

Intellectual Property, SMEs, and Economic Recovery in Nigeria

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1.1 Introduction

The Nigerian economy, in the past year, has been ravaged by a large-scale activity halter in the COVID-19 pandemic and riddled with rising inflation,¹ worsening unemployment,² and bleak prospects for a full recovery.³ Against this backdrop, the country is in desperate need of economic momentum which SMEs are well-suited to provide. At the same time, Intellectual Property (IP), in line with its underlying principle of utilizing private benefit for the eventual end of social good,

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¹ Omilana, T. (2021, March 16). Nigeria inflation continues to rise, surges to 34-month high. *The Guardian Nigeria*. <https://guardian.ng/news/nigeria-inflation-continues-to-rise-surges-to-34-month-high/>

² Olurounbi, R. (2021, March 15). Nigeria Unemployment Rate Rises to 33%, Second Highest on Global List. *Bloomberg*. <https://www.bloomberg.com/news/articles/2021-03-15/nigeria-unemployment-rate-rises-to-second-highest-on-global-list#:~:text=The%20jobless%20rate%20in%20Nigeria,agency%20released%20labor%2Dforce%20statistics.>

³ Alade, B. (2021, May 5). Expert says Nigeria's economic recovery remains weak. *The Guardian*. <https://guardian.ng/business-services/business/expert-says-nigerias-economic-recovery-remains-weak/>

could prove very useful in improving the private ventures of SMEs for the social good of overall economic development. Thus, this essay seeks to explore the role of SMEs in the economic recovery of Nigeria as well as address how IP could make the fulfilment of this role simply better.

1.2 SMEs as a Tool for Economic Recovery in Nigeria

In the words of Peter Drucker, small enterprises represent the main catalyst for economic development.⁴ It is not difficult to see how this is true in Nigeria where SMEs account for 96% of businesses.⁵ As will be shown, the well-being of SMEs translates to overall economic development in several ways.

First, SMEs contribute considerably in terms of economic output as shown by their contribution of 48% to national GDP,⁶ which makes them even more relevant in this period of COVID19-induced economic decline. Furthermore, studies show that SMEs contribute the largest share of employment and job creation globally.⁷ This is already the case in Nigeria where SMEs account for over 80% of employment.⁸ Nevertheless, further leveraging this characteristic of SMEs could help alleviate Nigeria's current unemployment rate of 33.3%.⁹ In the same vein, the propensity of

⁴ Druker, P.F. (2009). *Innovation and Entrepreneurship*, New York: Harper Collins. Lazăr, I., Ilieș, L., Mortan, M., Vereș, V., Lungescu, D., Company management, Cluj-Napoca: Risporint.

⁵ PWC. (2020). *MSME Survey 2020: Nigeria Report*. <https://www.pwc.com/ng/en/assets/pdf/pwc-msme-survey-2020-final.pdf>

⁶ Faminu, G. (2020, January 30). MSMEs: Oiling the wheels of Nigerian economy. *Business Day*.

<https://businessday.ng/business-economy/article/msmes-oiling-the-wheels-of-nigerian-economy/>

⁷ International Labour Organization (ILO). (2019). *The Power of Small: Unlocking The Potential of SMEs*.

<https://www.ilo.org/infostories/en-GB/Stories/Employment/SMEs#intro>

⁸ PWC. (2020). *MSME Survey 2020: Nigeria Report*. <https://www.pwc.com/ng/en/assets/pdf/pwc-msme-survey-2020-final.pdf>

⁹ Olurounbi, R. (2021, March 15). Nigeria Unemployment Rate Rises to 33%, Second Highest on Global List. *Bloomberg*. <https://www.bloomberg.com/news/articles/2021-03-15/nigeria-unemployment-rate-rises-to-second-highest-on-global-list#:~:text=The%20jobless%20rate%20in%20Nigeria,agency%20released%20labor%2Dforce%20statistics.>

SMEs to employ people makes them suited for redistribution of wealth and poverty alleviation. This is particularly important given Nigeria's 40% poverty rate.¹⁰

In addition, SMEs help breed competition in various sectors and prevent the formation of monopolies. This competition spurs economic growth in various ways. For one, it brings the best out in businesses by promoting innovation alongside the resultant better products and services. Similarly, competition brings about better productivity which upon aggregation leads to economy-wide efficiency. Also, SMEs benefit the Nigerian economy by acting as a cushion in times of economic downturn since they are better at adapting to changing market conditions, thanks to their small scale.

