

**MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES  
FEDERAL TRADE COMMISSION AND THE FEDERAL REPUBLIC OF NIGERIA'S  
FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION AND  
ECONOMIC AND FINANCIAL CRIMES COMMISSION ON MUTUAL ENFORCEMENT  
ASSISTANCE IN CONSUMER PROTECTION MATTERS**

The United States Federal Trade Commission ("FTC"), and the Federal Republic of Nigeria's Federal Competition and Consumer Protection Commission ("FCCPC") and Economic and Financial Crimes Commission ("EFCC") (each "a Participant"),

RECOGNIZING that fraudulent and deceptive commercial practices, and other unlawful conduct against consumers, undermine the integrity of both domestic and global markets to the detriment of all businesses and consumers, and undermine consumer confidence in those markets;

RECOGNIZING that the enforcement challenges that exist go beyond national frontiers and therefore that cooperation between national public authorities responsible for the enforcement of laws that protect the interests of consumers is essential to fight such practices;

RECOGNIZING that cross-border fraud and deception often involve violations of both criminal and civil laws, and that appropriate cooperation between civil and criminal enforcement bodies can effectively help address and deter such unlawful conduct;

RECOGNIZING that appropriate coordination between civil and criminal agencies can provide complementary approaches to serious economic crime, including mass marketing fraud, through information and intelligence sharing and parallel enforcement;

RECOGNIZING that the Participants have already worked together in connection with the International Consumer Protection and Enforcement Network ("ICPEN"), the African Consumer Protection Dialogue, and the International Mass Marketing Fraud Working Group; and

RECOGNIZING that the Participants have established strong working relationships and previously executed a Memorandum of Understanding between the United States Federal Trade Commission and the Federal Republic of Nigeria's Federal Competition and Consumer Protection Commission (formerly the Consumer Protection Council) and Economic and Financial Crimes Commission on Mutual Enforcement Assistance in Consumer Protection Matters, and that this Memorandum is the successor to and updates that Memorandum.

HAVE REACHED THE FOLLOWING UNDERSTANDING:

**I. Definitions**

For the purposes of this Memorandum of Understanding ("Memorandum"),

- A. "Applicable Consumer Protection Laws" means the laws and regulations identified in Annex 1, and such other laws or regulations as the Participants may from time to time collectively identify in writing to be an Applicable Consumer Protection Law for purposes of this Memorandum.
- B. "Covered Violation" means a practice that would violate the Applicable Consumer Protection Laws of one Participant's country and that are the same or substantially similar to a practice prohibited by any provision of the Applicable Consumer Protection Laws of the other country described in Annex 1 of this Memorandum.
- C. "Information" means evidence, testimony, communications, statements, documents or copies thereof, data, metadata, recordings, images in any form, and all data compilations that serve to identify, locate or link any such materials such as file inventories, folders and lists, or other things, that are obtained in anticipation of or during the course of an investigation or enforcement proceeding, including the identity of a person under investigation and any personal data necessary or useful for such an investigation or proceeding;
- D. "Materials" means all documents and electronically stored information and tangible things that were shared under this Memorandum and that are in a Requesting Participant's possession, custody, or control
- E. "Person" means any natural person or legal entity, including corporations, unincorporated associations, partnerships, or bodies corporate existing under or authorized by the laws of either the United States, its States, or its Territories, the laws of Nigeria, or its Territories, or the laws of other countries.
- F. "Request" means a request for assistance under this Memorandum.
- G. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.
- H. "Requesting Participant" means the Participant seeking or receiving assistance under this Memorandum.

