

Foundation for Consumer Freedom Advancement (FCFA)

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Mr. Olatunji Bello

Executive Vice-Chairman/Chief Executive

Federal Competition and Consumer Protection Commission (FCCPC)

23 Jimmy Carter Street, Asokoro, Abuja

Federal Capital Territory, Nigeria

Re: Comments on the Draft Federal Competition and Consumer Protection Sales Promotion (Amended) Regulations, 2026

Submitted by email to: salespromoregulations2026@fccpc.gov.ng

Dear Mr. Bello,

The Foundation for Consumer Freedom Advancement (FCFA) is an independent, non-partisan consumer advocacy organisation working across Africa. We speak for ordinary consumers: the market trader comparing prices, the student stretching an allowance, the small business owner trying to reach customers without hiring a lawyer first. We welcome the Commission's invitation to comment on the Draft Sales Promotion (Amended) Regulations, 2026, and we submit these comments in that spirit, ahead of the 20 October 2026 deadline.

Our comments below take the draft as published on the Commission's website on 30 September 2026. We cite provisions by regulation number. Where the draft repeats a number, we identify the provision by its Part as well.

1. General views

We share the Commission's aim of protecting consumers from fake promotions, unpaid prizes and misleading claims, and we support the draft's anti-fraud rules. Promised prizes must exist and be under the promoter's control when advertised (Regulation 57(2)), and must be awarded as described (Regulation 52(3)). Odds and material conditions must be disclosed (Regulation 54). Paid endorsements must be identified (Regulation 22). No consumer may be enrolled in another product or mailing list without consent (Regulations 54(4) and 72), and bait marketing is prohibited (Regulation 55(d)). These rules protect consumers without telling them what to buy. For the chance-based promotions that, in our view, should be the only ones requiring registration, the public record in Regulation 69 will help consumers check that a draw is genuine before they take part.

Our concern is the draft's reach. Regulation 4 (Part II) provides that "no undertaking shall organize or conduct a sales promotion without first registering the promotion with the Commission." The draft's own definitions give that duty a very wide scope: Regulation 78 defines "prize" to include a discount, "sales promotion" to cover incentives offered "in connection with the patronage of goods or services," and "promotional activities" expressly to include advertisement. Regulation 44 goes further still, providing that "all sales promotions, advertisements, or marketing communications" directed at Nigerian consumers "shall register with the Commission." On a plain reading, an ordinary price discount, a seasonal sale, or a new product advertisement would need the Commission's prior approval before it reaches the public. That is a permission slip for commercial speech, and it sits uneasily with the guarantee of freedom of expression in Section 39 of the Constitution of the Federal Republic of Nigeria, 1999.

We also invite the Commission to consider the question of legal authority. The draft's preamble cites Sections 17, 18 and 163 of the Federal Competition and Consumer Protection Act, 2018. Those provisions empower the Commission to protect consumers and make regulations for that purpose. Whether they authorise a system of prior licensing for advertising is a serious question, and one on which the Commission's reasoning should be set out plainly before the Regulations are finalised.

There is, finally, a problem of overlap. Regulation 53(1) requires all advertising and marketing materials for a sales promotion to comply with "the applicable advertising and marketing code," and Regulation 64(2) contemplates collaboration with "advertising regulators (APCON)." Regulation 78 defines that code as the code issued by the Advertising Regulatory Council of Nigeria (ARCON). If advertisements must already satisfy ARCON's vetting and the draft additionally requires them to be registered with the Commission, businesses face double approval and double fees for the same advertisement. Regulation 65 allows the Commission to require proof of other regulators' approvals as a condition of registration, which makes the Commission a gatekeeper for approvals it does not grant. And Regulation 76(2) provides that these Regulations "shall prevail" over other enactments in any conflict; subsidiary legislation cannot override an Act of the National Assembly, such as the ARCON Act or the Nigeria Data Protection Act, 2023, and this provision should be deleted. The Commission should clarify that registration with the Commission does not duplicate ARCON vetting, and should say plainly which approvals a business actually needs.

2. Registration and approval should be limited to chance-based promotions

The strongest consumer-protection case for prior registration concerns promotions where winners are selected by chance: prize draws, raffles, and similar schemes. That

is where fraud bites hardest, where consumers cannot see how winners are chosen, and where the Commission's oversight adds the most value.

We propose that the registration duty in Regulation 4 be confined to chance-based promotions. Ordinary discounts, seasonal sales, rebates, and product advertisements, where the consumer simply buys at a stated price, should not require prior approval. Making this explicit would focus the Commission's resources where consumers are most exposed.

The threshold in Regulation 5(9) is a welcome start, but as drafted it is discretionary, still requires "every detail of the promotion," and under Regulation 5(11) leaves every post-promotion duty in place, including an accountant-certified report (Regulation 60(2), Part IX) and an independent audit at the promoter's expense (Regulation 75(1)). For a market trader running a ₦200,000 giveaway, the accountant and the auditor can cost more than the prizes. The exemption should apply automatically, and promotions within it should be free of certification and audit duties. Regulation 75(1) should also become a power to require an audit where there is cause, not a duty on every promoter. No business should need a lawyer, or an auditor, to run a modest giveaway.