From the foregoing, it is evident that SMEs can be veritable tools in the herculean task of revitalizing the Nigerian economy.

1.3 Intellectual Property & SMEs: Economically Repositioning Nigeria in a Post-COVID World

IP supports the growth and health of SMEs, and by extension the economy, in various ways as will be illustrated in subsequent paragraphs.

First, it goes a long way in solving the problem of short lifecycles that SMEs face. Many SMEs fail within their first 5 years,¹¹ the effect being that the economic benefits they provide are lost way too quickly. How does IP solve this problem? Well, modern SMEs thrive on innovation; however,

¹⁰ National Bureau of Statistics. (2019). *2019 Poverty and Inequality in Nigeria: Executive Summary*. <http://nigerianstat.gov.ng/download/1092>

¹¹ McIntyre, G. (2020, November 20). What Percentage of Small Businesses Fail? *Fundera*. <https://www.fundera.com/blog/what-percentage-of-small-businesses-fail#:~:text=The%20fast%20answer%20for%20what,fail%20in%20their%20fifth%20year.>

these innovations are often at risk of imitation or theft by fellow SMEs and larger enterprises. With Intellectual Property Rights (IPR), an SME can safeguard its innovations and reap its dividends. This way, such SME could gain competitive advantages which translate to market share retention; thereby, enabling it to not just last longer but also grow.

In this respect, SMEs could maximize the different IP regimes by leveraging the IP Continuum Framework. This refers to the strategy of initially protecting the unique functionality of inventions or original expressions through Patent/Copyright. Then, transferring the value of these inventions and expressions into more long-term suited IP regimes like trademarks through targeted advertising. This way, SMEs can retain the market advantages of innovation and creativity beyond the limited periods of patent/copyright protection.

Furthermore, IP alleviates the issue of inadequate capital, which according to Price Waterhouse Cooper (PWC) ranks as the most critical problem SMEs face in Nigeria.¹² Lack of capital hinders SMEs in such ways as to limit their economic utility. IP solves this problem in two ways: making SMEs more appealing as investment destinations and diversifying streams of income.

On the investment front, ownership of IP adds value to businesses as intangible assets. Considering the increasing value of intangible assets and now the use of IP valuation by investors in determining the worth of businesses, it is not difficult to see how SMEs with such useful IP would appeal more to investors and thus unlock better access to capital. Case in point is how IP enabled a Nigerian company – EAT-SET Industries – to attract investment as far back as 2001.¹³ Furthermore, IP could help SMEs gain better access to capital by diversifying the streams of

¹² PWC. (2020). *MSME Survey 2020: Nigeria Report*. <https://www.pwc.com/ng/en/assets/pdf/pwc-msme-survey-2020-final.pdf>

¹³ World Intellectual Property Organization (WIPO). (2010). *Using IP to Attract Investors: Case Study*. <https://www.wipo.int/ipadvantage/en/details.jsp?id=2545>

income for the business. Beyond generating revenue from the direct commercialization of IP products, IP presents other opportunities for SMEs to make money such as the assigning and licensing of IP.

Another critical problem facing Nigerian SMEs is finding customers.¹⁴ IP, however, helps with this by facilitating and improving marketing. IPRs such as trademarks and industrial designs protect various marketing and brand-related elements like logos, slogans, and ornamental aspects of products. Hence, these IPRs could be instrumental in creating strong brand identities and ensuring product differentiation, all of which help businesses stand out and gain customers.

