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TEMPLARS ThoughtLab

Court Upholds Nigeria Competition Authority's Regulatory Powers: *Implications for Nigeria's Communications Sector*

The regulatory framework governing competition matters in Nigeria's communications industry has been the subject of recent legal controversy, majorly stemming from the existence of two statutes which expressly confer exclusive regulatory powers on different regulatory bodies. At the heart of this debate are the *Federal Competition and Consumer Protection Act, 2018* (the "**FCCPA**") and the *Nigeria Communications Act, 2003* (the "**NCA**").

While the NCA vests the Nigerian Communications Commission (**NCC**) with the exclusive authority to regulate issues of competition within the communications sector,¹ the FCCPA equally vests the Federal Competition and Consumer Protection Commission (**FCCPC**) with jurisdiction to regulate all matters pertaining to competition across all sectors. This state of affairs has created uncertainty and controversy as to which law and body takes precedence when it comes to competition oversight, thereby putting industry players at the risk of dual regulation.

In the recent case of *Emeka Nnubia v Honourable Minister of Industry, Trade and Investment, FCCPC and MTN Nigeria Communications Plc*,² the Federal High Court (**FHC**), albeit a court of first instance, appears to have resolved this seeming statutory conflict in favour of the FCCPC. This article examines the decision of the FHC and its potential impact on the regulation of competition within regulated sectors and generally on the ease of doing business in Nigeria, while also proffering recommendations, based on practices in other jurisdictions.

¹ Section 90 NCA

² Suit No: FHC/L/CS/1009/2024 (Unreported) delivered coram, Honourable Justice F.N. Ogazi, on 7 February 2025

Facts of the Case

By a letter dated May 17, 2024, titled “*Notice of Limited Initial Inquiry and Possible Prospective Investigation*” (“**FCCPC’s Letter**”) the FCCPC notified MTN Nigeria Communications Plc (MTNN) of the initiation of a limited initial inquiry and possible prospective investigation (LIIPPI) of MTNN, pursuant to the FCCPC’s regulatory mandate. By the said letter, the FCCPC directed MTNN to produce an array of documents and information.

Miffed by the FCCPC’s Letter, the Plaintiff, a shareholder of MTNN, filed a suit at the FHC, seeking a declaration that the NCC, and not the FCCPC, had exclusive jurisdiction to regulate competition matters in the communications sector. Separately, the Plaintiff sought a declaration that many of the internal documents requested by FCCPC contained sensitive data and trade secrets, the release of which would prejudice him and his interests in his investee company. The Plaintiff also sought a declaration that the failure of the FCCPC to specify the legitimate purpose for which it was demanding MTNN’s internal documents amounts to a breach of the Nigerian Data Privacy Act, 2023.

In response to the action, the FCCPC filed a preliminary objection by which it challenged the competence of the suit mainly on the grounds that: the Plaintiff failed to serve pre-action notice on the FCCPC before commencing the action; and that the Plaintiff lacked *locus standi* (i.e., the legal right or capacity) to institute the suit. In its decision, the FHC upheld FCCPC’s preliminary objection, holding that the Plaintiff indeed lacked the *locus standi* to institute the suit as the suit appeared to be more for the benefit of MTNN and considered the apprehension of the Plaintiff to be remote. Further, the Plaintiff’s failure to issue a pre-action notice to the FCCPC amounts to failure to fulfil a condition precedent, thereby rendering the suit incompetent.³

Although the Court had upheld the FCCPC’s preliminary objection and already determined the matter in favour of the FCCPC based on preliminary issues, it nevertheless proceeded to pronounce on the substantive issues in the suit.⁴

The Court’s Decision on the Merits of the Case

We should mention that the decision of the FHC on the merits touched on a number of legal issues. However, for the purpose of this publication, our focus will be on the court’s decision as it relates to the conflict between the NCA and the FCCPA – the focal point.

In its decision, the FHC held that although both the NCA and the FCCPA respectively vest the NCC and the FCCPC with exclusive jurisdiction over competition matters in the telecommunications industry,⁵ the FCCPA, being a law passed later in time (in the year 2019)⁶, takes priority over any earlier enacted laws (such as the NCA, which was enacted in 2003) which contain

³ It its decision, the Court relied on the case of *FIRS v Midwestern Oil & gas Co. Plc & Anor* (2024) LPELR-61872 (CA) and discountenanced the decision of the Court of Appeal in *Tabugbo v Managing Director, FAAN* (2023) LPELR-59849(CA) because it was more recent.

⁴ Following the principle in *Katto v. CBN* (1991) LPELR-1678(SC)

⁵ See section 90 of the NCA and section 104 of the FCCPA.

⁶ Although the law received presidential assent in January 2019, it is cited as the Federal Competition and Consumer Protection, 2018

conflicting provisions with the FCCPA.⁷ The court's reasoning is based on the established principle that where there are conflicting provisions, the more recent of the two legislations should take precedence⁸.

