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By: Folakunmi Pinheiro

Edited by John Oxenham & Andreas Stargard

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I. Introduction

Many countries have faced record inflation levels in recent years, driven by pandemic-induced economic responses and the war in Ukraine. Nigeria has been no exception. Domestic policies, such as border closures, subsidy removal, and currency devaluation, have further exacerbated the rate of inflation. In December 2024, Nigeria's inflation rate peaked at 34.8 percent, an almost 30-year high.[1] In these conditions, businesses must raise prices to offset rising input costs and keep the wages of their employees aligned with inflation.

However, some businesses can exploit this situation by artificially inflating prices — a practice commonly referred to as "greedflation." Formally, "greedflation" is defined in the Collins English Dictionary, where it was shortlisted for the 2023 word of the year,[2] as "the use of inflation as an excuse to raise prices to artificially high levels in order to increase corporate profits."[3] Importantly, greedflation does not *cause* inflation,[4] but rather it is a *symptom* of inflation. In 2023, a joint review by the Institute for Public Policy Research and Common Wealth analyzed 1,350 corporations across four continents, including Africa, and found that many multinationals raised prices beyond "socially and economically beneficial levels," allowing them to generate "excess profits."[5] Some corporations even enjoyed profits that outpaced the rate of inflation.[6]

Greedflation demands our attention because it disproportionately harms the poorest and most vulnerable by transferring wealth from their pockets to the hands of the most powerful. Addressing it requires a multi-faceted approach, one which integrates different aspects of law, policy, and regulation.

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* Doctoral Candidate, Faculty of Law, University of Cambridge. Email: fsp26@cam.ac.uk. This column is written in my personal capacity. The views expressed are mine and do not represent those of the Federal Competition and Consumer Protection Commission, where I have worked as a consultant.

1 Trading Economics, 'Nigeria Inflation Rate' (*Trading Economics*, 16 December 2024) tradingeconomics.com.

2 Addley, '"AI" Named Most Notable Word of 2023 by Collins Dictionary', *The Guardian* (1 November 2023) theguardian.com

3 "Greedflation," *Collins English Dictionary* (no date)

4 The Economist, '"Greedflation" is a Nonsense Idea', *The Economist* (London, 6 July 2023) economist.com

5 Jung and Hayes, 'Inflation, Profits, and Market Power: Towards a New Research and Policy Agenda' (*IPPR*, 7 December 2023) ippr.org.

6 *Id*.

Competition is one aspect of this approach. After all, the Organization for Economic Cooperation and Development ("OECD"), has argued that "supporting competitive markets will have an overall beneficial effect on inflation."[7] In this regard, Nigeria's competition regime, established under the Federal Competition and Consumer Protection Act, 2018 ("FCCPA"), has potential because the Federal Competition and Consumer Protection Commission ("FCCPC") has powers that can help combat greedflation. The new leadership recognizes this potential. Just two weeks into his role, Tunji Bello issued his first press release affirming the FCCPC's commitment to working with market leaders to curb "undue profiteering at the expense of consumers during economic challenges."[8] While competition law may not initially appear central to tackling these issues, it can play an important role alongside other instruments in addressing greedflation, as demonstrated in other jurisdictions.[9]

This column will focus on three main questions. In section two, what powers does the FCCPC have to tackle greedflation? In section three, have the powers been effective? And in section four, how can the powers be strengthened? Finally, the fifth section will conclude.

II. Powers

There are two main ways the FCCPC can tackle greedflation: namely, excessive pricing and price gouging. Both approaches involve penalizing the high prices.

A. *Excessive Pricing*

In relation to excessive pricing, it is prohibited as an abuse of dominance under section 72(2)(a) of the FCCPA. For example, it is possible for a dominant supermarket to leverage its market power by charging excessively high prices for a particular product that it could constitute a competition law infringement.

Generally, a firm is considered dominant if it can act independently without regard for the reactions of consumers or competitors. To determine dominance, the FCCPC assesses factors such as market shares, financial power,

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7 OECD Secretariat, 'Competition and Inflation - Background Note' (Organisation for Economic Cooperation and Development 24 October 2022) at 15.

8 FCCPC Press Release, 'Inflation: FCCPC to Engage Market Leaders and Others' (*Federal Competition & Consumer Protection Commission*, 12 August 2024) fccpc.gov.ng.

9 Egerton-Doyle and others, '"Profit-Push Inflation": Antitrust Agencies' Efforts in Fighting Inflation-Disguised Price Increases' (*LinkingCompetition*, 27 June 2023) linklaters.com.

access to supplies or markets, entry barriers, the presence of competition, among other factors.