## **II. Objectives and Scope of Assistance**

- A. This Memorandum sets forth the Participants' intent with regard to mutual assistance and the exchange of Information for the purpose of enforcing and securing compliance with Applicable Consumer Protection Laws.
- B. The Participants understand that it is in their common interest to:

1. cooperate with respect to the enforcement of the Applicable Consumer Protection Laws, including sharing Information that a Participant believes would be relevant to investigations or enforcement proceedings regarding Covered Violations of the Applicable Consumer Protection Laws, consumer complaints and other personally identifiable information, that a Participant believes would be relevant to investigations or enforcement proceedings regarding Covered Violations of the Applicable Consumer Protection Laws;
  2. facilitate mutual exchange of knowledge and expertise through training programs and staff exchanges;
  3. facilitate research and education related to consumer protection;
  4. promote a better understanding by each Participant of economic and legal conditions and theories relevant to the enforcement of the Applicable Consumer Protection Laws; and
  5. inform each other of developments in their respective countries that relate to this Memorandum.
- C. In furtherance of these common interests, and consistent with Section IV, the Participants intend to use best efforts to:
1. share Information, including consumer complaints and other personally identifiable information, that a Participant believes would be relevant to investigations or enforcement proceedings regarding Covered Violations of the Applicable Consumer Protection Laws;
  2. provide investigative assistance in appropriate cases, including obtaining Information under the Participants' respective legal authorities, on behalf of the other Participant;
  3. exchange and provide other relevant information in relation to matters within the scope of this Memorandum, such as information relevant to consumer and business education; government and self-regulatory enforcement solutions; amendments to relevant legislation; and staffing and resource issues;
  4. pursue further staff exchanges and joint training programs;
  5. coordinate enforcement against cross-border Covered Violations that are priority issues for the Participants;

6. provide other appropriate assistance that would aid in the enforcement against Covered Violations;
7. engage in enforcement cooperation to address the use of wire transfers with a nexus to Covered Violations;
8. continue membership in, and the use of complaint data from, the multinational project [www.econsumer.gov](http://www.econsumer.gov); and
9. coordinate participation in efforts to address consumer protection issues relating to spam and cyber threat enforcement, including participation in the UCENet.

#### D. Joint Implementation Committee

The Participants intend to establish a Joint Implementation Committee, made up of not more than three representatives from each Participant, which is expected to meet at least twice a year, either in person or by telephone or videoconference, in order to:

1. discuss pending Requests made by the Participants;
2. assess Requests concerning acts and practices set forth in Section II, including which Requests are the highest priorities to pursue;
3. review [econsumer.gov](http://econsumer.gov) complaint data and other complaint data sources, such as complaint data compiled by the FCCPC, the EFCC and the FTC's Consumer Sentinel Network, to identify areas of mutual enforcement interest for coordinated enforcement work; and
4. when appropriate, consider the need for improvements to this Memorandum and to make suitable proposals for modification.

### III. Requests for Assistance

- A. Each Participant is to designate a primary contact for the purposes of Requests for assistance and other communications under this Memorandum.
- B. If the request relates to Enforcement of Applicable Consumer Protection Laws, then Participants understand that:
  1. Requests for assistance are to include sufficient Information to enable the Requested Participant to determine whether a Request relates to a Covered Violation and to take action in appropriate circumstances. Such Information may include a description of the facts underlying the request and the type of assistance sought, as well as an indication of

any special precautions that should be taken in the course of fulfilling the Request, as described in Annex 2;

2. Requests for assistance are to specify the purpose for which the Information requested is to be used;
  3. Consistent with Section V, a Request for assistance certifies that the Requesting Participant is to maintain the confidentiality of each Request for assistance, the existence of any investigation related to the request, all materials related to each request, and all Information provided in response to each request, unless otherwise determined; and
  4. Prior to submitting Requests for assistance, Participants should perform a preliminary inquiry to ensure that the Request is consistent with the scope of this Memorandum and does not impose an excessive burden on the Requested Participant.
- C. Participants should use their best efforts to resolve any disagreements related to cooperation that may arise under this Memorandum, and, failing resolution in a reasonably timely manner, by discussion between appropriate senior officials designated by the Participants.

#### **IV. Limitations on Assistance**

- A. The Requested Participant may exercise its discretion to decline the Request, or limit or condition its cooperation, including where it is outside the scope of this Memorandum, or more generally, where it would be inconsistent with domestic laws, or important interests or priorities.
- B. The Participants recognize that it is not feasible for a Participant to offer assistance to the other Participant for every Covered Violation. Accordingly, the Participants intend to use best efforts, as outlined in Section II, to seek and provide cooperation focusing on those Covered Violations most serious in nature, such as those that cause or are likely to cause injury to a significant number of persons, and those otherwise causing substantial injury. If asked, the Requested Participant is to provide a preliminary response within 30 days as to whether it intends to fulfil the Request, decline the Request, or limit or condition its cooperation with the Request. If the Requested Participant intends to fulfil the Request, its response may include a non-binding time estimate.
- C. A Requesting Participant may request the reasons for which a Requested Participant declined or limited assistance.

