

**THE ABUSE OF DOMINANCE IN THE DIGITAL MARKET: A NIGERIAN
PERSPECTIVE**

Omowonuola Adekanmbi

VOLUME 7, NO. 1 (2024)

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ABSTRACT

The digitisation of the economy has altered market dynamics, expanding competition challenges to the digital ecosystem. The Federal Competition and Consumer Protection Commission recently penalised Meta Platforms Inc. for abusing its dominant position in Nigeria. This article explores the implications of this landmark decision, focusing on the intersection of digital market practices and competition law in Nigeria. It examines the Federal Competition and Consumer Protection Act to discover how the current regulatory frameworks handle dominance in digital marketplaces. The study also highlights critical issues such as data exploitation, market entry barriers, and the bundling of services. Using the Meta case as a foundation, this article proposes reforms to improve regulatory enforcement and ensure fairness in Nigeria's digital market.

* Omowonuola Adekanmbi is an Associate in the Finance Department of Templars, a tier one law firm in Nigeria and an LLM candidate at the University of Cambridge.

1.0 INTRODUCTION

The world is fast becoming a global village thereby causing an increase in the trade of goods and services on the Internet. Consequently, there is a digitisation of the economy in many African States. Since there is a movement to trading on the Internet, the digitisation of the economy is increasing, and the dynamics of competition are changing, thereby extending beyond the scope of traditional markets into the digital ecosystem. In Africa and specifically, Nigeria, the competition law rules are relatively new and are constantly evolving to meet the growing demands of the economy, thus necessitating a growing need to assess the effects of competition in the digital market particularly the effect that big companies will have over emerging companies within the digital market.

Recently, the Federal Competition and Consumer Protection Commission (“FCCPC” or the “Commission”), Nigeria’s foremost competition authority, imposed a US\$200,000,000 (Two Hundred Million United States Dollars) fine against Meta Platforms Inc. and WhatsApp LLC (together referred to as Meta), one of the biggest providers of social networking, advertising and business insight solutions in the world and operating majorly within the digital ecosystem, for competition law infractions, including the abuse of its dominant market position by forcing unscrupulous and anti-competitive policies on its consumers.¹

¹ ‘Release In the Matter of Meta Platforms, Inc. and WhatsApp LLC’ FCCPC 19 July 2024, available at <https://fccpc.gov.ng/wp-content/uploads/2024/07/Release-In-the-Matter-of-Meta-Platforms-Inc.-and-WhatsApp-LLC.pdf> (accessed 27 July 2024).

This paper will consider the concept of competition and abuse of dominance under Nigerian law; competition and abuse of dominance in the digital market; an examination of the case between the Commission and Meta as well as its implications for Nigeria's competition law; and recommendations to help improve competition in the Nigerian digital market.

2.0 COMPETITION AND ABUSE OF DOMINANCE UNDER NIGERIAN LAW

The Federal Competition and Consumer Protection Act 2018 (FCCPA or "the Act"), Nigeria's primary legislation for safeguarding consumer rights and regulating competition, contains extensive provisions aimed at fostering a fair and efficient competitive market. These provisions are designed to ensure that all citizens have access to safe products while protecting the rights of consumers across the country.

The FCCPC, in accordance with its powers under the Act, regulates all competition law-related issues in Nigeria, including but not limited to the abuse of dominance. An undertaking will be considered to be in a position of dominance if the undertaking can act without taking account of its customers, consumers, or competitors.² Furthermore, within a relevant market, a dominant position exists:

Where an undertaking enjoys a position of economic strength enabling it to prevent effective competition being maintained on the relevant market and having the power to behave, to an appreciative extent, independently of its competitors, customers and ultimately consumers.³

² Section 70 (1), Federal Competition and Consumer Protection Act (FCCPA) 2018.

³ Section 70 (2), FCCPA.

It is imperative to note that by the provision of the FCCPA, occupying a position of dominance is not in itself illegal. A violation of the law occurs only when a business holding a dominant position in a market abuses that position.⁴

2.1 When will an Undertaking be deemed to be in a Dominant Position?

As earlier mentioned, an undertaking will be considered as having a dominant position if it can act without considering three important market players, that is, its customers, the consumers or its competitors. Additionally, there are certain factors to be considered by the Commission in determining whether an undertaking holds a dominant position in the market.