Specific guidance for excessive pricing can be found in the FCCPC's Abuse of Dominance Regulations, 2022 ("ADR"). In particular, regulation 10 requires the FCCPC to evaluate factors such as high entry barriers, the availability of credible alternatives for consumers, market maturity, and whether price increases stem from external factors. If most of these conditions are present, the FCCPC will proceed to assess the "excessive" nature of the price by examining: (i) whether the price significantly exceeds production costs, (ii) what an efficient firm would charge in the same market, and (iii) whether the price is excessive either "in itself" or when compared to competing products. A price is only deemed excessive if the difference between its cost-price benchmarks is "substantial," meaning that "it bears no reasonable correlation to the economic value of the product."

Firm's accused of excessive pricing have two possible defenses. First, the firm can establish that one or more of the above-mentioned market conditions are not present. For instance, it could argue that entry barriers are low, allowing new competitors to undercut its prices; that credible alternatives exist, giving customers other options; that the market is not mature and remains open to innovation and investment, enabling new players to challenge high prices; or that the price increases result from external factors, like nationwide inflation, rather than anticompetitive conduct. In such instances, the FCCPC is unlikely to intervene to avoid becoming a *de facto* price regulator. Scholars frequently highlight the challenges government agencies face when regulating prices,[10] and the FCCPC's ADR acknowledges this sentiment, noting that "high prices can be regulated by new entrants or innovation."

Second, under section 72(3) of the FCCPA, a dominant firm can plead the "efficiency defense," arguing that its otherwise anticompetitive conduct generates efficiencies that outweigh the anticompetitive effects. Specifically, the conduct must: (i) improve production or distribution or promote technological or economic progress; (ii) ensure consumers receive a fair share of the resulting benefits;

10 von Hayek, 'The Use of Knowledge in Society' (1945) 35 THE AMERICAN ECONOMIC REVIEW 270.

(iii) be indispensable to achieving the objectives in (i); and (iv) not eliminate competition in a substantial part of the market. If these criteria are met, the firm will not be deemed to have abused its dominance. Notably, the efficiency defense applies to all abuses listed in section 72(2), including excessive pricing.

B. Price Gouging

Another tool available to the FCCPC is price gouging, which is contrary to section 127 of the FCCPA. This provision prohibits firms from supplying goods or services at manifestly unfair, unreasonable, or unjust prices. It falls under Part XV of the FCCPA, which focuses on consumer rights. As such, price gouging is not a competition law issue but a consumer protection infringement.[11] Unlike excessive pricing, price gouging does not require dominance or market power. That is the main difference between the two practices: excessive pricing stems from how a dominant firm exploits weakened competitive forces, while price gouging can occur in a competitive market. A dominant firm may price gouge during an emergency situation, even while facing competition. Excessive pricing, however, only applies when the market conditions in regulation 10 of the APR are present.

Compared to excessive pricing, there is limited official guidance on how the FCCPC assesses price gouging. However, in April 2020, the FCCPC issued a guidance document on COVID-19 business collaboration, which the author has written about elsewhere,[12] and consumer rights.[13] The latter part of this document touched on price gouging, criticizing businesses exploiting the pandemic "as an opportunity to subvert competition or prey on vulnerable Nigerians."[14] It emphasized the importance of maintaining competitive prices, particularly for essential goods and services "that are essential to urgent public health and subsistence needs."[15] The FCCPC also warned against artificially inflating prices and encouraged manufacturers to combat price gouging by "setting maximum prices at which retailers may sell their products."[16]

11 Fung and Roberts, 'Covid-19 and The Role of a Competition Authority: The CMA's Response to Price Gouging Complaints' (2021) 12 JOURNAL OF EUROPEAN COMPETITION LAW & PRACTICE 734 at 735.

12 Pinheiro and others, 'COVID-19: Competition and Consumer Protection' (OALP COVID-19 Resource Centre April 2020).

13 Business Guidance Relating to COVID-19 On Business Co-operation/Collaboration and Certain Consumer Rights Under the Federal Competition and Consumer Protection Act (FCCPA) 2020.

14 *Id*. para. 1.4.

15 *Id*.

16 *Id*. para. 3.2.

However, this document offers limited clarity on how the FCCPC will assess whether a price constitutes price gouging. The terms "unfair," "unreasonable," and "unjust" remain undefined. Compare this to excessive pricing, where the FCCPC has established tests to determine whether a price is "excessive," as well as defenses for accused firms. Nonetheless, the FCCPC has investigated multiple price gouging incidents, which provide guidance for future enforcement. These will be discussed in the next section.

