertake consultations with the public, road operators, road service providers, parties involved in Private Sector Participation, concessionaires, licensees, road users, other persons and agencies and industry stakeholders within the road sector affected by or with an interest in its directions and to consider any responses to the consultations;
 - (h) provide for the licensing of road operators and road service providers, parties involved in Private Sector Participation, concessionaires, licensees and other persons and agencies carrying out commercial activities on Federal Roads; and
 - (i) to do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Act.
- (2) Subject to this Act, the Road Sector Regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions and to enable it to achieve its objectives under this Act and under any relevant legislation.

Amendment Proposed:

Immediately after the words "Subject to" in line 1, *insert* the words "the provision of" (*Senator Bala Ibn Na'Allah — Kebbi South*).

Question that the amendment be made, put and agreed to.

- (3) In furtherance of its functions and powers, the Road Sector Regulator shall make such orders, regulations or subsidiary legislation as it shall deem necessary for the performance of its functions and exercise of its powers and to enable it to achieve its objectives and to give full force and effect to the provisions of this Act and the enforcement of such regulations under this Act and under any relevant legislation (*Senator Kabiru I. Gaya — Kano South*).

Question that Clause 23 as amended do stand part of the Bill, put and agreed to.

PART VIII — ROADS PLAN

Clause 24: Preparation of Roads Plan

- (1) In consultation with the Ministry, the National Roads Fund and any relevant agency, the Authority shall prepare, maintain and monitor a Five-Year Rolling Road Maintenance and Development Plan (hereinafter referred to as the "Plan") for the fulfillment of its responsibilities under this Act; and to meet national development objectives, prioritisation criteria and performance expectations in accordance with the provisions set out herein.
- (2) The Plan shall —
 - (a) be broken into yearly action programmes and shall contain such information, amongst others, that would allow a determination of the Authorities proposed activities over the Plan period in respect of each element of the Federal Road Network.;
 - (b) constitute the basis for determining the financial and physical resource needs and proposed modes of its sourcing; the likely outcome from the implementation of the Plan and key performance indicators by which its implementation performance can be measured and monitored;
 - (c) identify year by year, road sections that become no longer maintainable and due for rehabilitation and upgrading.
 - (d) form the basis of annual budgetary proposals in the National Budgetary process.
- (3) The Authority shall submit the Plan to the National Roads Fund Board within four (4) months before the start of the Authority's financial year for the year of submission, in such form and containing such details as the National Roads Fund Board shall specify, outlining a comprehensive plan of action for the roads under the jurisdiction of the Authority and the estimated costs of every activity required to implement the plan of action.
- (4) The Authority shall submit the Plan to the National Roads Fund Board within six months of its establishment in the case of the first Plan and within four months before the start of the Authority's financial year for the year of submission in the case of subsequent Plans, together with its five-year funding programmes and the database for the service level for the Plan period relative to the road network for which the Authority has responsibility.
- (5) The National Roads Fund Board shall review the Plan and the funding submissions of the Authority against set financial, economic and social criteria for the achievement of the objects of the National Roads Fund Board; and shall upon satisfying itself of the integrity of the Plan and the submissions of the Authority, approve the programme contained in the Plan for funding from the Roads Fund.
- (6) The Authority shall keep the Plan under review and update it annually, with appropriate input and approval of the National Roads Fund Board, within the five (5) year rolling plan cycle.

Committee's Recommendation:

That the provision in Clause 24 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 24 do stand part of the Bill, put and agreed to.

PART IX — OFFENCES AND PENALTIES**Clause 25: Offences and Penalties.**

Except as otherwise provided under any other section of this Act, any person who willfully —

- (a) prevents or obstructs any authorised officer, agent or person in the performance of his function under this Act;
- (b) fails to pay to any officer, agent or person empowered to collect any fees, levies, charges, rates and tariffs payable under this Act;
- (c) withholds any fees, levies, charges, rates and tariffs paid under this Act;
- (d) does any other fraudulent act or thing relating to the issue of receipts or collection of fees, levies, charges, rates and tariffs under this Act.

shall be guilty of an offence and liable on conviction to a fine not less than Two Hundred Thousand Naira (N200,000.00) or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment.

