



**A REPORT OF THE FEDERAL COMPETITION AND
CONSUMER PROTECTION COMMISSION'S
INVESTIGATION INTO MISLEADING BRANDING
AND LABELLING PRACTICES AND ALLEGATIONS
OF ANTICOMPETITIVE CONDUCTS BY COCA-
COLA NIGERIA LIMITED AND THE NIGERIAN
BOTTLING COMPANY LIMITED**

EXECUTIVE SUMMARY AND FINDINGS

July 29, 2024

EXECUTIVE SUMMARY

In June 2019, the Commission became aware that Coca-Cola Nigeria Limited (Coca-Cola Nigeria) and the Nigerian Bottling Company (NBC) had produced and introduced Coke Original Taste- Less Sugar (Coke Less Sugar) to the market as a new variant of its Coca-Cola (Coke) drink, without any publicity, nor prior information to consumers. This new variant was bottled in a packaging that was nearly identical to the packaging of the Coke Original. Subsequently, in September 2019, the Commission also discovered that the Limca lemon-lime flavoured drink appeared to have two variants which are not distinguished. These which products tasted significantly different, have different compositions and nutritional value, were packaged in identical bottles, with identical brand design and the same National Agency for Food and Drug Administration and Control (NAFDAC) registration numbers. The Commission therefore commenced an investigation into the misleading labelling and branding practices of Coca-Cola Nigeria and NBC.

In January 2021, during the pendency of the investigation, the Commission received a complaint alleging that Coca-Cola Nigeria offered its products (particularly Coke) at significantly different prices in different locations across the country and that the product quality varies from location to location. This prompted the Commission to expand the scope of the investigation, and as a result, the investigation sought to determine the following issues:

1. Whether the labelling, packaging and branding of Coca-Cola products are misleading or likely to mislead consumers.
2. Whether the Companies provided misleading and or false information to the Commission.
3. Whether Coca-Cola's product pricing is indicative of an abuse of market dominance.

During the course of the investigation the Commission requested and received several documentary, visual and audiovisual information from the Companies; conducted a site visit to the NBC Abuja plant on the 2nd of August 2019; and held several meetings with the Companies, including on 11th June 2020, 26th June 2020, 6th February 2023, and 22nd June 2023. Notably, on 21st September 2020, the Commission approved a new packaging design for Coke Less Sugar which was presented by the Companies, as being sufficiently distinguished from the packaging design of Coke Original, in a bid to ensure that consumers were no longer misled. The Companies subsequently sought and received permission from the Commission to effect the changes by the third week of December 2020, however, they never eventually proceeded to implement this differentiation, and rather communicated to the Commission in January 2021 that they had made a business decision to discontinue all the Coke Original PET SKUs, while continuing to produce the variant in the Can packaging only. The Commission was however still of the opinion that this did not eliminate the potential for consumers to be misled and rather perpetuated it further. The Commission thereafter shared its preliminary investigation report with Coca-Cola Nigeria.

Subsequently, the Companies sought a meeting with the Commission, and this took place on the 6th of February 2023. At the meeting, the Companies informed the Commission of their intention to reintroduce the discontinued Coke Original variant in PET and sought the Commission's approval for a new set of designs to be used for the new production. The designs, by the Commission's assessment overlooked the progress made by the earlier approved design (on 21st September 2020) and raised the exact same concerns as the original designs which the Commission had long determined to be misleading. Therefore, the Commission declined to approve the new set of designs.

However, on 10th February 2023, the Commission discovered that the Companies had already reintroduced the Coke Original variant in PET and that the designs in respect of which approval was sought by the Companies were already being used for the production, marketing and distribution of both Coke Original and Coke Less Sugar. Not only does this deliberate and misleading action appear to ridicule the efforts of the Commission, but more significantly, it demonstrates their lack of regard for Nigerian

consumers and the law as it continues to perpetuate the deception of consumers on a larger scale. Specifically, market surveillance by the Commission discovered that a batch of Coke Original in the 35cl PET bottle which was produced on 29th January 2023 and a batch of Coke Less Sugar in 50cl PET bottle which was produced on 10th January 2023, were being sold in Victoria Island area of Lagos State. The Commission noted that these products carried the brand designs in respect of which the Companies sought approval on 6th February 2023, and that these products were produced eight days and twenty-seven days, respectively, before the request for the Commission's approval.

