



**COCA-COLA NIGERIA LIMITED AND NIGERIAN BOTTLING COMPANY LIMITED:  
INVESTIGATION: RE: MISLEADING/DECEPTIVE PRODUCT LABELLING AND OR  
PORTRAYAL AND FAILURE TO TRANSPARENTLY MANAGE NON-HARMFUL  
PRODUCTION ERROR IN RECALL OR COMMUNICATION OF SAME, AND  
POSSIBLE ABUSE OF DOMINANCE, VIOLATING THE FEDERAL COMPETITION  
AND CONSUMER PROTECTION ACT, 2018 (FCCPA).**

*Pursuant to Sections 17, 116, 123, 124, 127, and 155 of the Federal Competition  
and Consumer Protection Act, 2018*

**Thursday, August 1, 2024:** In June 2019, the Federal Competition and Consumer Protection Commission (Commission) became aware that Coca-Cola Nigeria Limited (Coca-Cola) and Nigerian Bottling Company Limited (NBC) (jointly referred to as the "Companies") had commenced a migration of their Coke brand from a formulation that included regular sugar to non-nutritive sweeteners. The migration at the time, though not concluded, apparently followed previously concluded, but undisclosed and uncommunicated migrations with respect to their other brands, to wit: Fanta and Sprite (as the Investigation will later discover). The strategy and conduct at the time appeared to possibly infringe FCCPA provisions prohibiting misleading trade descriptions, unfair marketing tactics, and questions whether some pricing strategies in certain geographical areas of Nigeria were on account of market power in the geographic areas, and as such constituted abuse of dominant market position.

The Commission opened a formal investigation accordingly. Between June 2019 and December 2020, the Commission and Coca-Cola as well as NBC engaged repeatedly, including seeking and securing vast internal documents and production logs to determine the veracity or otherwise of allegations that were subject of investigation or explanations provided by Coca-Cola and NBC.

By December 2020, the Commission was convinced based on the evidence, that Coca-Cola and NBC on multiple occasions, and counts violated, and remained in violation of the FCCPA, particularly with respect to transparency, and clear disclosure obligations to their product patrons, intentional communications in describing their Coca-Cola "Original Taste, Less Sugar" variant as one and the same, as well as unchanged, when in actual fact, same had indeed changed, was

different, differently formulated and not the same as their otherwise "classic, or "Original Taste". One of the parties also attempted to, or misled the Commission under Section 112 of the FCCPA.

Coca-Cola and NBC initially sought to end the investigation and regulatory process by adopting clearer, more transparent and truthful descriptions and differentiation of the relevant variants of their products. The Commission granted this accommodation, and also gave Coca-Cola and NBC the opportunity and prerogative to propose remedies including descriptions and product differentiations that comply with applicable statutory standards

Coca-Cola, NBC, and the Commission engaged in a lengthy process of building consensus around a mutually agreed differentiation and description of the different relevant products. Coca-Cola and NBC sought an extended timeline before changing to the newly mutually agreed product descriptions and differentiations as proposed by Coca-Cola and NBC in order to exhaust existing packaging inventory, and lead time for new packaging inventory to arrive in stock. The Commission granted the extension as requested.

On the eve of the cut-off date, and end of the extension, Coca-Cola and NBC abandoned the months of work and mutually agreed outcome with the Commission, for a different business strategy, which has turned out not to meet the applicable standards. Over the next years, it remained abundantly apparent that Coca-Cola and NBC's meritless efforts failed, and it became clear to the Commission that neither Coca-Cola, nor NBC desired or intended to provide transparency to consumers in a manner that complied with the standards in the FCCPA.

Accordingly, the Commission concluded the then open investigation, and again engaged Coca-Cola and NBC with a view to providing sufficient remedies. Coca-Cola despite this prolonged investigation, and multiple opportunities to comply with the law, have failed to do same. Despite multiple and repeated further engagements with Coca-Cola, NBC and their respective retained legal practitioners, the current market status and consumer feedback clearly demonstrates the colossal ineffectiveness of the milder and weak differentiations Coca-Cola and NBC have adopted. Their internal documents show that they are aware of the evidence of the feedback that their efforts remain ineffectual. Coca-Cola and NBC have however made more spirited efforts at other interventions to address the regulatory concerns than measures to ensure compliance, and discharge from the regulatory process.

Accordingly, and considering that the conduct continues and remains, the Commission has entered, issued and served its Final order on Coca-Cola and NBC on July 29, 2024. The Final Order contains the Commission's findings some of which include:

1. **Misleading trade descriptions** under Section 116 FCCPA by continuing to mislead consumers to believing Coca-Cola Original Taste is not materially different from Coca-Cola Original Taste "Less Sugar."

2. **Unfair marketing tactics:** Contrary to Section 124(1)(a) of the FCCPA, Coca-Cola Nigeria markets Coca-Cola Original Taste Less Sugar in packaging first, indistinguishable, and now not sufficiently distinguishable from Coca-Cola Original Taste, contrary to Sections 123(1)(a), (b), and (c) of the FCCPA.

Further, Coca-Cola and NBC after regulatory intervention still failed to take appropriate steps to modify misleading behaviour demonstrating that the Companies acted intentionally by misrepresenting Coca-Cola Original Taste Less Sugar as Coca-Cola Original Taste in a deliberate business strategy.

Furthermore, NBC used identical packaging for both Zero Sugar and its 50:50 variant of Limca Lime- Lemon flavoured drink, misleading consumers and violating Sections 17(g), 116(1) & (2), and 123 of the FCCPA and Section 2(a) of the National Agency for Food and Drug Administration and Control Act 2004. The Commission found NBC applied deceptive trade descriptions to the two variants and supply these products to consumers violating Section 116 (3) of the FCCPA.

The Commission has reserved the question of Abuse of Dominance and quantum of the penalty appropriate under the FCCPA and Administrative Penalties Regulation 2020 (APR) for further regulatory action, and same will be imposed in due course.

To view the Final Order and Notice and full Investigative Report, visit <https://fccpc.gov.ng/ibla>

Signed

**Management**