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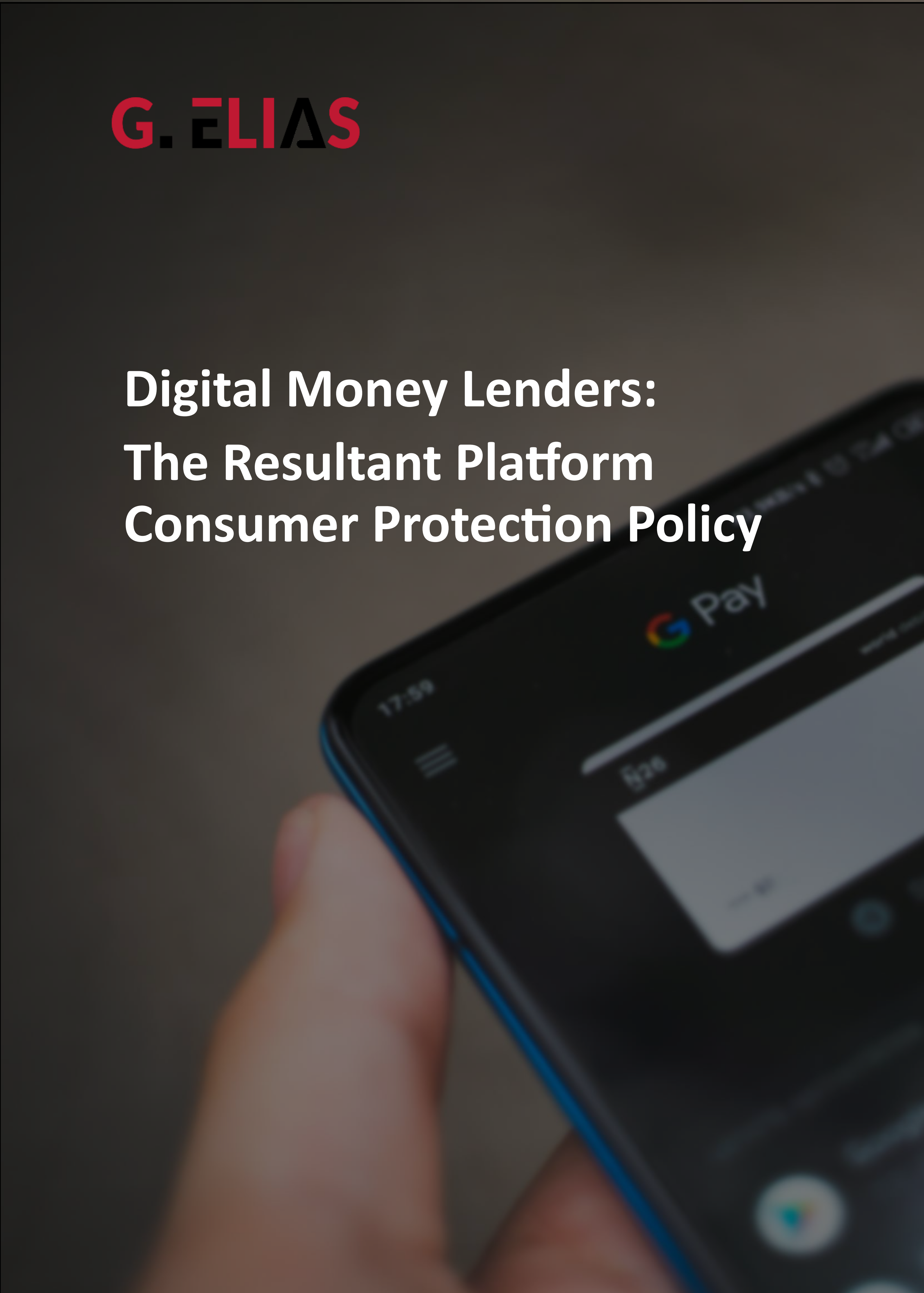
Digital Money Lenders:
The Resultant Platform Consumer Protection Policy



Introduction

Nigeria's booming technology space has witnessed the emergence of several digital lending applications backed by various leading companies. Their value proposition is the provision of fast, low-amount, short-term loans with no collateral or stringent KYC pre-approval processes. Such a proposition appeals to many Nigerians.

However, on the back of this alluring credit advancement process is a relatively-unforgiving debt recovery machine that has increased greatly the risk of harassing, cyber-bullying and defaming borrowers, and the abuse of the consumer protection and data privacy rights of customers.

Abuses here have come to the notice of two agencies. One is the National Information Technology Development Agency (NITDA), in charge of safeguarding data protection rights. The other is the Federal Competition and Consumer Protection Commission (FCCPC), in charge of consumer protection. These agencies have attempted to counter the harsh measures that these companies have been using.

Some of these agencies' mechanisms tend to put in place a regime of prior approvals. Of these, three standout: (a) issuing the Limited Interim Regulatory Registration Framework and Guidelines for Digital Lending 2022 to regulate digital lending companies and make provisions for registrations and approvals; (b) requiring service providers in the ecosystem (such as banks, access/download platforms or stores, technology providers and payment systems) to get regulatory approval before providing their services; (c) and releasing lists of approved and conditionally approved digital lenders[1].