These factors include; the market value of the undertaking or undertakings concerned in the relevant market; the financial power of the affected undertaking; its or their access to supplies or markets; its or their links with other undertakings; legal or factual barriers to market entry by other undertakings; actual or potential competition by undertakings established within or outside the scope of application of the FCCPA; ability to shift supply or demand to other goods or services; and the ability of the opposite market side to resort to other undertakings.⁵

Beyond the scope of the FCCPA, in determining whether an undertaking has a dominant position in the market, the FCCPC, in the exercise of its powers under the FCCPA issued the Federal Competition and Consumer Protection Commission Abuse of Dominance Regulations 2022 (the “FCCPC Dominance Regulations”), which restates the position of

⁴ Section 72, FCCPA.

⁵ Section 72(3), FCCPA.

the FCCPA that an undertaking would be deemed to be in a dominant position where the undertaking can act without considering its customers, consumers or competitors; or enjoys a position of economic strength in the market which enables it to prevent effective competition from being maintained.⁶ It further provides that the FCCPC will assess the ability of the undertaking to unilaterally increase prices in its relevant market beyond the competitive level.⁷ In addition, the FCCPC would also consider parameters which are capable of being influenced to the advantage of the dominant undertaking and to the detriment of consumers.⁸ They include prices, output, innovation, variety and quality of goods or services, data (in the case of an undertaking in the digital economy) and other relevant parameters.

Furthermore, to determine that an undertaking is in a dominant position, the FCCPC will delineate the relevant market and upon doing so, the FCCPC will consider the competitive factors provided in the FCCPA to be able to access the competitive structure of the relevant market.⁹ Upon delineating the relevant market, the FCCPC would consider the constraints imposed by the existing supply sources and the position on the market of actual competitors (the market position of the undertaking and its competitors including its market shares, financial power, access to supplies or markets, and link with other competitors). The Commission would also consider the constraints imposed by the credible threat of future expansion by actual competitors or entry by potential competitors (expansion and entry, and legal and factual barriers to entry) and

⁶ The Abuse of Dominance Regulations (the FCCPC Dominance Regulations), 2022, Regulation 4(1) of the FCCPC Dominance Regulations.

⁷ Regulation 4(2), FCCPC Dominance Regulations.

⁸ Ibid.

⁹ Regulation 5, FCCPC Dominance Regulations.

the constraints imposed by the bargaining strength of customers of the undertaking (countervailing buyer power).¹⁰

An undertaking may be deemed dominant in multi-sided markets and networks¹¹ and in such instances, the FCCPC would consider;¹² direct and indirect network effects,¹³ the parallel use of services from different providers and the switching costs for users, economies of scale of the undertaking, arising in connection with network effects, access of the undertaking to data relevant to competition, and innovation-driven competitive pressure.

Whilst the FCCPA and the FCCPC Dominance Regulations do not specifically provide for undertakings operating within the digital ecosystem, the above provisions would be applicable in determining whether an undertaking operating within the digital ecosystem is indeed in a dominant position.

¹⁰ Regulation 5(2), FCCPC Dominance Regulations.

¹¹ Although not defined by the Act or the Regulations, a multi-sided market is generally known and understood to be a market where firms need to get two or more distinct groups of customers who value each other's participation on board the same platform in order to generate economic value; Sean Silverthorne, "New Research Explores Multi-Sided Markets," 12 March 2006, available at: <https://hbswk.hbs.edu/item/new-research-explores-multi-sided-markets> (accessed 29 November 2024); A multi-sided network is also recognised as a service or product that connects two or more participant groups; Daniel Pereira, "Multi Sided Platform Business Models," 3 March 2023, available at: <https://businessmodelanalyst.com/multisided-platform-business-model/> (accessed 29 November 2024); A good example is Ride Hailing Services, the Uber App is a multi-sided network connecting the riders to the drivers.

¹² Regulation 5(4), FCCPC Dominance Regulations.