III. Effectiveness

Interestingly, while price gouging has been frequently investigated and warned against, the FCCPC is yet to announce an investigation into excessive pricing. This is not to say the FCCPC is unaware of its excessive pricing powers. In fact, it has repeatedly warned against excessive pricing, and it has explicitly stated its intention and willingness to intervene. Most notably, this was outlined in the previously mentioned guidance document, as well as other press releases, some of which stated that the FCCPC is collaborating with various public and private sector stakeholders to enhance its monitoring of excessive prices.[17]

Meanwhile, there have been multiple price gouging interventions. Most recently, Air Peace, which allegedly engaged in exploitative ticket pricing, including significant price hikes around the December 2024 festive period.[18] In 2020, the FCCPC also intervened against different pharmacies and supermarkets, such as H-Medix and Ebeano, for hiking the prices of protective and personal hygiene products, like face masks, latex gloves, sanitizers, and antibacterial wipes.[19] This extended to a collaboration with Jumia to delist 390 products, whose prices were artificially increased.[20] Across both interventions, opportunistic sellers hiked their prices in response to a sudden surge in demand for their particular products.

There are, of course, benefits to using price gouging to tackle price hikes, and by extension, greedflation. For starters, it has

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17 FCCPC Press Release, 'Upholding Market Integrity in the Good Chain Sector' (*Federal Competition & Consumer Protection Commission*, 9 February 2024) fccpc.gov.ng.

18 FCCPC Press Release, 'FCCPC Engages GTBank, MTN and Air Peace over Possible Violations' (*Federal Competition & Consumer Protection Commission*, 1 December 2024) fccpc.gov.ng.

19 FCCPC Press Release, 'COVID-19 Response: FCCPC Receives FG Award' (*Federal Competition & Consumer Protection Commission*, 19 August 2020) fccpc.gov.ng.

20 *Id.*

a broader reach than excessive pricing, which requires the offending firm to be dominant. Meanwhile, as noted above, price gouging applies to all firms irrespective of size.

Price gouging is also easier to establish. In order to establish excessive pricing, the FCCPC must, first, define the relevant market, which involves a range of legal and economic tests, and in some cases, the FCCPC might consult external consultants. Market definition is required, although controversially,[21] in competition interventions because it allows the FCCPC to establish whether a firm is: (i) dominant; and (ii) subject to sufficient competitive constraints.[22] More hurdles remain after defining the market and establishing dominance. The legal tests to be satisfied for an excessive price are difficult to meet. As noted, there must be no *reasonable* correlation of the price to the economic value of the product.

In other jurisdictions, the price increase has been thousands of percent. For instance, in 2021, the UK's Competition & Markets Authority ("CMA") imposed fines on Auden McKenzie and Actavis for increasing the price of hydrocortisone tablets by over 10,000 percent.[23] In the same year, the CMA found that Advanz Pharma increased the price of liothyronine tablets by over 6,000 percent.[24] Admittedly, these are on the extreme end. "Normal" cases like *Gazprom* in 2018 saw the European Commission find that the Russian state-owned energy company increased the price of gas in Central and Eastern Europe by 170 percent.[25]

Regardless of whether the interventions are "extreme" or "normal," the overarching point remains: it is harder to prove that a price is excessive than to prove that price gouging has occurred. In the latter, there is no need to define the market or to establish dominance. Rather, the FCCPC can directly analyze whether the price was opportunistically hiked. Therefore, it is no surprise that price gouging is more frequently used.

The FCCPC's institutional history is also relevant. The FCCPC was born out of

21 Kaplow, 'Why (Ever) Define Markets?' (2010) 124 HARVARD LAW REVIEW 437.

22 Robertson, 'The Relevant Market in Competition Law: A Legal Concept' (2019) 7 JOURNAL OF ANTITRUST ENFORCEMENT 158.

23 CMA Press Release, 'CMA Finds Drug Companies Overcharged NHS' (*UK Government website*, 15 July 2021) gov.uk.

24 CMA Press Release, 'CMA Fines Pharma Firm over Pricing of Crucial Thyroid Drug' (*UK Government website*, 29 July 2021) gov.uk.