## **V. Confidentiality and Data Safeguards Certification**

- A. When disclosing Information under this Memorandum, the Participants intend to set out: that the Information is disclosed for official law enforcement purposes; whether there may be any further onward disclosure of the Information, and if so, the procedures for doing so; and whether the Information may be used for any other purpose. To the fullest extent possible, and consistent with their respective laws, each Participant intends to certify the confidential treatment of Information received under this Memorandum, including the existence of an investigation to which the Information relates. The Participants plan to treat the shared Information, the existence of the investigation to which the Information relates, and any Requests made pursuant to this Memorandum as confidential, and do not intend to further disclose or use this Information for purposes other than those for which it was originally shared, which may include assistance from a third party, without the prior written consent of the Requesting Participant.
- B. Each Participant is to use best efforts, consistent with its laws, to safeguard the security of any Information received under this Memorandum and respect any safeguards decided upon by the Participants involved in the Request. In the event of any unauthorized access or disclosure of the Information, the Participants are to take all reasonable steps to prevent a recurrence of the event and to promptly notify any other affected Participant of the occurrence.
- C. The Participants recognize that Information exchanged in connection with investigations and enforcement often contains personally identifiable information. If the Requesting Participant wishes to obtain confidential Information that includes personally identifiable information, the Participants understand that they are to take additional appropriate measures to safely transmit and safeguard the Information containing personally identifiable information. Protective measures include, but are not limited to, the following examples and their reasonable equivalents, which may be used separately or combined as appropriate to particular circumstances:
1. transmitting the Information in an encrypted format;
  2. transmitting the Information directly by a courier with package tracking capabilities;
  3. maintaining the Information in secure, limited access locations (e.g., password-protected files for electronic information and locked storage for hard-copy information); and
  4. if used in a proceeding that may lead to public disclosure, redacting personally identifiable information or filing under seal.

## **VI. Disclosure of Confidential Information**

A. Notwithstanding Section V.A, the Participants understand that:

1. A Participant may disclose Information provided pursuant to this Memorandum in response to a formal demand from the Participant's country's legislative body or an order issued from a court with proper jurisdiction in an action commenced by the Participant or its government; and
2. Information obtained in connection with the investigation or enforcement of criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of a Participant's country's criminal laws.

B. The Participants should oppose, to the fullest extent possible consistent with their respective laws, any application by a third party for disclosure of confidential Information received from a Requested Participant, unless the Requested Participant consents to its release. The Participant that receives such an application is to notify forthwith the Participant that provided it with the confidential Information. This is not understood to require a Participant to appeal every decision of a court or tribunal ordering it to disclose Information. In such a case, the Participants should consult each other on next steps. Moreover, nothing in this provision is understood to interfere with the defendant's right to obtain certain exculpatory information in a criminal proceeding.

## **VII. Retention of Materials**

- A. Participants understand they are expected to not retain Materials for longer than is reasonably needed to fulfil the purpose for which the Materials were shared, or any document retention required by the Requesting Participant's country's laws, whichever is longer.
- B. The Participants recognize that in order to fulfil the purpose for which the Materials were shared, the Participants typically need to retain the Materials until the conclusion of the pertinent investigation or related proceedings for which the Materials were requested.
- C. Consistent with their respective laws, the Participants are expected to return or delete any Materials that are no longer needed, using secure methods, as soon as practicable after the Requested Participant makes a written request

for return or deletion or otherwise within a reasonable time once the Materials are no longer required.

### **VIII. Costs**

Unless otherwise decided by the Participants, each Participant bears its own costs.