¹³ Although not defined by the Act or the Regulations, a network effect refers to a situation where the value of a product or service depends on the number of buyers, sellers, or users who leverage it. A direct network effect occurs when the value of a product or service increases simply because the number of users increase while an indirect network effect occurs when a service depends on two or more user groups (such as buyers and sellers or producers and consumers) and as more people from one group join the platform, the other group receives a greater value amount; Kate Gibson, "5 Ways to Leverage network Effects for Business Growth," 16 July 2024, available at: <https://online.hbs.edu/blog/post/network-effects-business#:~:text=Network%20effects%20occur%20when%20your,the%20same%20group%20or%20side> (accessed 29 November 2024).

In addition to the above provisions, the Nigerian Communications Act (NCA), the primary legislation for the regulation of the communication sector in Nigeria, contains copious provisions on the regulation of competition as it relates to the Nigerian communications market.¹⁴ The Nigerian communications market can be considered to be within the digital ecosystem and as such its provisions are noteworthy.

The Nigerian Communications Commission issued the Nigerian Communications Act - Competition Practices Regulations 2007 (the “NCC Competition Regulations”), which provides a framework for the promotion of fair competition in the communications sector and protects the misuse of market power.¹⁵ Its considerations for the determinant of a dominant position within the communications market are similar to that of the FCCPC Dominance Regulations, although it contains considerations that are specifically tailored to the communications industry.¹⁶ Albeit, these considerations can be examined when considering dominance within the Nigerian digital market.

2.2 What Actions Constitute an Abuse of a Dominant Position in Nigeria?

Where an undertaking is determined to be in a position of dominance within its relevant market, such undertaking can be deemed to have abused its dominant position in the following circumstances;¹⁷

¹⁴ Section 3(1), Nigerian Communications Act (NCA), 2003 Cap N97, Laws of the Federation of Nigeria 2004.

¹⁵ Section 1, Nigerian Communications Act- Competition Practices Regulations 2007.

¹⁶ Regulation 18(2), NCC Competition Regulations.

¹⁷ Section 72(2), FCCPA.

2.2.1 *When the Undertaking Charges an Excessive Price to the Detriment of Consumers*

In deciding on whether an undertaking is guilty of excessive pricing as a means of abusing its dominant position in the market, the FCCPC will consider¹⁸ whether the market is characterised by any high barriers to entry; whether the consumers have credible alternatives to the products or services of the dominant undertaking; whether the firms compete in a mature environment, where investment and innovation play little or no role; whether the price charged significantly exceeds the cost incurred in production;¹⁹ the price that would have been expected to be charged by an efficient undertaking in a competitive market; and whether the price charged is unfair either in itself or when compared to competing products in the geographical market.

2.2.2 *Where there is a refusal to give a Competitor Access to an Essential Facility when it is Economically Feasible to do so*

In determining whether an undertaking's refusal to supply goods or services or to provide access to essential facilities is abusive, the following conditions must be satisfied;²⁰ where a refusal relates to a product, a service or an essential facility that is objectively necessary for an undertaking to compete effectively in a downstream market such that the input is indispensable since there are no alternative solutions which enable equally efficient competitors to counter (at least in the long-term) the negative effects of the refusal; where a refusal is likely to lead to the elimination of

¹⁸ Regulation 9(1), FCCPC Dominance Regulations.

¹⁹ Regulation 9(4), FCCPC Dominance Regulations.

²⁰ Regulation 10(2), FCCPC Dominance Regulations.

effective competition or the prevention of its emergence in the downstream market (the higher the market share and the less capacity constrained the dominant undertaking is, the more likely effective competition will be eliminated); where a refusal is likely to lead to consumer harm (this will particularly be the case if the refusal is likely to prevent innovation or limit technical development, for instance by preventing the emergence of a new product that is not a mere duplicate of the dominant undertaking's product); and where the requirement to deal will not significantly deter the dominant undertaking's incentives to invest and the refusal to deal is not otherwise objectively justified.

2.2.3 Forcing the Condition that the Buyer Purchases Separate Goods or Services Unrelated to the Object of a Contract

In this instance, the FCCPC will arrive at a decision that an infraction has occurred if the following conditions are satisfied:²¹ the undertaking accused of abusing its dominant position, is dominant in the primary product market which is the product to which other products are bundled; the products are distinct products from the consumer's point of view; and the conduct or practices are likely to lead to foreclosure of competitors on the tied or bundling market.