Where registration is required, the process should respect the applicant's time. Regulation 5(6) gives the Commission twenty-one working days to determine an application. If the Commission has not communicated a decision within that window, registration should be deemed granted, so that silence cannot operate as a refusal.

3. Influencers, artificial intelligence, and free speech

Regulation 21 requires every undertaking promoting under a paid, sponsored or affiliated arrangement to register its sales promotion, and Regulation 36 requires every undertaking deploying artificial intelligence (AI), machine learning or automated technologies for marketing to register the system itself with the Commission. We oppose both registration duties.

Disclosure is the right tool here, and the draft's disclosure duties are sound: influencers should identify paid relationships plainly, and AI-generated content should carry disclosure where leaving it out would mislead, with an opt-out from automated marketing (Regulation 40). But registration of the speaker, or of the software the speaker uses, is a different matter. Regulation 36 would require the registration of every chatbot, virtual influencer and automated messaging system used in marketing, backed by two-year recordkeeping of each system's "design, operation, data sources, and decision-making processes" (Regulation 42). For a large company that is a compliance project; for a small business running a WhatsApp chatbot, it is a reason not to use the technology at all. Nigeria should not become a jurisdiction where adopting standard marketing software requires a regulator's permission first. The draft's duties of accuracy, and the promoter's liability

for what its systems say, already protect consumers without a licensing regime for software.

Regulation 33 provides that no influencer, affiliate or brand ambassador may publish "any endorsement, commentary, or promotional content" relating to regulated subjects, including medicine, healthcare, law and financial services, without a relevant qualification, certification or licence. Consider a mother paid by a bed-net brand to share how she protects her children from malaria: honest, useful, plainly personal-experience speech, yet caught by the credential rule because she holds no health qualification. The mischief the provision aims at is false claims of professional authority, and it should be confined to that: no person should claim professional standing they do not have. Honest personal-experience speech should not need a licence.

Regulations 34 and 35 compound the problem. Regulation 34 requires platforms to verify credentials before publication, turning every platform into a pre-publication censor, and Regulation 35 forbids brands from engaging anyone without a credential. Both should be deleted.

4. Pricing: confine the rule to deception

Regulation 55(c) forbids promoters to "impose unfair, hidden, or discriminatory terms on consumers, including exclusion from access, differential pricing, or preferential treatment." Read literally, "differential pricing" would make ordinary commercial pricing unlawful: student discounts, loyalty prices, early-bird offers, regional pricing, and introductory rates all charge different consumers different prices.

We propose that this provision be confined to hidden or deceptive terms. Where a price difference is openly disclosed, it is not a consumer-protection problem; it is commerce. The draft's own transparency duties already require that material terms be clearly disclosed. A rule that bans disclosed price differences would punish exactly the discounting that benefits price-sensitive consumers most.

Regulation 16 raises the same problem for algorithmic pricing, requiring systems that set "prices" to operate in a "non-discriminatory manner." It should likewise be confined to deception and manipulation, which Regulation 17 already prohibits.

5. Platforms, cross-border sellers, and due process

Regulation 19 makes "a promoter, digital platform, or intermediary that hosts, facilitates, or disseminates a misleading or non-compliant online promotion" jointly and severally liable for any breach. Holding a platform automatically liable for a third party's promotion will make platforms refuse legitimate Nigerian advertisers rather than risk liability, shrinking the advertising market for small businesses. A notice-and-takedown system, under which a platform that removes non-compliant content promptly upon notice is not liable, would protect consumers without making platforms the Commission's enforcers.

Regulation 49 provides that where a foreign entity fails to comply, "the Commission shall take such steps as are necessary to restrict, suspend, or prohibit access to the promotional content, platform, or website within Nigeria." Website blocking is a severe remedy. It should require a court order, not an administrative decision.

Regulation 50 requires cross-border promoters to "designate a local representative or contact person in Nigeria." We oppose this requirement. It raises the cost of serving Nigerian consumers from abroad, which means fewer choices and higher prices for those consumers, while adding little to enforcement: Regulation 2 already asserts jurisdiction over promotions "having effect within Nigeria" and Regulation 48 provides for cooperative enforcement arrangements.

6. Penalties should be proportionate, and appeals should stay enforcement

Regulation 61(2) (Part X) sets administrative penalties of up to ₦50 million for natural persons and up to ₦100 million or 1% of the previous year's turnover, whichever is greater, for bodies corporate, with directors liable to disqualification of up to five years. These maxima may be appropriate for large-scale fraud, but applied to a small business's first paperwork breach they would be ruinous. Penalties should be scaled to the size of the undertaking, the gravity of the breach, and whether it is a first offence. A penalty regime that can destroy a small business for a filing error does not protect consumers; it reduces their choices.