In addition, IP such as Geographical Indications (GI) could facilitate the entry of SMEs into international trade, thereby boosting Nigeria's non-oil export. So many local products in Nigeria are promising candidates for GI protection, from our Adire to our Benue yams and Ofada Rice. These are all products that could be collectively leveraged by SMEs through GI protection to increase sales, both domestically and internationally. For this to be the case, however, Nigeria would have to institute a better legislative framework for GI as well as take progressive steps for international GI protection like adopting the Lisbon System.¹⁵

Finally, these benefits IP accrues to SMEs eventually tie back to the economy. For instance, by improving product/brand differentiation, IP usage would lead to fiercer competition, which as stated earlier, results in economy-wide efficiency. Similarly, the wide use of IP among SMEs would incentivize innovation, which has been recognized as being essential for economic

¹⁴ PWC. (2020). *MSME Survey 2020: Nigeria Report*. <https://www.pwc.com/ng/en/assets/pdf/pwc-msme-survey-2020-final.pdf>

¹⁵ World Intellectual Property Organization (WIPO). (n.d.) *Lisbon – The International System of Appellations of Origin and Geographical Indications*. <https://www.wipo.int/lisbon/en/>

growth.¹⁶ Lastly, the fact that IP makes these SMEs better businesses that last longer and grow would improve their performance with respect to employment, wealth redistribution, and economic output.

1.4 Intellectual Property Challenges faced by SMEs

Despite the various ways IP benefits SMEs, the reality is that certain factors prevent SMEs from making effective use of the IP system. One factor is the lack of awareness among SMEs regarding the value of IP protection to their businesses. Other critical obstacles include the perceived complexity, cumbersomeness, and cost of IP registrations as well as poor enforcement. Thankfully, these problems are not beyond solving as several initiatives could be undertaken to improve the disposition of SMEs to IP.

First, the government and other stakeholders must invest in awareness campaigns to educate SMEs on the importance of IP to their businesses. In the same vein, models such as the MIPLG free IP consultation for SMEs could be adopted and deployed from time to time and on a larger scale to improve knowledge about IP among SMEs. Also, SMEs could be introduced to helpful tools like WIPO IP Diagnostics that conducts basic IP diagnosis on businesses using questionnaires.

In addition, the government must work towards creating an IP registration that is not only less tedious but also simplified. One way this can be done is by enlisting professionals at the point of registration to help guide SMEs through the process, thus making for hitch-free registrations.

¹⁶ European Central Bank. (2017). *How does innovation lead to growth?*
<https://www.ecb.europa.eu/explainers/tell-me-more/html/growth.en.html#:~:text=One%20of%20the%20major%20benefits,other%20words%2C%20the%20economy%20grows.>

Similarly, hastening the digitalization of IP registration would go a long way in making registrations faster.

As regards cost, studies have shown that with respect to patents, the costs that dissuade SMEs are not just application and filing costs but also expenses associated with the legal defence of patents.¹⁷ As such, it is not enough that the government subsidizes patent application fees for SMEs, it is also necessary in the long-term that mechanisms are created for pre- and post-grant opposition at the patent office, thereby reducing the need for full-fledged litigation. The latter recommendation is regarded as long-term as it would require a transition to a substantive patent administration.

Finally, the Nigerian IP regime must be strengthened as the current weak regime has been shown to not only discourage innovation among businesses but also have detrimental effects on the economy.¹⁸ Thus, there is a need to review our outdated IP laws and bring them up to modern standards and constitutionally domesticate relevant treaties. Also, it is necessary to improve enforcement by taking up policy initiatives that strengthen the enforcement capacity of IP agencies as well as promote coordination with other agencies like NAFDAC, CAC, and the Nigerian Customs Service.

¹⁷ Burrone, E. (2005). Intellectual Property Rights and Innovation in SMEs in OECD Countries. *Journal of Intellectual Property Rights* 10, 34-43.

¹⁸ PWC. (2019). *Impact of Intellectual Property Infringement on Businesses and the Nigerian Economy*. <https://www.pwc.com/ng/en/assets/pdf/ip-infringement-ngr-economy.pdf>

1.5 Conclusion

The journey towards Nigeria's economic recovery is likely to be anything but smooth. Nonetheless, Nigerian SMEs, with IP providing momentum, could prove to be just what is needed to steer this country's economy not just through post-covid recovery but also towards exponential development.