2.2.4 Selling Goods or Services Below their Marginal or Average Cost

The FCCPC Dominance Regulations refer to this act as predatory pricing. Predatory pricing involves deliberately setting the price of a product below its appropriate cost in a bid to incur short-term losses on the sale of the product to eliminate competition.²²

²¹ Regulation 11(4), FCCPC Dominance Regulations.

²² Regulation 12(1), FCCPC Dominance Regulations.

In assessing whether a dominant undertaking is engaged in predatory pricing, the FCCPC would consider whether losses that could have been avoided were incurred by the dominant undertaking in the face of commercially viable alternatives.²³

Additionally, the FCCPC will consider a dominant undertaking to be engaging in predatory pricing if the undertaking sets a price below the average avoidable cost as a short-term strategy subject to market conditions.²⁴ The FCCPC will also take into consideration other factors such as direct evidence of a strategy aimed at excluding competitors and the likelihood for equally efficient competitors to have entered the market in the absence of the conduct in question or the period during which lower prices are sustained.

2.2.5 Requiring or Inducing a Supplier or Customer not to deal with a Competitor

The FCCPC in assessing whether a dominant undertaking is guilty of abusing its dominant position in the market will also take the following considerations into account:²⁵ the competitive constraints exercised by actual and potential competitors; the stability of market shares; the likelihood of new entry; and the portion of the market affected by the conduct of the undertaking and the duration of the obligation.

2.2.6 Other Factors Considered by the FCCPC

Additionally, the FCCPC will consider certain factors in ascertaining whether any of the actions of an undertaking amount to an abuse of dominant position under the FCCPA.

²³ Regulation 12(3), FCCPC Dominance Regulations.

²⁴ Regulation 12(4)(a), FCCPC Dominance Regulations.

²⁵ Regulation 13(4), FCCPC Dominance Regulations.

They include: refusing to supply scarce goods to a competitor when supplying those goods is economically feasible or buying up a scarce supply of intermediate goods or resources required by a competitor if the anti-competitive effect of the exclusionary act outweighs its technological efficiency and other pro-competitive gains; and when the activities of an undertaking unreasonably lessen competition in the market and impede the transfer or dissemination of technology.²⁶

2.3 Possible Defences to an Allegation of Abuse of Dominance Under the FCCPA and the FCCPC Dominance Regulations

Where an undertaking is alleged of abusing its dominant position by engaging in any of the activities highlighted above, the undertaking would not be treated as abusing a dominant position if its conduct improves the production or distribution of goods or services or the promotion of technological or economic progress while allowing consumers a fair share of the profit; the conduct is indispensable to the attainment of the objectives above; and the undertaking does not have the possibility of eliminating competition.²⁷

Consequently, an undertaking accused of abusing a dominant position can raise any of the above points in its defence.²⁸ However, the burden of proving this rests on the undertaking seeking to rely on these defences. Thus, the arguments and evidence

²⁶ Section 72(4), FCCPA.

²⁷ Section 72(3), FCCPA

²⁸ Regulation 14(1), FCCPC Dominance Regulations.

presented by the undertaking must be such that would convince the FCCPC not to conclude that the alleged infraction gives rise to pro-competitive effects.²⁹

3.0 COMPETITION AND ABUSE OF DOMINANCE IN THE DIGITAL MARKET

The FCCPA and the FCCPC Dominance Regulations contain copious provisions regulating the abuse of dominance and while these provisions can be extended to activities within the digital ecosystem, there needs to be specific rules that bear in mind the complexities of digital markets. Unlike the traditional market where the regulation of competition is relatively easy, the regulation of competition in the digital market is a bit more complex considering that the digital market involves digital platform-based business models, network effects, and economies of scale, amongst other things.³⁰

Since digital markets are often distinguished by strong multi-sided network effect and high start-up costs, amongst others, there is usually a difficulty of market entry by small digital businesses and this in turn leads to a small group of companies or individuals holding a significant market share.³¹ Although it is unclear how certain conducts in the digital market can be characterised as an abuse of a dominant position or amount to monopolising the market, within the existing framework, some conducts can be deemed to constitute a breach of competition within the digital market. Some of these conducts will be discussed seriatim.

²⁹ Regulation 14(3), FCCPC Dominance Regulations.