Separately, the FHC held that by section 105 (3) of the FCCPA, the FCCPC and sector-specific regulators such as the NCC are required to ensure a coordinated approach to competition and consumer protection. The Court observed this provision removes the exclusive regulatory powers of sector-specific regulators such as the NCC and instead lays down concurrent regulatory power with the FCCPC in respect of competition matters arising from such specific sectors.

Notably, the court rejected the Plaintiff's argument that by virtue of section 105 (4) of the FCCPA, it was mandatory for there to be prior negotiations or collaboration between sector-specific regulators and the FCCPC, before the FCCPC can exercise its concurrent power over the competition matters in the telecommunications industry. In its decision, the FHC held that such prior negotiation or consultation was not a condition precedent to the FCCPC's exercise of concurrent regulatory powers with sector-specific regulators. The FHC further held that in the real sense, it was the responsibility of other sector-specific agencies, such as the NCC, to commence negotiation agreements with FCCPC for collaborative regulation on competition matters.⁹

On the whole, the Court concluded that the NCC does not have exclusive powers to regulate competition in the industry, rather, the NCC and the FCCPC have concurrent regulatory competence to regulate competition in the telecoms industry. The court further clarified that ultimately, in the event of any conflict between the positions held by both bodies, the FCCPC's directives would always take precedence.

Musings On the Decision of the FHC

The NCA Or the FCCPC – Which is a Specific Legislation?

The focal reason for the FHC's placement of the provisions of the FCCPA over those of the NCA (on the issue of competition in the telecommunications industry) is because the FCCPA was passed later in time. We posit that, while this approach has a basis in law, reliance on same (without more) may create controversy. In our view, the path (i.e., recency of legislation) adopted by the FHC in ascribing primacy to the FCCPA **is not the only known or acceptable yardstick** under Nigerian law.

A fundamental and perhaps more pertinent point which the Court did not address is the applicability of the trite canon of interpretation – *generalia specialibus non-derogant*, which means that a general law must yield to a specific law.¹⁰ The idea behind this principle is that when a law is made specifically for a subject matter, it prevails over any general law, as it relates to the subject matter in issue. This principle has been consistently applied to resolve conflicts between overlapping statutes.

⁷ The Court relied on the authority of *Akintokun v LPDC* (2014) 13 NWLR (Pt. 1423) 118

⁸ *Jombo United Co. Ltd v. Leadway Assurance Co. Ltd* (2016) LPELR-40831(SC)

⁹ The Court relied on section 105(5) of the FCCPA

¹⁰ *Matari v Dangaladima* (1993) 3 NWLR (Pt. 281) 266

Applying the above rule, it is arguable that the FCCPA is a specific law because its sole purpose is to address competition (**a specific subject**) issues across various sectors. This perspective is perhaps compelling, given that, unlike the NCA, which touches on many subjects (one of which is competition), the FCCPA deals specifically with competition and consumer protection. Going by this reasoning, if the court applied the rule governing specific and general legislations, it is likely that it would still have arrived at the same end – being the primacy of the FCCPA. Be that as it may, we believe that the *generalia specialibus non-derogat* principle would have been a more apposite consideration in this matter.

Regulatory Uncertainty and Investor Confidence: The Risk of Concurrent Powers

The concurrent powers of the FCCPC and the NCC, which were upheld by the FHC, could create regulatory uncertainty, if not adeptly managed. For instance, a telecommunications company that has already been scrutinised and found compliant by the NCC could later be subjected to the pain of a subsequent separate investigation by the FCCPC. Such a state of affair portends a lack of clarity and predictability in the regulatory landscape. For sector-regulated companies, the prospect of being regulated by the NCA and FCCPC on the same subject (i.e., competition) could undermine ease of doing business, create confusion around compliance standards, and ultimately deter companies from making long-term commitments to the Nigerian communications market.

Another crucial issue that must be considered is the relevant expertise and understanding that could be lost if sector regulators are not in charge of or are centrally involved in the regulation of competition matters in their respective sectors. This strategic consideration probably explains the basis for section 65 of the *Banks and Other Financial Institutions Act (BOFIA)*, which explicitly precludes the application of the FCCPA on banking activities, except for mergers and acquisitions.¹¹ In other words, the BOFIA expressly vests the CBN with jurisdiction to regulate banks and financial institutions on all competition matters, to the exclusion of those bordering on mergers and acquisitions.

Recently, in a bid to reduce the uncertainty created by concurrent jurisdiction, the FCCPC and the NCC executed a Memorandum of Understanding (MOU) on collaborative regulation of the telecommunication industry, which establishes a broad “one-stop” arrangement for the industry players¹². While this development appears progressive, the MOU is yet to be made public.

In order to address the central concerns of operators and investors, it is expected to provide practical guidance on how operators may engage with this framework in day-to-day compliance, leaving no room for duplicative requests and inconsistent directives. Without clear operational procedures, timelines, or dispute resolution mechanisms, the MOU risks entrenching rather than alleviating the very regulatory unpredictability it was intended to cure.