The Commission having considered all the issues formulated for determination, made its findings. On May 30 and 31, 2023 the Commission issued its Interim Investigation Report and an Order and Notice to Show Cause (ONSC) to the Companies. In response, via letters dated July 3, 2023, the Companies informed the Commission about the commencement of their efforts to enable consumers to clearly distinguish the two Coca-Cola Original Taste variants. The Commission therefore set out to assess the sufficiency of these efforts to adequately sensitize consumers about how to distinguish between the two products, and also compare the efforts made by the sensitisation campaign which they tagged "Coke with Meals", to other campaigns run by the Companies. The Commission requested and received information from the Companies regarding the budget and implementation details of the campaign as well as other relevant campaigns. By the Commission's assessment, the efforts made by the Companies with respect to the "Coke with Meals" campaign pale in comparison when compared to efforts taken in respect of other campaigns, and were also insufficient to adequately alert consumers to the relevant distinguishing factors between the two variants.

The Commission's findings include:

- a) That Companies knowingly and intentionally applied a trade description to the Coca-Cola Less Sugar variant that could reasonably mislead consumers as to the nature and feel of the drink, in such a manner that consumers would assume that the product was the Coca-Cola Original Taste variant, in violation of Section 116 (1) and (2) of the FCCPA.

- b) That NBC, by producing and distributing the two variants of Limca Lime-Lemon flavoured drink in the same packaging and brand design, and using the same NAFDAC registration number for both products, impliedly and falsely communicated to the consumer that both products are the same and thus misled and deceived consumers, in violation of Section 123 (1) (a), (b) and (c) of the FCCPA and Regulation 2 (a) of the National Agency For Food And Drug Administration and Control Act (2004), Pre-packaged Food (Labelling) Regulations.
- c) That NBC, on at least four occasions, provided false and misleading information to the Commission, in violation of Section 112 of the FCCPA; and That Coca-Cola Nigeria, on at least one occasion, misled the Commission, in violation of Section 112 of the FCCPA.
- d) That the available pieces of information regarding the pricing patterns of Coca-Cola products are, by themselves, insufficient to demonstrate any abuse of market dominance, but they however raise some concerns around the pricing in Ebonyi State in 2019. Though concerning, the astronomical price increases observed in Ebonyi State cannot (by itself) sustain a finding of excessive pricing, as several factors must be considered in determining whether there was excessive pricing. Therefore, the Commission may conduct further investigations into the issue of whether Coca-Cola Nigeria's product pricing is indicative of an abuse of market dominance.

Having therefore extensively considered all the issues, the Commission concludes this investigation by the issuance of this Report and Order & Notice to the Companies.

FINDINGS AND RESPONSIBILITIES

This section of the report provides a collation of all findings in this report and ascribes responsibility to either or both companies.

Determining Responsibility

Though both companies have during this investigation presented a joint front as being collectively responsible for developing, branding, marketing and sale of the relevant products, there are clear lines of responsibility that relate to the violations identified by the Commission during the investigation.

To this end, the statement on the Nigerian Bottling Company's (NBC) website is very instructive on where those responsibilities lie. It states:

*"The **Coca-Cola Company** owns, develops and markets its brands with the end consumer. We [**NBC**] are responsible for producing, distributing, and selling these beverages. We work together to ensure that we have the right portfolio for our markets and to ensure excellent, efficient execution."¹*

Thus, the Commission takes these identified roles into consideration in assigning responsibility for action in respect of the violations identified by this investigation. Hence, the Commission determined that violations relating to production, distribution and sale are ascribable to the NBC, while violations relating to brand designs and marketing/advertising are ascribable to Coca-Cola Nigeria, and where the responsibilities overlap or the violation cuts across both sides of responsibilities, the Commission ascribed the violation to both companies. Thus, the Commission finds as follows with respect to the issues below:

¹ <https://ng.coca-colahellenic.com/en/about-us> . underlines, bold and [insertions] are by the Commission.