Committee's Recommendation:

That the provision in Clause 25 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 25 do stand part of the Bill, put and agreed to.

PART X — MISCELLANEOUS**Clause 26: Application of the Public Protection Act.**

Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against an officer or employee of the Authority.

Committee's Recommendation:

That the provision in Clause 26 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 26 do stand part of the Bill, put and agreed to.

Clause 27: Notices.

A notice, summons or other documents required or authorized to be served upon the Authority under the provisions of this Act or any other enacted law may be served by delivering it to the Managing Director or by sending it by registered post addressed to the Managing Director at any of the principal offices of the Authority or by electronic means through e-mail or website of the Authority.

Committee's Recommendation:

That the provision in Clause 27 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 27 do stand part of the Bill, put and agreed to.

Clause 28: Legal Proceedings.

No civil action shall be commenced against the Authority or its authorised officers before the expiration of a period of 30 days after written notice of intention to commence the suit shall have been served on the Authority by the intending plaintiff or his agent, and the notice shall clearly and explicitly state the:—

- (a) cause of action;
- (b) particulars of the claim;
- (c) name and place of abode of the intending plaintiff; and
- (d) relief sought.

Committee's Recommendation:

That the provision in Clause 28 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 28 do stand part of the Bill, put and agreed to.

Clause 29: Indemnity of Officers of the Authority

A member of the Board, the Managing Director, any officer or employee of the Authority shall be indemnified out of the assets of the Authority against any liability incurred by him in defending any proceeding, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, where such proceeding is brought against him in his capacity as a member of the Board, the Managing Director, officer or an employee of the Authority.

Committee's Recommendation:

That the provision in Clause 29 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 29 do stand part of the Bill, put and agreed to.

Clause 30: Regulations

The Board may, with the approval of the Minister make such regulations as in its opinion, are necessary or expedient for giving full effect to the provisions of the Act and for the due administration of its provisions.

Committee's Recommendation:

That the provision in Clause 30 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 30 do stand part of the Bill, put and agreed to.

Clause 31: Confidentiality.

- (1) A member of the Board, or the Board or the Managing Director or any other officer or employee of the Authority shall:—
 - (a) not, for his personal gain, make use of any information which has come to his knowledge in the exercise of his power or is obtained by him in the ordinary course of his duty as a member of the Board or as a Managing Director, officer or employee of the Authority;
 - (b) treat as confidential any information which has come to his knowledge in the exercise of his power or is obtained by him in the performance of his duties under this Act;

- (c) not disclose any information referred to under paragraph (b) of this sub-section, except where required to do so by a Court or in such other circumstances as may be prescribed by the Board from time to time.
- (2) Any person who contravenes any of the provisions of sub-section (1) of this section commits an offence and shall be liable on conviction to a fine of not less than N500,000.00 or imprisonment for a term not exceeding two years or both such fine and imprisonment.
- (3) Any person who contravenes any of the provisions of sub-section (1) of this section commits an offence and shall be liable on conviction to a fine of not less than Five Hundred Thousand Naira (N500,000.00) or imprisonment for a term not exceeding two (2) years or both such fine and imprisonment.

Committee's Recommendation:

That the provision in Clause 31 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 31 do stand part of the Bill, put and agreed to.

Clause 32: Repeal, Savings and Transitional Provisions.