Regulation 63(2) provides that an appeal to the Competition and Consumer Protection Tribunal "shall not stay the enforcement of the Commission's decision unless ordered by the Tribunal or Court." We propose that a timely appeal should stay enforcement as of right, unless the Commission shows the Tribunal a reason why immediate enforcement is necessary, with one exception: orders requiring a promoter to pay a promised prize or refund participants should take effect immediately and not be stayed by an appeal, consistent with Regulation 62(1), which already requires the immediate award of an unpaid prize. A promoter who refuses to pay should not be able to delay payment by appealing. A business disputing any other order should not have to comply with it before its appeal is heard.

7. Prize draws: verification, prizes, and lotteries

We support the draft's insistence that prizes be awarded as advertised, that odds and conditions be disclosed, and that no consumer be required to incur unreasonable expense to claim a prize (Regulation 52(4)). The "no purchase necessary" principle and the requirement of a genuine free-entry alternative (Regulation 52(5)(a)) are sound consumer protections. We also welcome the rule in Regulation 59(3) (Part IX) that a promoter "shall not retain the value" of an unclaimed prize.

On supervision of draws, Regulation 58(2) gives the Commission the right to attend and monitor any draw, and Regulation 58(2)(i) lets it demand "audit logs or source

code" for automated draws. Regulation 58(3) already allows an independent auditor or lawyer to witness a draw, but only at the Commission's option. It should be the promoter's option, in place of Commission attendance: independent verification of draws, by an auditor or lawyer with at least two impartial witnesses (Regulation 59(2), Part VIII), protects consumers without putting the regulator inside every business's systems. And the Commission should not require the surrender of proprietary source code as a condition of running a promotion.

On lotteries, Regulations 3 and 64(1) require promoters to comply with the National Lottery Act, 2005 and to seek the approval of the National Lottery Regulatory Commission. In *A.G. Lagos State & Ors v. A.G. Federation & Ors*, decided 22 November 2024, the Supreme Court held that the National Assembly lacks the constitutional power to legislate on lotteries and games of chance, so that the National Lottery Act, 2005 applies only in the Federal Capital Territory and lotteries elsewhere are a matter for the states. The Regulations should be updated to reflect the law as it stands, including the cooperation clause in Regulation 64(1).

8. Transparency and technical corrections

Stakeholders cannot assess the cost of these Regulations because the fee schedule is missing. Regulations 5(1) and 5(4) require every application to be accompanied by "the prescribed fee (Third Schedule)" and provide that the Commission "may refuse to accept an application until the prescribed fee is paid," yet the published draft contains only the First and Second Schedules; the Third Schedule is not attached. The Commission should publish the fee schedule before the Regulations are finalised, so that comments, especially from small businesses, can engage with the actual cost of compliance.

We also invite the Commission to publish a cost-benefit assessment of the registration regime: what it will cost businesses, particularly small ones, to register, report, keep records and submit to audits, set against the consumer harm the regime is expected to prevent. A regime of this breadth should be able to show its benefits outweigh its costs.

Technical corrections:

- Regulation 4 appears twice.
- Regulations 59, 60 and 61 each appear twice.
- Part V appears twice, with different contents (Artificial Intelligence and Automated Marketing; Cross-Border and E-Commerce Transactions). The Parts should be renumbered so each Part number is unique.
- Regulation 64(2) refers to "advertising regulators (APCON)," while Regulation 78 defines the applicable code as the code issued by the Advertising Regulatory Council of Nigeria. The name should be updated to ARCON throughout.
- Regulation 5(10) refers to "sub-regulation (1)" where it means (9).

- Regulation 60(1) (Part IX) refers the final report to the First Schedule, but the form is in the Second Schedule.
- Form FCCPC B sets a 21-day deadline against the regulation's 30 days.
- The definition of "Promoter" in Regulation 78 is split, with its first half placed under "Lottery".
- Regulation 77(1) says the 2005 Regulations are "amended", but Regulation 77(2) treats them as "revoked".
- Part VI contains two overlapping "No Purchase Necessary" paragraphs (Regulations 52(5)(a) and 52(5)(a)(i)), one providing that the promoter "shall provide" a free entry alternative and the other that the promoter "may, where appropriate, provide" one. The two should be reconciled into a single clear rule.

Conclusion

Nigerian consumers deserve protection from fraudulent promotions, and much of this draft provides it. But protection should not come at the price of requiring the Commission's permission before a business may advertise a discount, speak through an influencer, or use standard software to reach customers. We urge the Commission to narrow the registration duty to chance-based promotions, drop the registration of speakers and software, confine the pricing rule to deception, require a court order before blocking websites, and scale penalties to the offender.

We would welcome the opportunity to discuss these comments with the Commission's team, and we are happy to share drafting language for any of the proposals above.

Respectfully,

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