¹¹ The High Court of Lagos State in *Lamfat Gas Nig. Ent. Limited v Kuda Microfinance Bank* (Suit No. LD/6869GCM/2023) held that the FCCPC lacks the regulatory power on banking activities. On the other hand, the FHC in *Wema Bank v FCCPC* (Suit No: FHC/L/450/2021) held that the provision of section 104 of the FCCPA grants superior jurisdiction over section 65 of the BOFIA. The Court held further that the FCCPC's jurisdiction covers all matters of dispute and complaints on consumer protection.

¹² <https://x.com/fccpcnigeria/status/1879250888201519612?s=12> (Accessed on 9 September 2025)

Avoiding the Pitfalls of Concurrent Jurisdiction: Lessons from the United Kingdom's Model

In the United Kingdom (UK), the Competition and Markets Authority (**CMA**) oversees competition across industries, but sector regulators like the Office of Communications (for telecommunications) work in tandem with the CMA under a framework that delineates their respective roles clearly. The Concurrence Regulations 2014 and the CMA's Guidance on the concurrent application of competition law in regulated sectors¹³ aim to ensure the effective functioning of the UK's concurrency regime. The Guidance offers the most comprehensive insight into how concurrency in regulating competition is applied in practice. It clarifies that while sector regulators possess the same enforcement powers as the CMA under competition law, only the CMA retains the authority to issue penalty guidance and to formulate or amend its procedural rules.

Alongside legislative reforms, new cooperation measures were introduced between the CMA and sector regulators. These included memoranda of understanding detailing practical collaboration on concurrent powers and the CMA's publication of general guidance on concurrency operations. Additionally, the UK Competition Network was created to facilitate multilateral engagement among the regulators.¹⁴ Under the UK system, the competition authority has the role of an appellate body in regulated sectors and sector regulators themselves may make references to the competition authority for market investigations.¹⁵ This collaborative approach enhances regulatory effectiveness by leveraging the expertise of both general competition authorities and industry-specific bodies.¹⁶

Overall, this framework demonstrates how concurrent regulatory powers can be effectively managed to promote fair market practices without duplicating efforts or creating conflicting standards. For instance, from April 2021 to March 2022, the CMA reported that it worked with sector regulators on 38 merger cases across industries such as aviation, communications, financial services, and healthcare.¹⁷ This collaboration allowed the CMA to draw on the regulators' expertise, enhancing market understanding and developing more effective remedies.

Conclusion

The court's ruling affirms the FCCPC's position that it is the primary authority responsible for regulating competition matters in Nigeria, regardless of the sector where such arises. It, however, remains to be seen if the said decision will be overturned on appeal.

The Court's ruling in favour of concurrent regulatory powers between the FCCPC and sector-specific regulators such as the NCC raises important questions about statutory interpretation, regulatory overlap, and the potential impact on business operations in Nigeria. While the FCCPC plays a crucial role in regulating competition across sectors, sector-specific regulators like the NCC have tailored expertise that is critical to their industries. This must be prioritised.

¹³ Regulated Industries: Guidance on Concurrent Application of Competition Law to regulated Industries, 2014: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892735/Guidance_on_concurrent_application_of_competition_law_to_regulated_industries.pdf (Accessed 10 September 2025).

¹⁴ Ibid

¹⁵ Interactions between competition authorities and sector regulators OECD (2022) Interactions Between Competition Authorities and Sector Regulators: OECD Competition Policy Roundtable Background Note, p.9 (Accessed on 10 September 2025)

¹⁶ Ibid

¹⁷ Ibid – p. 23; Nine Years of Enhanced Concurrency in UK Competition Regulation | Cleary Antitrust Watch, Nine Years of Enhanced Concurrency in UK Competition Regulation (Accessed on 21 February 2025).

Of particular note is the court's ruling that the power of the FCCPC to collaboratively regulate competition matters is not hinged upon prior agreements with relevant sector-specific regulators and that it is, in fact, incumbent upon sector regulators to engage with the FCCPC to define collaborative arrangements. Based on this pronouncement, sector-specific regulators may need to take proactive steps to negotiate collaborative agreements with the FCCPC to ensure seamless regulatory coordination, to avoid arbitrage and to instill certainty for businesses in highly regulated industries.

Moving forward, Nigeria's competition regulatory framework must be fine-tuned to ensure that while competition law is enforced uniformly, sector-specific expertise is respected and overlapping powers are clearly delineated to avoid unnecessary regulatory burden on businesses. Pending such changes to the legal and regulatory framework, businesses are advised to set up internal compliance mechanisms that ensure they are in tandem with the FCCPA and sector-specific rules.

In addition to the foregoing, it is advisable for businesses to maintain open channels with both the FCCPC and sector-specific regulators, with a view to clarifying expectations. Importantly, businesses should seek legal counsel at the earliest, to minimise risk exposure and obviate avoidable sanctions.