- (1) The Federal Roads Maintenance Agency (Establishment etc.) Act, 2002; the Federal Roads Maintenance Agency (Amendment, etc.) Act, 2007; the Federal Highways Act 1971 and the Control of Advertisement (Federal Highways) Act 1986 are hereby repealed.
- (2) Without prejudice to section 6 of the Interpretation Act, the repeal of the Act specified in subsection (1) of this section, shall not affect anything done under or pursuant to the Act.
- (3) Any subsidiary legislation, bye-law, regulation, order, made, issued, given or done under the repealed Acts and which are in force at the commencement of this Act, shall to the extent that their provisions are not inconsistent with any object or provision in this Act, continue to be in force and have effect as if made, issued, given or done under this Act until such a time that anything done under this Act amends, overrides, revokes or replaces it in any manner.
- (4) Every instrument, contract, requirement, certificate, appointment with tenure, notice, direction, decision, authorization, consent, application, request or thing made, issued, given or done under the repealed Acts shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under this Act until such a time that anything done under this Act amends, overrides, revokes or replaces it in any manner.
- (5) The Statutory functions, rights, interest, obligations and liabilities of the Federal Roads Maintenance Agency and the Department of the Ministry responsible for construction, rehabilitation and maintenance of Federal Roads before the commencement of this Act under any contract, rights of way, concessions or instrument shall by virtue of this Act be deemed to have been assigned to, transferred or vested in the Authority.

- (6) Upon the Commencement of this Act, such number of persons employed by the Agency as may be required by the Authority shall be deemed to be staff of the Authority and shall be transferred to the service of the Authority in line with the provisions contained in section 8 of Schedule III to this Act.
- (7) The Minister may within the twenty-four (24) months after the commencement of this Act, by order published in the Gazette, make additional saving or transitional provisions in order to give better effect to the objectives of this section.

Committee's Recommendation:

That the provision in Clause 32 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 32 do stand part of the Bill, put and agreed to.

Clause 33: Interpretation.

In this Act except the context otherwise requires —

"Advertisement" means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, which is employed wholly or partly for the purposes of advertisement, announcement or direction, including any hoarding or similar structure used, or adapted for use, for the display of an advertisement or a message that is not solely serving a function that is traffic and road use related;

Question: That the word "Advertisement" be as defined in the Interpretation to this Act, put and agreed to.

"Authority" means the Federal Roads Authority established under section 3 of this Act;

Question: That the word "Authority" be as defined in the Interpretation to this Act, put and agreed to.

"base camps" means the outfit or unit office established by the Authority along Federal Roads;

Question: That the words "base camps" be as defined in the Interpretation to this Act, put and agreed to.

"Board" means the Governing Board of the Authority established under section 4 of this Act;

Question: That the word "Board" be as defined in the Interpretation to this Act, put and agreed to.

"Federal Road(s)" means Federal trunk roads, roads and bridges owned by the Federal Government including:—

- a. land acquired or existing as a Federal road or highway pursuant to any legislation, subsidiary legislation, bye-law, declaration or order made before the commencement of this Act and gazetted in the Federal Gazette;
- b. land acquired under this Act for the purpose of Federal Roads;

- c. Federal trunk roads within the context of item 63 of part 1 of the second schedule to the Constitution of the Federal Republic of Nigeria 1999

Question: That the words "Federal Roads" be as defined in the Interpretation to this Act, put and agreed to.

"Federal Road Network" means Federal Roads (inclusive of Rights of Way, Road Reserve, bridges, and road furniture)

Question: That the word "Federal Road Network" be as defined in the Interpretation to this Act, put and agreed to.

"geo-political zones" means the six geo-political units of the Federation; "member" means a member of the Board and includes the Chairman; "Minister" means Minister in charge of Federal Road Infrastructure; "Ministry" shall be construed accordingly;

Question: That the word "Geo-political zones" be as defined in the Interpretation to this Act, put and agreed to.

"Person" shall mean a natural person, body corporate, partnership, joint venture, co-operative, trust, or other entity that is recognized by the law as a distinct body with the right to enter into contracts and to own property;

Question: That the word "Person" be as defined in the Interpretation to this Act, put and agreed to.

"Private Sector Participation" means a business relationship procured through a contractual agreement whether by means of a concession, Public-Private Partnership, joint venture, or other agreement between a government agency and one or more private sector entities for the purpose of the provision of a project, service or facility by the private sector that will serve the public;

Question: That the words "Private Sector Participation" be as defined in the Interpretation to this Act, put and agreed to.

