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Client Alert

FCCPC INTERIM STATEMENT ON HIKE IN AIR FARES

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On March 3, 2022, the Federal Competition and Consumer Commission (“**FCCPC**”) made a statement regarding the apparent co-ordinated action of airlines in Nigeria to increase their base fares (the “**Release**”). According to the FCCPC, this action contravenes several provisions of the Federal Competition and Consumer Protection Act 2018 (“**FCCPA**”) as well as the Nigerian Civil Aviation Regulations 2015 (the “**NCAA Regulations**”). Consequently, the FCCPC issued an interim order prohibiting the performance of any agreement or arrangement of the Airline Operators of Nigeria (“**AON**”) regarding any increase in air fares.

This action is predicated on the powers of the FCCPA as the primary regulator of competition and consumer protection. The FCCPC has regulatory jurisdiction over all businesses and undertakings including businesses operating in regulated industries, such as Aviation. Sections 17(a) and 105 of the FCCPA.

Airlines may fix their prices with the approval of the industry regulator, the Nigerian Civil Aviation Authority (“**NCAA**”). NCAA Regulation 18.14.1. The NCAA may disallow or suspend a basic fare increase which is excessively high to the disadvantage of consumers in relation to the long term fully-allocated relevant costs of the air carrier, including a satisfactory return on capital. In taking such action, the NCAA is advised by the whole fare structure for the route in question and may consider other relevant factors including the competitive market situation. NCAA Regulations 18.14.6.1. Thus, the NCAA, in sanctioning a fare increase, must consider the economic realities of the route.

The FCCPC’s statement recognises the ability of airlines to fix their fares in accordance with applicable law. However, the FCCPC maintains that, and indeed, in line with the FCCPA, companies are prohibited from entering into an agreement or by other means, attempt to influence upward or discourage the reduction of price at which any other undertaking offers services (s. 107(1) of FCCPA). An undertaking is also prohibited from conspiring, agreeing or arranging with another undertaking to prevent or unreasonably enhance the price of any goods and services. (s. 108(1)(b) of FCCPA). Further, The NCAA regulations also supports the prohibition of this type of conduct. (Regulation 18.15.1 of the NCAA Regulations). It makes it unlawful to enter into any contract, arrangement, understanding or conspiracy between two or more parties that constitutes a restraint of competition in the civil aviation industry. Directly or indirectly fixing a charge, fee, rate, fare and tariff restrains competition. Regulation 18.15.2(i). It appears that what this specific NCAA Regulation prohibits is the “collaborative” hike in prices. Therefore, an individual increase in fares subject to the approval of the NCAA will be legal. The NCAA Regulations and the Release seek to prevent the formation of cartels or collusion to increase prices.

Effect of the Release and Impact on Nigerian Airlines

Airlines are, by the Release, prohibited from giving effect to any arrangement or contract by members of the AON for co-ordinated increase in air fares. Thus, all such arrangements, or agreements, if any, are effectively put on abeyance pending the conclusion of the FCCPC’s investigations.

We continue to await and monitor the FCCPC’s further update on the subject.

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