



The Federal High Court Reaffirms the Primary Regulator for Competition and Consumer Protection Issues in all Sectors in Nigeria

Regulations

In accordance with our Firm's objective to keep you informed on key regulatory matters, we wish to bring to your attention a significant Judgment of the Federal High Court in Nigeria, Lagos Division, coram: Hon. Justice F.N. Ogazi in Suit No: FHC/L/CS/1009/2024 - Emeka Nnubia v. Honourable Minister of Industry,

Trade and Investment, Federal Competition and Consumer Protection Commission's (FCCPC) and MTN Communications Nigeria PLC, reaffirming the authority of the FCCPC to investigate anti-competitive practices across all sectors in Nigeria.

Background

On 17th May 2024, the FCCPC issued a Notice of Initial Inquiry and Possible Investigation to MTN requesting some disclosures concerning arrangements that the FCCPC believed were infringements of the Federal Competition and Consumer Protection Act (FCCPA) 2018. Following some correspondence between the FCCPC and MTN, the FCCPC granted a 14-day extension of the compliance timeline to MTN. However, before the expiration of the extended timeline, Emeka Nnubia (the Plaintiff), an MTN Nigeria shareholder filed an action in Court challenging the authority of the FCCPC to investigate MTN.

According to the claims filed via Originating Summons, the Plaintiff contended that the Nigerian Communications Commission (NCC) exercised sole authority over companies and persons operating

within the telecommunications sector in Nigeria. The Plaintiff's contention was based on the provisions of Section 90 of the Nigerian Communications Act (NCA) 2003, which provided that the NCC had exclusive jurisdiction over competition matters in the telecommunications sector. Likewise, the Plaintiff argued that the disclosures requested by the FCCPC violated the privacy principles of the Nigeria Data Protection Act 2023.

Following the service of the Originating Summons, the 1st Defendant, FCCPC, filed its Counter-Affidavit and after hearing both parties, the Court adjourned for Judgment and on 7th February 2025, the Federal High Court in Lagos ruled in favour of the FCCPC, affirming its jurisdiction over competition and consumer protection matters across all industries.

The Rationale for the Judgment

Honourable Justice F. N. Ogazi of the Federal High Court stated that the FCCPC has statutory authority to investigate and regulate competition and consumer protection matters across all sectors, including telecommunications. In discharging this function, the FCCPC may act independently or in collaboration with sector-specific regulators. The Court also held that the FCCPA 2018 prevails over conflicting provisions of the NCA 2003, having been passed later in time.

On the issue of the violation of the privacy policy of the Nigeria Data Protection Act 2023, the Court held that the FCCPC's summons and requests for information from MTN did not violate any data privacy laws. The information requested from MTN

was not information that uniquely identified an individual nor did it relate to one or more factors specific to an individual's physical, physiological, genetic, psychological, cultural, social or economic identity. As such, the requests were deemed lawful and compliant with existing data protection laws, including the Nigeria Data Protection Act 2023.

Most importantly, the Court reaffirmed that it is not empowered to restrain a regulatory authority from performing its statutory functions. The Judgment reemphasises the need for all arms of government to uphold the doctrine of separation of powers enshrined in the Constitution.

Legal Implications and Recommendations

This Judgment reinforces the FCCPC as the primary regulatory agency for consumer protection and competition practices in Nigeria. The FCCPC's powers extend beyond the FMCG sector and cover all other sectors in Nigeria, regardless of the presence of a sector-specific regulator. As such, businesses in Nigeria, either local or foreign, conglomerates or single entities, must comply with the provisions of the FCCPA and comply with lawful requests of the FCCPC. Businesses should anticipate increased regulatory scrutiny and ensure adherence to competition and consumer protection laws.

Furthermore, companies facing competition or consumer protection inquiries should ensure compliance with FCCPC directives, as the regulator's investigative actions have now been judicially affirmed. Given the potential for regulatory overlap, companies are encouraged to adopt a proactive approach to compliance, engaging legal counsel to navigate concurrent regulatory requirements effectively.

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Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our client's business needs and surpassing their expectations, and we do this with an uncompromising commitment to Client service and legal excellence

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