"President" means the President of the Federal Republic of Nigeria;

Question: That the word "President" be as defined in the Interpretation to this Act, put and agreed to.

"Road"/"road(s)" means Federal Roads;

Question: That the word "Road/road(s)" be as defined in the Interpretation to this Act, put and agreed to.

"Road Asset Management System" means a central data repository that stores, processes, displays and reports information on the assets within the road network to include road inventory and condition, bridge inventory and condition, classified traffic counts and axle loadings for road agencies to manage their road networks transparently in an efficient and effective manner;

Question: That the word "Road Asset Management System" be as defined in the Interpretation to this Act, put and agreed to.

"Road Reserve" means the land means the land adjacent to the road carriageway, to a width of 60meters as specified in road regulations and belonging to the Federal Government of Nigeria and deemed part of the Federal Road;

Question: That the word "Road Reserve" be as defined in the Interpretation to this Act, put and agreed to.

"Road Sector Regulator" shall mean any person, body, agency, organization specifically designated by an Act of the National Assembly with the functions and powers of being a multi- sector transport regulator responsible for the regulation of matters which includes the economic and safety regulation of the road sector to such extent as determined under this Act or any other Act.

Question: That the word "Road Sector Regulator" be as defined in the Interpretation to this Act, put and agreed to.

Committee's Recommendation:

That the provision in Clause 33 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 33 do stand part of the Bill, put and agreed to.

Clause 34: Short Title

This Act may be cited as the Federal Roads Bill, 2017.

Committee's Recommendation:

That the provision in Clause 34 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 34 do stand part of the Bill, put and agreed to.

FIRST SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD

PROCEEDINGS OF THE BOARD

[SECTION 3(4)]

1. Subject to this Act and section 27 of the Interpretation Act (which provides for decisions of a statutory body to be taken by a majority of its members and for the person presiding at any meeting, when a vote is ordered to have a second or casting vote), the Board may make standing orders regulating its proceedings or that of any of its Committees.
2. At every meeting of the Board, the Chairman shall preside and in his absence the members present at the meeting shall appoint one of their members to preside.
3. The quorum at a meeting of the Board shall consist of the Chairman or, in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule, and five other members.
4. The Board shall for the purpose of this Act, meet not less than three times in each year and subject, thereto, the Board shall meet whenever it is summoned by the Chairman, and if required to do so, by notice given to the Chairman by not less than eight members, the Chairman shall summon a meeting of the Board to be held within 14 days from the date on which the notice is given.

5. Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him to the Board for such period as it thinks fit, but a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.
6.
 - (a) Subject to its standing orders, the Board may appoint such number of standing and ad hoc Committees as it thinks fit to consider and report on any matter with which the Authority is concerned.
 - (b) A committee appointed under this paragraph shall:—
 - (i) consist of such number of persons (not necessarily members of the Board as may be determined by the Board), and a person other than a member of the Board shall hold office on the Committee in accordance with the terms of his appointment; and
 - (ii) be presided over by a member of the Board.
 - (c) The quorum of any Committee set up by the Board shall be as determined by the Board.
 - (d) A decision of a Committee of the Board shall be of no effect until it is confirmed by the Board.

MISCELLANEOUS

7. The fixing of the seal of the Authority shall be authenticated by the signature of the Chairman, the Managing Director, or any other person generally or specifically authorized by the Board to act for that purpose.
8. Any contract or instrument which, if made by a Person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the authority by the Managing Director or by any other person generally or specifically authorized by the Board to act for that purpose.
9. Any document purporting to be a contract, instrument or other document duly signed or sealed on behalf of the Authority shall be received in evidence and shall, unless the contrary is proved, be presume without further proof to have been so signed.
10.
 - (1) The validity of any proceedings of the Board or of any of its Committees shall not be affected by:—
 - (a) any vacancy in the membership of the Board, or Committee; or
 - (b) any defect in the appointment of a member of the Board or Committee.

Question that the provisions of First Schedules stand part of this Bill— Agreed to.

