

The New Practice (TNP)

- An Andersen Collaborating Firm



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Is It Time to Regulate the Live Concert Experience in Nigeria?

the cancellation was that it was not possible to deliver a show of the quality that Nigeria deserves.⁴ It is however rumoured that Nigeria's operational deficiencies were the reason for the cancellation.⁵

It is beneficial to highlight some of these matters within the FCCPC's purview as provided under the Federal Competition and Consumer Protection Act (the "Act"). Section 130 of the Act for example states that:

When an undertaking agrees to perform any service for or on behalf of a consumer, the consumer has a right to:

- The timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;*
- Performance of the services in a manner and quality that reasonable persons are generally entitled to expect;*

In addition, according to Section 167 of the Act "Service" includes: "a service of any description, whether industrial, trade, professional or any other service."

From the provisions above, it is clear that the services rendered by concert organisers and artists fall well within the definition of a "service" under the Act. Consequently, they are obligated to deliver their services to the reasonable satisfaction of the attendees. However, while primary legislation speaks to these issues at a high level, there is a gap in the specifics, and we have not seen a move by the FCCPC to provide industry-specific guidelines that expound on the needs of the live concert business in Nigeria.

In most regulated sectors, it is not unusual to find regulations or guidelines that set out minimum service levels, statutory timelines, and stakeholder obligations. The live concert business may benefit from an approach of this nature by defining:

- Who the service provider is in the context of a live concert vis-a-vis who bears the direct liability to the consumer;
- Maximum delay window for late arrival by performers;
- Events of default that could warrant refunds to attendees; and
- Mandatory liability insurance requirements etc.

Striking the Right Chord with Regulation

In making a case for regulatory intervention, a relevant point to start from is the consideration of examples from other jurisdictions with such actual or proposed regulatory interventions in the live concerts business. In the US – the world's largest music market, there have been calls from the Consumer Financial Protection Bureau President

for a crackdown on "junk fees"⁶ to lower costs for music and sports event consumers. Should this sail, the ban on junk fees would require businesses to display all fees and the full price of goods and services upfront.⁷ In line with these calls, Live Nation – the world's largest live music promoter has committed to rolling out an upfront all-in pricing experience that will reflect one clear, total price for the fans who attend Live Nation-owned venues and festivals across the US.⁸ These concerns over ticket fees are not exactly novel and date as far back as 1995 when Consumers Against Unfair Ticketing – a nonprofit coalition lobbied for State and Federal laws to cap service fees and monitor contracts among live concert stakeholders. Another notable mention of a case for regulation in the US is the Gina Maeng paper, which argues in favour of Federal laws for crowd management in the live music industry.⁹

In the UK, the issue of junk fees is catered for under the Consumer Rights Act 2015 (CRA) – The UK is however carrying out consultations on this subject matter to improve the quality and accessibility of information, so consumers can make better-informed choices about the products they purchase.¹⁰ The UK also has in place the Licensing Act 2003 which designates certain entertainment activities as "regulated entertainment" that require some form of licensing permission, such as a premises licence certificate or a temporary event notice. An example is entertainment provided to over 500 people.

For a while, across Europe, the issue of ticket resale plagued the live music business. However, the EU's Digital Services Act, passed in February this year, now stipulates stricter rules for digital ticket sellers and resellers. Sam Shemtob, a director at Face-value European Alliance for Ticketing (FEAT) – an organisation that was a frontliner in lobbying for the regulation of ticket resale has described the Digital Services Act as "...a landmark moment for Europe's live events sector."¹¹

The examples cited above are just a few that point to the notion that indeed regulation of the live music business is not an anomaly. However, it does appear that the greater concern in Europe and America is the regulation of fair pricing for the protection of the consumer's interests. Although this is equally a valid concern in our jurisdiction, the quality of the live music experience is the greater elephant in the room at this point of our music industry's evolution. As such, while substantive legislation can cater to competition concerns, light-touch regulation may just be the solution to attaining better concerts going forward. This could be achieved through the creation of a functional framework together with statutory guidelines that set out minimum service levels, statutory timelines, and stakeholder obligations but do not necessarily interfere with the contractual liberties of stakeholders nor stifle creativity, even though this is easier said than done.