25 Case AT.39816 – Upstream Gas Supplies in Central and Eastern Europe (Commission Decision, European Commission 24 May 2018).

the Consumer Protection Council. As such, consumer protection was its original expertise. When the competition regime was added, substantial capacity building was anticipated to ensure proper enforcement of the competition mandate. Meanwhile, the institutional memory of consumer protection remained. The inevitable consequence of this — namely, combining two complementary but distinct regimes within one regulator — is that the regulator may favor one set of tools over the other.[26] In some respects, this echoes the pre-FCCPA landscape, where sector regulators — like the Nigerian Civil Aviation Authority and the Nigerian Communications Commission — had competition *and* regulatory powers. However, as observed by Justice Dimgba, these regulators neglected competition enforcement and focused their energies on their core expertise of sector regulation.[27] This dynamic necessitated the creation of a standalone, cross-sector competition regime, and it also further explains why the FCCPC favors price gouging over excessive pricing.

But this is a problem. Although price gouging interventions have been effective in the short term, excessive pricing interventions would be more effective in the long term because there is more deterrent effect. This higher deterrent effect is rooted in the FCCPC's Administrative Penalties Regulations, 2020 ("APR"). The APR details how penalties are calculated by the FCCPC,[28] by setting base amounts for calculating penalties for different infringements. The base for corporates engaged in pricing gouging is a ₦5 million fine, while the base for excessive pricing is 1 percent of the firm's annual turnover.[29] All else being equal, calculating a penalty based on the percentage of annual turnover, rather than a standardized rate, ensures that the regulatory consequences are proportionally felt by larger firms.

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26 Tavuyanago, 'The Interface between Competition Law and Consumer Protection Law: An Analysis of the Institutional Framework in the Nigerian Federal Competition and Consumer Protection Act of 2019' (2020) 27 SOUTH AFRICAN JOURNAL OF INTERNATIONAL AFFAIRS 391; and Dimgba, 'The Changing Landscape: Federal Competition and Consumer Protection Act' (The Jackson, Etti & Edu & Norton Rose Fulbright Conference on Competition Law, Four Points by Sheraton, Victoria Island, Lagos, 18 June 2019).

27 *Id*. Dimgba.

28 It is important to clarify that while the FCCPA prescribes higher fines and prison sentences for infringements, the APR provides that these will only be applicable in the case of particularly egregious violations. Other violations will be dealt with under the framework provided in the APR.

29 The Federal Competition and Consumer Protection Act (Administrative Penalties) Regulations 2020, Schedule 1, B 3222.

However, one could argue that the FCCPC can impose fines higher than the base amount. Still, the underutilization of the FCCPC's excessive pricing powers remains a problem — in light of the urgent need to tackle greedflation, the FCCPC must use all the tools in its arsenal. The multi-faceted approach referred to earlier must not only be multi-faceted *across* different legal regimes, but it must also be multi-faceted *within* a regime, by utilizing all relevant and available powers. Ultimately, excessive pricing can complement price gouging because it allows the FCCPC to examine how deeper, structural issues give rise to greedflation,[30] which does not occur in price gouging interventions.

IV. Proposal

Let us now consider how the excessive pricing provisions can be strengthened to ensure they can be used more frequently. It seems to me that the primary obstacle is the difficulty of proving the excessiveness of a price. It goes without saying that one cannot escape the requirements to define the market definition and to establish dominance.

Fortunately, there are other changes that can make it easier to establish excessive pricing. For instance, the FCCPA could be amended in line with the excessive pricing provisions in South Africa ("SA"), which states that: "If there is a *prima facie* case of abuse of dominance because the dominant firm has charged an excessive price, the dominant firm must show that the price was reasonable."[31] This reverses the burden of proof, thereby making it easier for the SA Competition Commission to establish that a price is excessive.

This change occurred in 2019, following multiple unsuccessful excessive pricing interventions. Most notably against Mittal Steel. The SA Competition Tribunal initially found that, since Mittal was "super-dominant" (almost 100 percent market share), it was abusive to increase the price of flat steel produced in SA to the level of imported flat steel. However, the Competition Appeal Court ("CAC") overturned this ruling for ignoring the explicit test in the law, which mandated price assessments and did not provide for

30 See, for instance, Blankertz and others, 'The European Commission Can and Must Act on Excessive Pricing' (*ProMarket*, 8 October 2025) promarket.org (referring to the relationship between rising market power, price levels, and inflation).

31 Competition Act 1999 (as amended), section 8(2).

"super-dominance."[32] The CAC, however, acknowledged that, on occasion, where prices did not bear a reasonable connection to the economic value, the respondent must submit evidence rebutting the *prima facie* case of excessive pricing.[33] This *obiter dictum* was subsequently enshrined in the 2019 amendment of the South African Competition Act of 1999.