SECOND SCHEDULE

EXECUTIVE OF ROAD MANAGEMENT TASK FORCE; THE EXECUTION OF ROAD MANAGEMENT FUNCTION

1.
 - (i) The Board shall carry out its road management function through executing Agencies which may be either of road management consultants, road agencies or agents of local government authorities.

- (ii) It shall be the duty of the Board to prepare and publish guidelines and procedures as to the manner of the discharge of these functions by these executing agencies and the Authority shall ensure that these guidelines and procedures are such as to ensure transparent, accountable and cost-effective performance of their duties by these agencies.
- 2.
 - (i) Without prejudice to the foregoing, the guidelines and procedures shall address issues relating to preparation and approval of plans and programmes, procurement of works, financial management of works, disbursement of funds.
 - (ii) It shall be the duty of the Authority to ensure awareness and understanding by the road agencies of these guidelines and procedures and their due implementation.
- 3. Any of the above executing agencies may be engaged by the Authority to prepare and submit to the Authority annual work plans covering the road network under its responsibility, not later than four months before the beginning of the next fiscal year.

PREPARATION AND ADOPTION OF ANNUAL WORK PLANS

- 4.
 - (i) The Board will prepare and adopt manuals of procedures defining its way of collaboration with the different types of executing agencies, including financial management systems, maintenance management systems, management information systems, procurement and disbursement procedures, etc. to be adopted by the executing agencies.
 - (ii) The Authority shall execute its duty with due regard to environmental issues.

Question that the provisions of Second Schedules stand part of this Bill— Agreed to.

THIRD SCHEDULE

TRANSFER OF ASSETS

- 1. All Assets and funds which immediately before the commencement of this Act were vested in the Federal Roads Maintenance Agency set up under the Federal Roads Maintenance Agency (Establishment etc.) Act, 2002 and the Federal Roads Maintenance Agency (Amendment, etc.) Act, 2007 "the Agency" and the department of the Ministry responsible for construction, rehabilitation and maintenance of Federal Roads shall by virtue of this Act be vested in the Federal Roads Authority. Provided that nothing in this Act shall be construed to preclude the power of the Ministry responsible for roads from engaging in the construction of roads.
- 2. All references in this schedule to the Agency shall mean and include the department of the Ministry of Works responsible for construction, rehabilitation and maintenance of Federal Roads.
- 3. All bonds, hypothecations, securities, deeds, contracts, instruments, documents, and working arrangements with respect to the assets transferred, that subsisted immediately before the commencement of this Act and to which the Agency was a party shall be as fully effective and enforceable against or in favour of the Authority as if, instead of the Agency, the Authority had been named therein.

4. Any cause of action or proceeding which existed or was pending with respect to the assets transferred by or against the Agency immediately before commencement of this Act, shall be enforced or continued, as the case may be, by or against or in favour of the Authority in the same way that it might have been enforced or continued by or against the Agency had this Act not been passed.
5. No action or other proceeding shall be commenced against the Authority in respect of an employee or asset that has been transferred to the Authority, where, if there had been no transfer, the time for commencing the action or other proceeding would have expired.
6. Nothing in this Act and nothing done as a result of a transfer under sub-paragraph (1) of this paragraph shall create any new cause of action in favour of:—
 - (a) a holder of a debt instrument that was issued by the Agency before the commencement of this Act; and
 - (b) a party to a contract with the Agency that was entered into before the commencement of this Act.
7. Any guarantee or surety-ship given or made by the Federal Government or any other person in respect of any debt or obligation of the Agency, and which was effective immediately before the transfer of the principal debt or obligation, shall remain fully effective against the guarantor or surety on and after the transfer date in relation to the payment of the debt or the performance of the obligation, as the case may be, by the Authority to which the principal debt or obligation was transferred.

