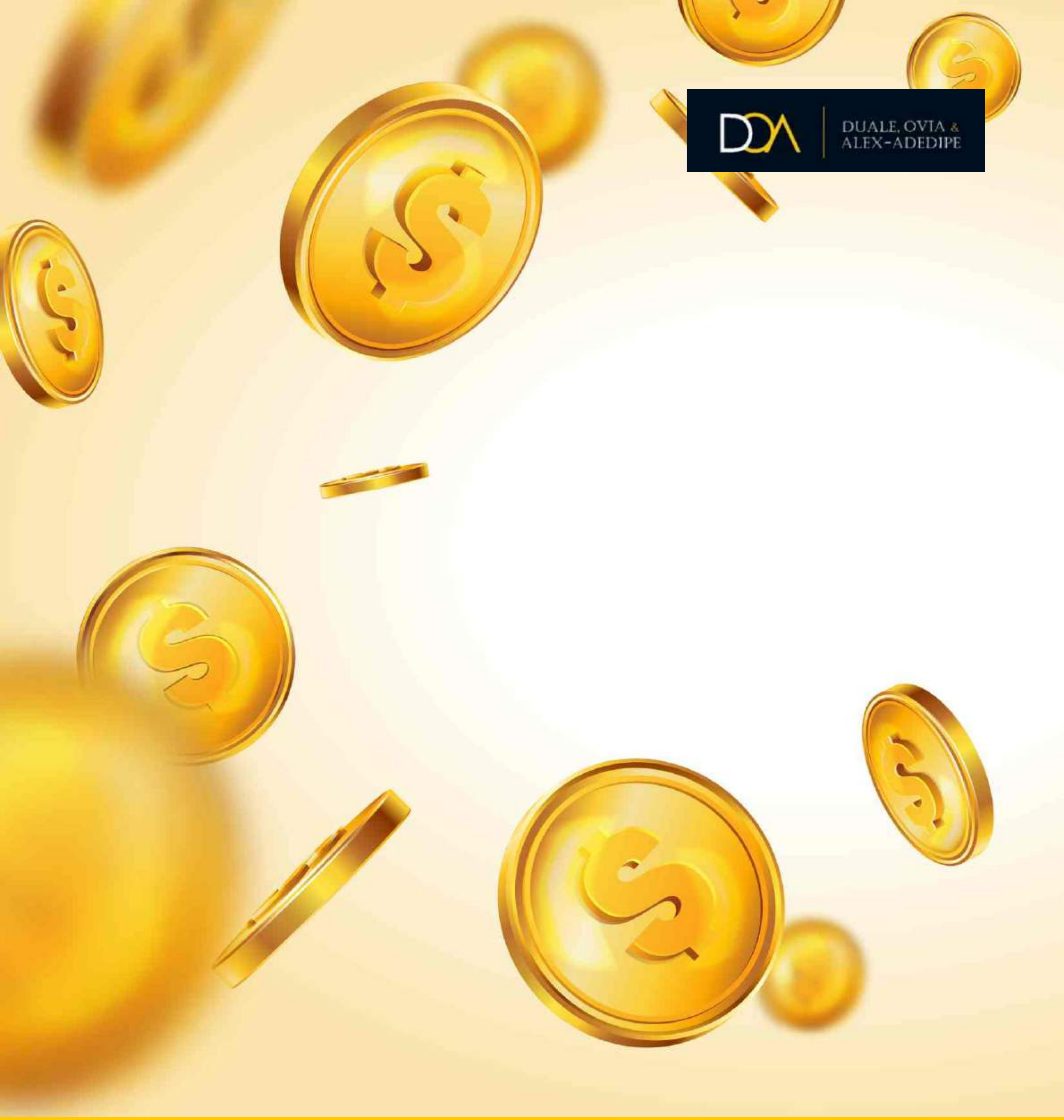

PRICE CONTROL AND COMPETITION IN NIGERIA

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Concept of Price Control

Given the rising inflation and decreasing consumers' purchasing power, governments often adopt a number of measures to cushion the impact of these macro-economic changes on the citizens. Direct regulation of prices of selected commodities, otherwise referred to as price control, is one of such measures. The underlying reason for its adoption is to cater for situations where the market-determined price (dictated by the interplay of the forces of supply and demand) is considered too high or too low. In the case of the former, the price fixing authority uses a maximum price (or price ceiling) to protect buyers from exorbitant prices. In the case of the latter, the price-fixing authority fixes a minimum price in order to encourage producers and sellers. Whilst arguably price control is a veritable economic tool for protection of consumers, increasing access to essential goods and controlling inflation through prevention of excessive price increase, the downsides to its adoption are that it:

a. often dampens innovation and investment as producers are less motivated to invest in new technologies and investment and
b. leads to creation of black markets due to shortage of goods and services largely because producers will be less incentivized to produce goods at a lower price.

