

Introduction

The Federal Competition and Consumer Protection Act 2018 (the "FCCPA") established the Federal Competition and Consumer Protection Commission (the "FCCPC" or "Commission") and vests it with the mandate to regulate competition, ensure standardization of goods and most importantly consumer protection in Nigeria.

Upon its establishment, the FCCPC started exercising regulatory oversight, power and authority across various sectors of the economy. Over time, the increasing regulatory oversight of the FCCPC started to generate concern amongst business owners and stakeholders. The reason for this concern is not far-fetched. Since most industries already have their sector-specific regulator(s), the business owners and industry stakeholders started to consider FCCPC's intervention and regulatory oversight either as duplicitous, unnecessary interference and an extraneous regulatory bottleneck.

This concern later evolved into a contention that arose in the case of *Emeka Nnubia v Honourable Minister of Industry, Trade & Investment*^[1] ("Emeka Nnubia's Case" or "the Case"). In this article, we will examine the facts that led to the contention and how it was resolved by the court. This case is significant because it now serves as a precedent on the regulatory scope of the FCCPC.

Brief Facts of the Case

In the case of *Emeka Nnubia V Honourable Minister of Industry, Trade & Investment*, the FCCPC by a letter informed MTN Nigerian Communications Plc ("MTN") that it had commenced investigation into some alleged anti-competitive practices it (MTN) was engaged in. The FCCPC therefore requested MTN to provide some corporate information.

The Plaintiff, who is one of the shareholders of MTN, instituted an action at the Federal High Court challenging the authority of FCCPC to regulate competition in the telecommunication industry. The Plaintiff contended that under the provisions of section 90 of the Nigerian Communications Act ("NCA"),^[2] the Nigerian Communications Commission ("NCC") is already vested with the exclusive authority to regulate competition in the telecommunications industry. Thus, since there is a sector-specific body regulating competition in the telecommunications industry, the regulatory authority of the FCCPC does not cover or extend to the telecommunications industry. On this premise, the Plaintiff argued that the information requested from MTN by FCCPC would violate the data privacy laws.

[1] Suit No. FHC/L/CS/1009/2024 delivered by Hon. Justice F N Ogazi of the Federal High Court, Lagos Judicial Division on 7th February 2025.

[2] Section 90 of the NCA reads – "Notwithstanding the provisions of any other written law, the Commission shall have exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and regulations, whether of a general or specific nature, as it relates to the Nigerian Communications market."

In response to the suit, the FCCPC filed a preliminary objection challenging the competence of the suit on the grounds that: (a) the Plaintiff lacked the locus standi to institute the suit^[JA1] , citing that it is MTN itself that can institute such suit and not the Plaintiff who is merely a shareholder of MTN; (b) the Plaintiff failed to issue a pre-action notice to the FCCPC, as statutorily required under the provisions of section 156(3) and (4) of the FCCPA^[JA2] . Defending the suit on the merit, FCCPC contended pursuant to the provisions of section 104 of the FCCPA,^[3] the anti-competition and regulatory authority of the FCCPC extends to all sectors, including the telecommunications industry. FCCPC also argued that the exercise of their regulatory authority and more specifically the information they requested from MTN does not violate data privacy laws.

The Decision of the Case

After hearing the argument of both parties, the Court upheld the preliminary objection raised and held that: (a) the Plaintiff does not have the locus standi to institute the action^[JA1] , as it is MTN itself that can institute such instant suit and not the Plaintiff who is merely a shareholder of MTN; (b) the failure of the Plaintiff to give pre-action notice to the FCCPC robs the Court of jurisdiction to entertain the suit. Consequently, the Court struck out the suit for lack of jurisdiction.

Notwithstanding the fact that it struck out the suit for want of jurisdiction, the Court proceeded to give its decision on the merits of the case. The Court noted that the provisions of section 90 of the NCA (which grants the NCC the anti-competition regulatory authority in the telecommunications industry) do not operate to exclude the power of the FCCPC to regulate competition in the telecommunications industry.

The Court therefore held that the provisions of section 90 of the NCA and section 104 of the FCCPA must be read together, stressing that the provisions of section 104 of the FCCPA, being a later legislation, take precedence over the provisions of section 90 of the NCA. As such, the provisions of section 90 of the NCA are invalid to the extent that they seek to limit the regulatory power of the FCCPC in the telecommunications industry. A reading of the provisions of section 104 of the FCCPA shows that the clear intendment of the legislature is for the FCCPC to have overriding powers in relation to matters relating to competition and consumer protection.

Conclusively, the Court held affirmatively that the FCCPC's regulatory power extends to all sectors, including the telecommunication sector.

[3] Section 104 of the FCCPA reads – "Notwithstanding the provisions of any other law but subject to the provisions of the Constitution of the Federal Republic of Nigeria, in all matters relating to competition and consumer protection, the provisions of this Act shall override the provisions of any other law."

By way of admonition, the Court relied on the provisions of section 105 of the FCCPA, to urge the FCCPC and every sector-specific regulator (such as NCC) to always collaborate in the regulation of anti-competitive practices and consumer protection in every industry. This aligns with global best practices where consumer protection regulators work in synergy with or mutually assist industry-specific regulators. The Court, however, warned that it is the obligation of the specific-sector regulators to engage and initiate collaboration with the FCCPC, and not the other way round.

The Court also held that the FCCPC has not violated any data privacy law by the information it requested MTN to produce.

Significance of the Decision

Emeka Nubia's case affirms the wide scope of FCCPC's powers to regulate competition and protect consumers across all sectors - whether in fast-moving consumer goods, telecommunications, oil & gas, agriculture, real estate or any other sector. What this means is that businesses across all sectors must recognize the FCCPC as one of their regulators, even if they have a primary sector regulator that regulates competition in their sector or industry.

Also, the decision in this case has also placed the duty on sector-specific regulators, like NCC to initiate engagement/collaboration with FCCPC in regulating competition in the industry, and not expect the FCCPC to do so.

Overall, this decision strengthens the regulatory authority of the FCCPC and it is hoped that this will further assist the FCCPC in its statutory mandate to combat anti-competitive practices and protect consumers in Nigeria.

Conclusion

While the position of the Court in this case seems to strengthen/expand the regulatory scope of the FCCPC, it should however be noted that the position of the Court can be regarded as obiter dicta. This is because, the Preliminary Objection raised against this suit was upheld and the suit was struck out. The court notwithstanding went on to consider the case on the merits, given the public interest significance of the matter. The considerations and positions taken on the powers of FCCPC cannot therefore be regarded as "judgement" *stricto sensu*, but rather as obiter dicta.



AUTHORS



Joshua Abe
Partner



Kehinde Sanuade
Associate

**For further inquiries and guidance, please
book a consultation with Abe & Asotie LP**

✉ info@abeandasotie.com

☎ +234 706 525 5012, +2348036033651

📍 Lagos Court of Arbitration Building,
1a Remi Olowude Street, Okunde Bluewater Scheme,
Maruwa, Lekki Phase 1, Lagos State.