The change was also cognizant of SA having the highest inequality levels in the world,[34] and ensuring that vulnerable consumers have access to goods and services. For instance, in a recent excessive pricing case, the SA Competition Commission ("SACC") found that Roche, a healthcare multinational, excessively priced trastuzumab, a breast cancer drug, which disproportionately impacted poor women that could not access essential treatment because they could not afford the drug.[35] The SACC stated that the prices violated the basic human right to have access to healthcare,[36] enshrined in the SA Constitution.[37]

An obvious concern relates to error costs. Invariably, reversing the burden as done in SA increases the risk of false positives, which could have adverse effects on investment incentives. In competition law, the logic is that high prices are necessary to allow dominant firms to recoup their investments.[38] Therefore, the argument goes, competition authorities should be cautious about disincentivizing investment because markets will self-correct as high prices attract new entrants who can undercut the dominant firm. However, there has been significant criticism of the notion that markets automatically self-correct.[39]

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32 Strunz, *The Interface of Competition Law, Industrial Policy and Development Concerns: The Case of South Africa* (Munich Studies on Innovation and Competition, Springer Berlin Heidelberg 2018) at 215.

33 Mittal Steel & 2 Ors v Harmony Gold Mining & Durban Roodepoort Deep Gold Mine (70/CAC/Apr07) [2009] ZACAC 1 at [50].

34 Sulla and others, 'Inequality in Southern Africa: An Assessment of the Southern African Customs Union - Country Brief: South Africa' (World Bank Group 7 March 2022).

35 CCSA Press Release, 'Competition Commission Prosecutes a Multinational Healthcare Company, Roche, for Excessive Pricing of a Breast Cancer Treatment Drug' (*Competition Commission of South Africa*, 8 February 2022) compcom.co.za.

36 *Id*.

37 Kende, 'The South African Constitutional Court's Embrace of Socio-Economic Rights: A Comparative Perspective' (2003) 6 CHAPMAN LAW REVIEW 137.

38 Fletcher and Jardine, 'Towards an Appropriate Policy for Excessive Pricing' in Ehlermann and Marquis (eds), *European Competition Law Annual 2007: A Reformed Approach to Article 82 EC* (1st edn, Bloomsbury Publishing 2008) at 536; and Calcagno and others, 'Economics of Excessive Pricing: An Application to the Pharmaceutical Industry' (2019) 10 JOURNAL OF EUROPEAN COMPETITION LAW & PRACTICE 166 at 171.

39 Ezrachi and Gilo, 'Are Excessive Prices Really Self-Correcting?' (2009) 5 JOURNAL OF COMPETITION LAW & ECONOMICS 249;

Even if markets can self-correct, we can weigh the risks of different error costs. This can be done on a case-by-case basis, in the context of particular market conditions, where sometimes a false negative might be worse than a false positive, especially combined with high inflation, high inequality, and high poverty levels. Under these conditions, a competition authority might not be able to afford to take the risk of not intervening. Therefore, the legal threshold can be lowered to protect vulnerable consumers.[40]

While adopting this amendment would strengthen the excessive pricing provisions in Nigeria, it is important to emphasize that the FCCPC is bound by intellectual rigor and contextual analysis. Prices must only be understood as excessive in the legal and economic circumstances of a particular market, in light of the specific cost constraints that firms face. In addition, as noted above, global and national forces contribute to high prices and the FCCPC must be attentive to when price increases are caused by these forces versus when they are intended to exploit consumers. The analytical framework in the ADR, which considers the price of competing goods in neighboring geographical markets, is a helpful guide to minimize the risk of errors, but as illustrated above, this must be combined with lowering the legal threshold to make it easier for the FCCPC to intervene.

V. Conclusion

To conclude, competition enforcement cannot, by itself, solve the problem of inflation. Competition law is mostly an *ex post* instrument. Concrete solutions to inflation must lie in fiscal and monetary policies but as illustrated in this column, competition law can mitigate some of the negative effects on vulnerable consumers. Therefore, the FCCPC's powers must be strengthened and the proposal in this column is a starting point.

Davies and Cohen, 'Error Costs, Platform Regulation, and Democracy' [2024] CLES RESEARCH PAPER SERIES 8/2024 at 12; and Petit, 'A Theory of Antitrust Limits' (2021) 28 GEORGE MASON LAW REVIEW 1399 at 1453.

40 See, for instance, Costa-Cabral and Nowag, 'Greedflation, Competition Law, and the Cost-of-Living Crisis' (EU Competition Policy Report, Socialists and Democrats 2023) (arguing to replace competition law's 'consumer welfare standard' with the 'vulnerable consumer standard' because, under the former, the positive effects on vulnerable consumers are by accident rather than by design).