Issue 1: Whether the labelling, packaging and branding of Coca-Cola products are misleading or likely to mislead consumers.

1. **The Companies** knowingly and intentionally applied a trade description to the Coca-Cola Less Sugar variant that could reasonably mislead consumers as to the nature and feel of the drink, in such a manner that consumers would assume that the product was the Coca-Cola Original Taste variant, in violation of Section 116 (1) and (2) of the FCCPA. The Commission received multiple complaints associated with this, and as such also concludes based on the evidence, that consumers were indeed, and as a matter of fact misled by the false and inaccurate portrayal of Coke Original Taste Less Sugar as Coke Original Taste. This portrayal, enterprise and infringement commenced in October 2018, and continues to date.
2. **The Companies** could reasonably determine, and did in fact become aware that branding the Coca-Cola Less Sugar variant in a manner so identical to the Coca-Cola Original Taste variant is likely to mislead consumers as to the actual content and feel of the product, yet, the Companies knowingly supplied, displayed, advertised and distributed these products with the misleading labels to consumers, in violation of Section 116(3)(a) of the FCCPA. This violation which commenced in October 2018, persists till date.
3. That **Coca-Cola Nigeria** in pursuance of trade and for the purpose of promoting and marketing Coca-Cola Less Sugar made advertorial (including video and poster) presentations of the 1 litre bottle, in manners that are misleading and which falsely represent that the product is the same as the Coca-Cola Original Taste variant in a new larger bottle. This false representation is deceptive and reasonably misleading with respect to the product's nature, content and taste, in violation of Section 123 (1) (a), (b) and (c) of the FCCPA.
4. **The Companies** adopted unfair tactics in marketing the Coke brand, by intentionally distributing and marketing Coca-Cola Less Sugar in packaging that

is similar and mostly indistinguishable from that of Coca-Cola Original, thereby deliberately misleading consumers into purchasing the Coca-Cola Less Sugar variant when their intention, and understanding of what they are purchasing is the Coca-Cola Original variant in violation of Section 124 (1) (a) of the FCCPA. This violation commenced in October 2018, persists till date.

5. That **NBC** having consistently produced and distributed the zero sugar variant of Limca Lime-Lemon flavoured drink for at least a period of 10 months, in its usual packaging, could reasonably determine that using the same packaging for, and applying an identical label to the 50:50 sugar variant was misleading. The Commission finds that **NBC** deliberately engaged in this deceit in an effort to surreptitiously re-introduce the 50% sugar variant to the market, after experimentation with the zero sugar variant. The application of such deceptive trade description violates the provisions of Sections 17(g), 116 (1) and (2) of the FCCPA.
6. That **NBC**, having applied the deceptive trade descriptions to the two variants of Limca Lime-Lemon flavoured drink, then proceeded to supply these products to consumers, knowing that such deceptive labelling is likely to mislead consumers as to the contents of the bottle. This conduct violates the provision of Section 116(3) of the FCCPA.
7. That **NBC**, by producing and distributing the two variants of Limca Lime-Lemon flavoured drink in the same packaging and brand design, and using the same NAFDAC registration number for both products, impliedly and falsely communicated to the consumer that both products are the same and thus misled and deceived consumers, in violation of Section 123 (1) (a), (b) and (c) of the FCCPA and Regulation 2 (a) of the National Agency For Food And Drug Administration and Control Act (2004), Pre-packaged Food (Labelling) Regulations.