### **IX. Duration of Cooperation**

- A. The Participants intend cooperation in accordance with this Memorandum to begin on the date the Memorandum has been signed by all Participants and to continue until discontinued in accordance with the provisions of this Memorandum.
- B. Assistance in accordance with this Memorandum is understood to be available concerning Covered Violations occurring before as well as after this arrangement is signed.
- C. A Participant may discontinue its participation in this Memorandum at any time. A Participant should endeavor to provide 30 days written notice of its intent to discontinue the Memorandum. Before providing such notice, a Participant is expected to consult with the other Participant(s).
- D. This Memorandum may be modified by mutual decision of the Participants. Any modification is to be in writing and signed by all Participants.
- E. On discontinuation of this Memorandum, the Participants are to maintain the confidentiality of any Information communicated to them by the other Participant in accordance with this Memorandum, and return or destroy, in accordance with the provisions of Section VI and Section VII, Information obtained from the other Participant in accordance with this Memorandum.



## **X. Legal Effect**

Nothing in this Memorandum is intended to:

- A. Create binding obligations, or affect existing obligations, under international or domestic law.
- B. Prevent a Participant from seeking assistance from or providing assistance to the other Participants pursuant to other agreements, arrangements, or practices.
- C. Affect any right of a Participant to seek information on a lawful basis from a Person located in the territory of the other Participant's country, or preclude any such Person from voluntarily providing legally obtained information to a Participant.
- D. Create a commitment that conflicts with the Participant's national laws, court orders, or any applicable international legal instruments.
- E. Create expectations of cooperation that would exceed a Participant's jurisdiction.

Signed in Washington DC, United States of America, and Abuja, Nigeria, in triplicate.

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Joseph J. Simons  
Chairman  
Federal Trade Commission  
United States of America  
Date:

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Babatunde Irukera  
Executive Vice Chairman/Chief Executive Officer  
Federal Competition and Consumer Protection Commission  
Nigeria  
Date:

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Mohammed Umar Abba  
Acting Executive Chairman  
Economic and Financial Crimes Commission  
Nigeria  
Date:

## **ANNEX 1**

### **Applicable Consumer Protection Laws**

#### **For Nigeria:**

1. The Federal Competition and Consumer Protection Commission Act of the Federation of Nigeria, 2018 and all the Regulations made pursuant thereto.
2. Part II of the Economic and Financial Crimes Commission (Establishment) Act 2004.

#### **For the United States of America:**

The Federal Trade Commission Act, 15 U.S.C. §§ 41-58, the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, the CAN-SPAM Act of 2003, 15 U.S.C. §§ 7701-7713, and other consumer protection laws, and the regulations promulgated pursuant to such laws, except those provisions comprising Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C § 6211(5))).

## **ANNEX 2**

### **Standard Request Form**

The Standard Request form is to include the following:

- (a) the names of the Requested and of the Requesting Participants;
- (b) the name, location, and contact details of the subject(s) of the investigation, if available;
- (c) a general description of the alleged infringement including, where applicable, the name of the product or service and the advertising or sales medium involved;
- (d) the estimated number and location of consumers likely to be harmed and the estimated economic harm;
- (e) the Applicable Consumer Protection Laws allegedly violated;
- (f) the description of the assistance requested;
- (g) the purpose for which the Information requested is to be used;
- (h) the statutory basis for maintaining confidentiality of a Request and all Information exchanged in connection with the Request, consistent with Annex 3 of the Memorandum;
- (i) an indication of any special precautions that should be taken in the course of fulfilling the Request;
- (j) a description of any investigation and consultations undertaken by the Requesting Participant; and
- (k) a description of the Information establishing a Covered Violation including witnesses and documents that the Requesting Participant can provide to the Requested Participant.
- (l) a certification of confidential treatment.

### Annex 3

The Participants' authority to maintain requested Information in confidence is as follows:

For the FTC:

The FTC protects the confidentiality of sensitive, nonpublic information received from businesses or consumers located domestically or abroad, or from foreign authorities, under applicable provisions of U.S. law. As a general matter, the FTC typically does not disclose nonpublic agency information. Nonpublic agency information can include information submitted to the agency, information about the Commission's investigations and actions, and information about internal agency deliberations. Unauthorized disclosure of nonpublic information submitted to the Commission is subject to criminal prosecution and punishable by fines or imprisonment under the FTC Act, 15 U.S.C. § 50. Under certain circumstances, unauthorized disclosure of nonpublic agency information is subject to criminal sanction under the Trade Secrets Act, 18 U.S.C. § 1905, the Larceny Act, 18 U.S.C. § 641, and SEC Rule 10b-5. In addition, the disclosure of materials submitted to the Commission is restricted by the following provisions of the FTC Act:

Sections 21(b) and 21(f) of the FTC Act, together with Commission Rule 4.10(d), limit disclosure of information in a law enforcement investigation if the information was submitted pursuant to compulsory process or if it was submitted voluntarily in lieu of such process pursuant to a request and designated confidential. Section 6(f) of the FTC Act limits disclosure of trade secrets and confidential or privileged commercial or financial information. Section 21(c) of the FTC Act requires pre-disclosure notice to the submitter where the Commission intends to disclose documents marked "confidential" by a submitter if the Commission or its designee determines that such documents are not in fact confidential.

The FTC Act does, however, permit disclosure of information protected by Sections 6(f), 21(b) and 21(f) to foreign law enforcement authorities in specified circumstances.<sup>1</sup> Other federal laws also require the FTC to treat specific types of information as confidential, without regard to the manner in which the information is obtained. For example, U.S. law imposes confidentiality obligations regarding certain classes of information, including personally identifiable information, maintained by federal

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<sup>1</sup> Such disclosure is permitted in the agency's discretion, for example, when the foreign law enforcement authority requests information for the purpose of investigating or engaging in enforcement proceedings related to possible violations of foreign laws prohibiting fraudulent or deceptive practices or other practices substantially similar to practices prohibited by any law administered by the Commission. Among other requirements, the foreign law enforcement agency must certify that it will use such information only for official law enforcement purposes, and set forth a *bona fide* legal basis for its authority to maintain the information in confidence.

agencies. See, e.g., 5 U.S.C. § 552a (Privacy Act of 1974). There are certain, discrete circumstances in which the FTC may disclose a person's confidential information for a specific use. For example, the FTC Act does not bar the agency's use of a person's confidential information in judicial and administrative proceedings. However, the Federal Rules of Civil Procedure and FTC Rules of Practice include procedures to protect confidential information used in judicial proceedings or FTC administrative proceedings. For instance, the person providing information may seek a protective order to prevent confidential information from being made public or from being used outside the court proceeding. See Fed. R. Civ. P. 26(c); 16 C.F.R. § 3.31(d) (requiring Administrative Law Judge in FTC proceeding to issue a specific protective order). In addition, the FTC Act does not prohibit the agency from complying with information requests from Congress. In the event of such a request, however, the agency must notify the submitter of the information, and the agency can request confidential treatment of any information that may be shared.

The FTC is also subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which requires the agency to provide access to certain existing government records to the public. The law recognizes, however, that the disclosure of certain information could be harmful. It therefore recognizes exceptions and excludes some records, or portions of records, from release including certain law enforcement records (e.g., certain investigatory files) including from foreign agencies. In addition, under Section 21(f) of the FTC Act as amended by the U.S. SAFE WEB Act, the FTC may also withhold from disclosure:

(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

For the FCCPC:

The FCCPC pursuant to its statutory obligations under Section 105(6)(d) of the Federal Competition and Consumer Protection Commission Act of the Federation of Nigeria, 2018 is mandated to protect confidential information.

(d) provide[s] for the exchange of information and the protection of confidential information

These obligations apply to the confidentiality of information not already in the public, relating to individuals and businesses that come under the regulatory scrutiny of the FCCPC in connection with the exercise of its statutory functions. Restrictions on the further disclosure of information apply to the FCCPC and to other persons to whom it makes disclosure.

For the EFCC:

The EFCC is under statutory obligations under Section 39 (1) of the Economic and Financial Crimes Commission (Establishment) Act 2004 to protect confidential information. These obligations apply to the confidentiality of information relating to individuals and businesses that comes to the EFCC in connection with the exercise of its statutory functions. Restrictions on the further disclosure of information apply to the EFCC and to other persons to whom it makes disclosure. In particular, a person making an unlawful disclosure commits a criminal offence (S39 (2) (d) of the EFCC Act).