The Price Control Act Vis-a-Vis the Federal Competition and Consumer Protection Act

Price Control in Nigeria was effectively introduced by the Price Control Act 1977 (the "PCA"). Though initially enacted as a decree by the military government, it officially became an Act, by virtue of the existing law, after Nigeria's transition from military rule to a democracy. Notably, section 1 of the PCA established the price control board (the "Board") and effectively mandates the Board, by way of a statutory notice, to fix a basic price for the commodity or goods specifically set out in the PCA. The basic price is required to properly represent: (a) in the case of locally produced goods, the cost of production of the commodity plus the manufacturer's profits and; (b) in case of imported goods, the duty-paid landed cost in Nigeria plus the importer's profits. The PCA criminalizes the sale, agreement to sell or offering of sale of any of the controlled commodity at a price that exceeds the controlled price, with accompanying penalties.

Whilst the PCA has not been expressly repealed, the FCCPA is at present the principal law regulating all matters relating to competition and consumer protection in Nigeria and cover all matters concerning the regulation of prices of consumer goods/commodities in Nigeria. The law is that, as between conflicting provisions in separate statutes, the provisions contained in the latest statute should prevail. Specifically, Section 88(1) of the FCCPA empowers the President to, by an order published in the Federal Gazette, declare the list of goods and services to be controlled in Nigeria.
In the case of a direct conflict between the PCA and the FCCPA, the later would prevail, having been enacted in 2019 as against the PCA which was enacted in 1977. Should the President exercise his power under Section 88(1) of the FCCPA, then the provision of the PCA on the same subject would be redundant.

Federal High Court Decision on Price Control in Nigeria
The Federal High Court (FHC) in Lagos recently ordered, in a suit marked FHC/L/CS/869/2023 brought Mr. Femi Falana (SAN), against the Price Control Board and the Attorney-General of the Federation (AGF) per Justice Ambrose Lewis-Allagoa of the FHC, the Federal Government to fix the prices of foodstuffs, and petroleum products within seven days from the date of the decision (the "Court Order"). Specifically, the Court Order

1 Section 5(2) of the PCA
2 Section 4 of the PCA.
3 See FRN v. George Osahon [2006] 5 NWLR (Pt. 973) 36, Akintokun v. LPDC (2014) LPELR-SC.111/2006

concerns the fixing of the price of milk, flour, salt, sugar, bicycles and its spare parts, matches, motorcycles and its spare parts, motor vehicles and its spare parts as well as petroleum products (including diesel, petrol motor spirit (PMS) and kerosene).

Though the application was unchallenged, the Court had to consider the issues raised by the applicant and the averments made in the accompanying affidavit, particularly the facts that i) the price of items, such as food , had been increasing almost on a daily basis, making life unbearable for the general public; and ii) sellers were not always sincere, but desperate to make excessive profits at the expense of the buyers.

Though the Court Order was validly issued, there is a critical question as to whether the Court Order will be successfully enforced. It remains to be seen how and what mechanism will be put in place by the plaintiffs to enforce the Court Order against the defendants.

Price Control vis-à-vis Competition, Private Investment and the Nigerian Economy.

Notwithstanding the legal argument against the continued applicability of the PCA and the apparent enforceability or otherwise of the FHC decision, there are critical questions regarding the practicality of price control in light of Nigeria's current economic situation. The consumer protection argument notwithstanding, price controls have positive impact on private investment decisions in the Nigerian economy. In certain sectors where price controls are efficiently implemented to ensure stability and predictability, investors may feel more confident in making long-term investments. For example, in industries with regulated prices such as telecommunications and energy, clear and consistent price controls can provide a conducive environment for private investment, infrastructure development and economic growth.

Pertinently, it is important that price control is not done excessively or unrealistically, as its economic effects could be devastating. A price control policy which aims to maintain a price ceiling for goods could diminish competition by reducing incentives for businesses to innovate, invest, or compete on quality. Suppliers may be pushed into reducing the usual quantities of their commodities, while the increased purchasing power of the general public would inevitably lead to more hands chasing fewer goods. Businesses may also scale back investments in capacity expansion and technology upgrades, leading to underinvestment, reduced productivity, and sluggish economic growth. Widespread or poorly managed price controls can also create market distortions, discourage domestic production, and promote black market activities which would make price control policies ineffective.

More so, price control alone may not address the underlying issues of supply chain constraints, rising costs of production and currency fluctuations. Regarding the issue of increasing food prices, there has been a public outcry by farmers on the insecurity in the nation which has impeded the farmers' ability to work and produce the usual quantities of food, thereby translating into food scarcity, while imported food products are directly affected by the continuous depreciation of the Naira. It is difficult to imagine that these underlying issues would disappear with the implementation of price control at this time.

Conclusion

While price control can play an important role in promoting fairness, affordability, and stability in the Nigerian economy, it needs to be carefully targeted, and implemented to avoid negative impacts on competition, private investment and economic growth. A balanced approach that considers market dynamics, regulatory effectiveness, and broader economic objectives is essential to ensure that price control contributes positively to Nigeria's economic development plans.

[4] <https://businessday.ng/agriculture/article/fx-insecurity-killing-our-business-farmers-cry-out/#:~:text=Farmers%20have%20decried%20Nigeria's%20heightening,President%20Bola%20Tinubu%2Dled%20government.>

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