³⁰ Padmashree Sampath, "Competition in the Digital Age," *Medium* 9 October 2019, available at <https://medium.com/berkman-klein-center/competition-in-the-digital-age-408a5c7f9f8d> (accessed 20 June 2024).

³¹ Baker McKenzie, "Competition in the Digital Economy: An African Perspective," available at <https://www.bakermckenzie.com/en/-/media/files/insight/publications/2021/07/baker-mckenzie-competition-in-the-digital-economy.pdf> (accessed 20 June 2024).

Firstly, a company would be deemed to be unduly taking advantage of its position and engaging in anti-competitive practices where a dominant company that operates in two-sided markets leverage the market power, it possesses on one side of the market to gain an undue advantage over other companies operating within the other side of the market.³²

Also, a large company with access to the data of other consumers on the internet can take advantage of the data it has to its undue advantage within another part of the digital market. Thus, a lot of regulators have concerns about large firms using user data to exploit the digital market and unduly taking advantage of the same.³³

4.0 THE REGULATION OF COMPETITION IN AFRICA USING NIGERIA AS A CASE STUDY

In Africa, the digital market is dominated by global research and social media giants. More often than not, a single company usually establishes a dominant position within the digital market as the majority of digital platform users find it easier to trust and use an already familiar and established digital platform.³⁴ However, as technology is still evolving, the competition and regulatory frameworks in most African countries are not aligned with the unique dynamics of the digital market. This misalignment often results in insufficient regional competition, which can hinder economic growth across the continent.³⁵

³² Ibid.

³³ Ibid.

³⁴ Claver Nigarura, "The Development of the Digital Economy: Competition Regulation in Africa," *DLA Piper Africa*, 27 April 2021, available at: <https://www.dlapiperafrica.com/en/africa-wide/insights/africa-connected/issue-06/the-development-of-the-digital-economy-competition-regulation-in-africa.html> (accessed 20 June 2024).

³⁵ Ibid.

In Nigeria, the FCCPC is developing certain guidelines for market definitions in a bid to restore fair competition in digital markets. The guidelines being developed by the FCCPC include a section on Zero Price and Digital Platforms.³⁶ In defining the digital market, the guidelines provide for certain considerations. These include understanding the roles of various players: users act as producers, platforms serve as distributors, and advertisers function as consumers. They also recognise platforms as multi-sided markets influenced by network effects. Additionally, digital markets are defined using adapted versions of the SSNIP (Small but Significant Non-transitory Increase in Prices) test, such as SSNIQ: Small but Significant Non-transitory Change in Quality, and SSNIC: Small but Significant Non-transitory Change in Cost. It should be noted that cost here does not necessarily refer to monetary cost.³⁷

4.1 The Role of African Heads of Competition Dialogue in Addressing Challenges in Emerging Digital Markets

As a result of the competitive challenges being posed in the digital market, the competition supervisory bodies from Kenya, South Africa, Nigeria, Mauritius, and Egypt signed a memorandum of understanding (MOU) to work together under the Africa Heads of Competition Dialogue (AHCD) to address emerging digital markets challenges.³⁸ These countries have a relatively large digital services sector, and it is anticipated that

³⁶ Babatunde Irukera, "Competition Law, Policy and Regulation in the Digital Era," *UNCTAD* 8 July 2021, available at https://unctad.org/system/files/non-official-document/ccpb_IGECOMP2021_Nigeria_Irukera_en.pdf (accessed on 27 July 2024).

³⁷ *Ibid.*

³⁸ Vincent Owino, "African Competition Watchdogs Plan to Check Digital Markets," *The East African* 18 February 2022, available at <https://www.theeastafrican.co.ke/tea/business-tech/african-competition-watchdogs-plan-to-check-digital-markets-3721772> (accessed 20 June 2024).

the MOU will foster growth in the digital market while enhancing the management of competitive practices within the sector.

The effect of this MOU is that these regulators would have the opportunity to assess their respective digital markets, including an evaluation of global, continental and regional markets, as well as, share information necessary for building capacity to deal with the attending challenges arising from competitive practices in the digital market.³⁹

In signing this MOU, there is a commitment to collectively conduct an analysis and research of the obstacles to the emergence and expansion of African digital platforms to enhance competition and inclusion in the African digital market.⁴⁰

Additionally, the regulators have stated that there are considerations of expanding the AHCD and as such the AHCD is open to admitting regulators of other African countries to improve the regulation of competition in the African digital market.