In the final analysis, Nigeria's live concert scene is a vibrant tapestry of music, culture, and community and we recognise that given the architecture of our laws presently, the FCCPC is best positioned to drive and transform the experience for consumers. It is relevant however to point out that, notwithstanding these powers wielded by the FCCPC, enabling consumers to have more qualitative concert experiences will not be something we stumble upon, nor can it be driven by the FCCPC alone but will require conscious stakeholder engagements, as well as cross-regulatory collaborations with Federal and State agencies to monitor and tackle these issues, and to create home-produced concert experiences that are safer, more vibrant than ever before and most importantly good value for the consumers' money. We however do rule out potential friction in the interplay between Federal and State agencies, given the absence of a clear mention of consumer protection in our legislative lists but in summary, the end goal for the industry will be that our status as the home of Afrobeats is also able to attract foreign investments to host world-class concerts and festivals that contribute significantly to our GDP growth.

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¹ Light touch regulation is a regulatory approach that emphasizes self-regulation, or the idea that businesses and organizations should be able to police themselves rather than being subjected to strict government oversight. It is a more hands-off approach than traditional, heavy-handed regulation.
² See Section 17(1) of the Federal Competition and Consumer Protection Act.
³ See <https://www.staters.co/article/why-are-nigeria-concerts-always-late/>.
Site also: <https://www.afrocity.com/concert-culture-in-nigeria-in-a-ligature-episode/>
⁴ <https://www.ig-mag.net/2023/11/info-nation-nigeria-debut-cancelled/#:~:text=Organisers%20say%20the%20%26%20refund%20including%20booking%20fees>
⁵ <https://www.ecoandinfoc.org/why-afro-beats-ready-for-information-a-welby-check/>
⁶ Junk fees are hidden, surprise fees that companies sneak onto customer bills, increasing costs and stifling competition in industries.
⁷ <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/11/biden-harris-administration-announces-broad-new-actions-to-protect-consumers-from-billions-in-junk-fees/>
⁸ <https://www.livelines.com/archives/ig-mag-1995-03-22-4-45762-story.html>
⁹ https://www.americanbar.org/groups/entertainment_sports/publications/entertainment_sports/layer/ed-40-01-winter-24/
¹⁰ <https://assets.publishing.service.gov.uk/media/548a459bee02000b7811/consultation-on-improving-price-transparency-and-product-information-for-consumers.pdf>
¹¹ <https://www.recordoftheindustry.com/news-and-priceticket-resale-platforms-become-subject-to-new-rules-as-eus-digital-services-act-enters-into-force>

In the past decade, Nigeria's live concert scene has bustled from the ripple effect of "Afrobeats" global success. Yet, despite the financial investments that have flooded, the promises of premium experiences, and the euphorically-edited social media clips from these concerts, the consensus amongst patrons i.e. concert attendees, even for "VIP" and "VVIP" ticket purchasers who pay an arm and a leg, is that the majority of concerts in Nigeria are not worth the Naira you pay. This is particularly because, when compared to concerts in Europe or America, headlined by the same artistes, the value and experience received are thousands of miles apart. Are the performers or the organisers the problem, or is the pertinent question whether the time is ripe to put some regulatory guardrails on the live concert experience in Nigeria?

It is rational to conceive some apprehension towards regulating a niche like this, especially considering the tendencies to stifle creativity, innovation, and spontaneity, but not if we strike the right chord with regulation, perhaps through light touch regulation.¹ In this article, we will delve into the peculiar hitches associated with live concerts in Nigeria and explore why it may be necessary to consider regulatory solutions to these problems. We will also examine the roles of performers and concert organisers in shaping the live concert landscape and discuss how regulation may aid their efforts for the benefit of all.

Who wields the power to regulate?

In Nigeria, performers and concert organisers are subject to several laws, regulators, and regulations. However, the most relevant regulator here is the Federal Competition and Consumer Protection Commission ("FCCPC"). The FCCPC as we know wields the power to protect and promote consumers' (including concert attendees') interests.² While the existing legal and regulatory framework may not comprehensively address all the issues currently faced in this space, the FCCPC is capable of mitigating some of the most germane issues, such as ticket pricing, late arrival by performers, non-appearance, and maybe safety to an extent. Similar issues are echoed in some publications in 2019 and 2023,³ alluding to a single deduction that Nigeria's concert culture is in dire need of intervention. As such, it seems the intervention we seek may already exist within our laws to a considerable extent. A case in point is the 2023 Afro Nation Lagos festival which was billed to take place in December but was cancelled in its final moments. The organisers stated the reason for

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