Other mechanisms are more focused on imposing remedies after the fact: (a) sanctioning of a digital lender for breach of data protection and privacy rights[2]; (b) ordering Google and Apple to withdraw some digital lending applications from their stores for violations of consumer rights[3]; (c) ordering all operating payment systems (notably Flutterwave, Opay and Paystack) to stop providing payment services to digital lending firms that have no approval from FCCPC or are under investigation[4]; and (d) ordering telecommunications and technology companies to cease providing hosting and other key services to digital lenders who have no approvals or are under investigation.

A Leading Corporate Player: Google

To protect their respective reputations and to be even more truly socially responsible citizens, some major private sector players have developed self-imposed regimes that add further consumer protection features to the minimum standards set by the regulators. This is a welcome development[5]. By way of an illustrative example, we focus below on the regime developed by the Alphabet Group (widely known as "Google").

Google has updated its April 2023 Google Playstore policy[6] for Nigeria, to be effective from May 31, 2023 ("the Google Rules"). All applications offered on the Google Playstore and supporting financial products and services are required to comply with the updates. Some of the rules apply both in Nigeria and elsewhere.

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[1] https://www.vanguardngr.com/2023/04/fg-approves-173-lending-apps-bars-illegal-digital-banks/.
[2] https://techcabal.com/2022/03/12/nigerian-government-shuts-down-6-illegal-digital-loan-companies/.
[3] https://www.premiumtimesng.com/news/top-news/549422-nigerias-consumer-protection-agency-orders-google-to-remove-money-lending-companies-from-app-store.html.
[4] https://radarr.africa/fccpc-bars-flutterwave-opay-and-others-from-providing-services-to-loan-sharks/.
[5] https://www.uber.com/legal/en/document/?name=privacy-notice&country=nigeria&lang=en.
[6] https://support.google.com/googleplay/android-developer/answer/13161491.

General Worldwide Rules

Disclosure requirement[7]

Applications that provide personal loans must disclose the following information in their "metadata", *i.e.*, the fields filled with information about the application:

1. The minimum and maximum period for repayment.
2. The maximum annual percentage rate (APR) which must include interest rates plus the fees and other costs for a year.
3. A representative example of the total cost of the loan, including the principal amount, interest, and all applicable fees.
4. A privacy policy that discloses in its entirety the access, collection, use and sharing of personal and sensitive user data, subject to the restrictions in the Google rules.

Limitations[8]

Under the updated policy, applications that require the full repayment of loans in 60 days or less from the date of issuance cannot be listed on the Google Play Store.

Also, applications that provide or facilitate access to personal loans are prohibited from accessing sensitive data such as photographs and contacts. This prohibition covers access to customer's external storage, images, contacts, location, telephone numbers and media videos.

Nigeria-Specific rules

In addition to the above, digital money lenders in Nigeria are obliged to comply with the following as included in the Google Rules:

1. Completing a personal loan application declaration form which requires the digital lender to confirm the submission of a Digital Money Lenders (DML) application and the receipt by the lender of full approval or conditional approval from the FCCPC.
2. Compliance by the lender with the Limited Interim Regulatory Registration Framework and Guidelines for Digital Lending 2022 by the FCCPC.
3. Loan aggregators must provide documentation and/or certification for digital lending services and contact details for every DML that they "partner" with.
4. And such other additional information or documents as may be requested by the Google Playstore.

Enforcement

Although the point has not yet been tested in litigation, we read the regulations and policies to mean that digital lenders must satisfy the minimum standards set out in each of the contractual and regulatory regimes. It is no excuse that, for example, the agency rules on any given point may be more lenient than the self-imposed rules of a corporate player. The digital lender must comply with both sets of rules.

The sanctions for breaching agency rules will be the usual sanctions for such breach: loss or suspension of licences or operations, fines, injunctions and so forth. The sanctions for breaching company policies will be the usual sanctions for breach of contract: termination, damages, injunctions and so forth. A

[7] https://support.google.com/googleplay/android-developer/answer/13161491.
[8] https://support.google.com/googleplay/android-developer/answer/13161491.

digital lender using the facilities of Google will ordinarily mean that the digital lender has contracted with Google to abide by Google's policy.

Conclusion

The advent of the new Google Rules is a welcome step in this new era of collaboration between regulators and leading business enterprises in protecting borrowers from digital lenders.

With the rapid development of financial technology and the rise of digital companies that host their operations on the internet, regulatory compliance and enforcement are no longer the sole responsibility of regulators. Technology companies, as well as platforms that provide access to and host digital lending companies, now have shared responsibility for ensuring that companies comply not only with the country regulations applicable in their sector but also, in effect, with internationally widely-used agreed standards of basic decency.

Regulatory agencies must not only collaborate with each other, as we have seen in the case of NITDA and FCCPC, but must also actively engage even foreign technology companies that service the Nigerian market to ensure fairly comprehensive coverage in achieving their enforcement goals.

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