TRANSFER OF EMPLOYEES

8.
 - (i) Upon the Commencement of this Act, such number of persons employed by the Agency as may be required by the Authority shall be deemed to be staff of the Authority and shall be transferred to the service of the Authority on terms not less favourable than those enjoyed immediately prior to the transfer.
 - (ii) The service rendered by an employee transferred pursuant to sub-paragraph (1) of this paragraph to the Agency shall be deemed to be service with the Authority for the purpose of determining employment related entitlements as specified in the relevant laws of employment in Nigeria.
 - (iii) Until such time as conditions of service are drawn up by the Authority:—
 - (a) the terms and conditions of service applicable to employees of the Agency shall continue to apply to every person transferred to the Authority as if every such person were still in the service of the Agency; and
 - (b) the Authority shall continue to contribute towards any pension scheme to which the Agency was contributing in respect of persons in the employ of the Agency prior to the transfer date.
 - (iv) Nothing in this paragraph shall operate so as to prevent any employee of the Agency from resigning or being dismissed from service.
 - (v) Nothing in this paragraph shall operate so as to create an entitlement for any employee of the Agency to become an employee of the Authority.

DIRECTIONS TO THE AGENCY

9. (i) The Minister may give the members of the Board of the Agency directions in writing in order to ensure the proper transfer of the assets of the Agency to the Authority and the Agency shall without delay, comply with every such direction.
- (ii) Without derogating from sub-paragraph (1) of this paragraph, directions given under that sub-paragraph may provide for:—
- (a) the cessation of all or any of the functions of the Agency;
 - (b) the termination of any contract entered into between the Agency and any person, provided that no such direction shall authorise the Agency to commit an unlawful breach of any such contract; and
 - (c) the production of any report and the provision of any information concerning the conduct of the Agency or the members of the board of the Agency or anything done by or on behalf of the Agency or the members of the Agency

Question that the provisions of Third Schedules stand part of this Bill— Agreed to.

Chairman to report Bill.

(SENATE IN PLENARY)

The Deputy Senate President reported that the Senate in the Committee of the Whole considered Report of the Committee on Works on Federal Roads Authority (Establishment, etc.) Bill, 2017 and approved as follows:

Clauses 1- 22	—	As Recommended
Clause 23	—	As Amended
Clauses 24- 35	—	As Recommended
Schedules 1-3	—	As Recommended

Question: That the Senate do approve the Report of the Committee of the Whole — *Resolved in the Affirmative.*

Motion made: That the Bill be now Read the Third Time (*Senate Leader*).

Question put and agreed to.

Bill accordingly Read the Third Time and Passed.

11. Committee on Works:

Report on the National Roads Fund (Establishment, etc.) Bill, 2017 (SB. 218):

Motion made: That the Senate do consider the Report of the Committee on Works on National Roads Fund (Establishment, etc.) Bill, 2017 (*Senator Kabiru I. Gaya — Kano South*).

Question put and agreed to.

Report presented.

Consideration of Report deferred for further Legislative Action.

- 12. Animal Health and Husbandry Technologies (Registration, etc) Bill, 2017 (HB. 320) - Concurrence:**

Consideration of Bill deferred to another Legislative Day.

- 13. Nigerian Oil and Gas Industry Content Development Act, 2010 (Amendment) Bill, 2017 (HB.99 & 118) - Concurrence:**

Consideration of Bill deferred to another Legislative Day.

- 14. Compulsory Treatment and Care of Victims of Gunshots Bill, 2017 (HB. 119) - Concurrence:**

Consideration of Bill deferred to another Legislative Day.

- 15. Corporate Manslaughter Bill, 2017 (HB. 273) - Concurrence:**

Consideration of Bill deferred to another Legislative Day.

- 16. National Child Protection and Enforcement Agency Bill, 2017 (HB. 127) - Concurrence:**

Consideration of Bill deferred to another Legislative Day.

- 17. Adjournment:**

Motion made: That the Senate do now adjourn till Friday, 9th June, 2017 at 10:00 a.m. (*Senate Leader*).

Adjourned accordingly at 12:48 p.m.

Ike Ekweremadu, CFR
Deputy Senate President,
Senate of the Federal Republic of Nigeria.