8. That **NBC** produced and distributed two variants of Limca Lime-Lemon flavoured drink – zero sugar variant and the 50:50 sugar variant, in identical packaging and label design. The producing and supplying these two different products in such a deceptive manner is an unfair marketing tactic in violation of Section 124 (1) (a) of the FCCPA.
9. When the deliberate, extensive and carefully orchestrated efforts made by the Companies to clearly distinguish Coke Zero from Coke Original, and additional efforts to adequately sensitize consumers on how to distinguish them, are compared with the misrepresentation of Coke Less-Sugar as Coke Original, it becomes clear that the latter is a deliberate business strategy and a demonstration of bad faith.
10. Upon regulatory action, intervention, engagement and accommodation, the Companies became acutely aware of these infringements, and the regulatory view based on evidence, but instead of concluding appropriate steps to modify this behaviour and ongoing infringement, declined the opportunity, and instead chose to modify its business in a manner that allows them to continue the misleading enterprise in further demonstration of a disinclination to transparently inform consumers about the differences in their products and further demonstration of bad faith. The Companies having agreed with the Commission sought approval for more differentiated and sufficiently descriptive labels, informed the Commission of a start date for the differentiation, and sought a moratorium of 90 days to exhaust existing stock and inventory, but thereafter abandoned this effort.

Issue 2: Whether the Companies provided misleading and or false information to the Commission.

1. That **NBC**, on at least four occasions, provided false and misleading information to the Commission, in violation of Section 112 of the FCCPA, as follows:

- a. NBC falsely claimed that its Production Line 5 at the Abuja Plant developed a fault and was therefore temporarily inoperative during the Commission's inspection on August 2, 2019, when the evidence is contrary to this assertion.
 - b. NBC falsely informed the Commission that the Production Line 1 was inoperative for the whole day (August 2, 2019), when the Commission inspected the Abuja Plant, when evidence shows the contrary.
 - c. NBC misled the Commission when it provided a document titled "*COCA COLA NIGERIA PRODUCED AT ABUJA PLANT FROM 01/05/2019 TO 31/07/2019*", which provided incomplete and grossly misleading information to the Commission.
 - d. NBC misled the Commission when at the meeting of 6th February 2023, NBC falsely informed the Commission that it had not applied the proposed brand designs to any of its products which were already in the market prior to presenting same to the Commission for approval.
2. That **Coca-Cola Nigeria**, on at least one occasion, misled the Commission, in violation of Section 112 of the FCCPA, when at the meeting of 6th February 2023, it falsely informed the Commission that the proposed design it presented to the Commission for approval were not already in use on products circulating in the market.

Issue 3 - Whether Coca-Cola Nigeria's product pricing is indicative of an abuse of market dominance.

The available pieces of information regarding the pricing patterns of Coca-Cola products are, by themselves, insufficient to demonstrate any abuse of market dominance, but they however raise some concerns around the pricing in Ebonyi State in 2019. Though concerning, the astronomical price increases observed in Ebonyi State cannot (by itself) sustain a finding of excessive pricing, as several factors must be

considered in determining whether there was excessive pricing. Therefore, the Commission may conduct further investigations into this issue.

Additional Consideration

The Commission notes that the Companies may not be dominant in many areas of Southern Nigeria as they appear to compete fiercely with other competitors who though have a strong presence in the South may not have a national footprint and coverage. However, on a national scale, it is conceivable and arguable that the Companies may hold a bigger market share.

As such, and in furtherance of the finding and recommendation for further investigation, it will be important to identify the Companies production and distribution footprints and infrastructure or apparatus in each geographic region individually, and as in appropriate market clusters, and nationally. Importantly, the Commission should also consider which other competitors have any or similar footprints, infrastructure or apparatus in comparison and in the same delineated geographical markets, and within the same time frame from 2018 till date.

Such further investigation will also consider whether restrictive agreements prohibited under Section 59 of the FCCPA and or conspiracies or conduct between or by the Companies prohibited under Section 108 of the FCCPA are implicated in the price disparities.