4.2 An Examination of the Case between the Commission and Meta as well as its Implications for Nigerian Competition Law

In 2021, the FCCPC set up an investigative panel to look into alleged violations of the FCCPA and the Nigerian Data Protection Regulation by Meta. The FCCPC contended that WhatsApp's updated Privacy Policy and business practices were contrary to the provisions of the FCCPA as the policy was imposed on Nigerian users without providing them with the opportunity to voluntarily accept or decline the policy. Amongst all the other issues considered by the FCCPC, this article would be specifically considering the

³⁹ Ibid.

⁴⁰ Ibid.

issue of whether Meta is dominant under the FCCPA and whether its practices constituted an abuse of dominance.

On the issue of whether Meta was in a position of dominance within the meaning of the law, the FCCPC considered the provision of section 70 of the FCCPA alongside a number of other factors, including Meta's technological links; Meta's market share compared to other market participants; the key features of the WhatsApp with respect to the homogeneity and substitutability of its service; the amount of data points collected by WhatsApp when compared to its competitors within the market; constraints posed to other competitors for expansion with respect to lock-in effects; and user's switching cost.

Having considered the following facts as well as data provided following an independent market survey, the FCCPC concluded that Meta was in a dominant position within the Constant-Based Instant Messaging Service market in Nigeria especially as WhatsApp is currently used by 65% of Nigerian users.⁴¹

In a bid to determine whether Meta was abusing its dominant position in the relevant market, the FCCPC considered the provisions of Sections 71(c), 72(2)(a), and 72(2)(d)(iii) of the FCCPA, which have already been discussed above. The FCCPC held that failing to give its customers a choice to opt out of or control the sharing of their data under its updated policy was illegal and an abuse of its dominant position, as

⁴¹ Muktar Oladunmade, "FCCPC probe found WhatsApp threatened to delete user accounts, collected excessive data" *TechCabal* 22 July 2024, available at <https://techcabal.com/2024/07/22/fccpc-probe-found-whatsapp-threatened-to-delete-user-accounts-collected-excessive-data/> (accessed 27 July 2024).

customers experienced disruptive and intrusive notifications limiting the quality and functionality of WhatsApp that forced them into accepting Meta's updated policy.

Furthermore, the FCCPC found that by collecting unnecessary data from its users, Meta was exploiting its dominant position by forcing WhatsApp's users to consent to sharing their personal data with a product in a different market, despite not having any interest in that product or market. This position is also reinforced by the fact that Meta's competitors like Telegram are unable to replicate the request for unnecessary information because their users have the discretion to leave.

Additionally, it was also found that by making it impossible for its users to withhold consent to share their data with third parties like Facebook, Meta violated the provision of the FCCPA prohibiting an undertaking from compelling its consumers to enter into an agreement with a third party as a condition for offering a service. By requesting that its users consent to share its data before being able to use WhatsApp, Meta was attempting to tie the Facebook market with the WhatsApp market. Without demonstrating that bundling those services respected users' right to choose or resulted in their economic benefits, Meta abused its position of dominance. The FCCPC held that by this conduct, Meta sought to maintain its dominance by forcing users to consent to be subjects of marketing and profiling in the Facebook market.

This bundling, without demonstrating that it provided greater economic benefits or respected users' right to choose, was deemed an abuse of dominance. The FCCPC concluded that this conduct aimed to maintain Meta's dominance by compelling users to accept marketing and profiling practices within the Facebook market.

Meta required users to consent to data sharing as a condition for using WhatsApp, effectively attempting to tie the Facebook and WhatsApp markets. This bundling, without demonstrating that it provided greater economic benefits or respected users' right to choose, was deemed an abuse of dominance. The FCCPC concluded that this conduct aimed to maintain Meta's dominance by compelling users to accept marketing and profiling practices within the Facebook market.

Having considered the above and a number of other factors which have not been discussed in detail, the FCCPC found that Meta abused its dominance by failing to protect and honour its customers' rights to fair dealing by using undue pressure and unfair tactics in its business practice of combining and transferring its users' data for commercial purposes without obtaining expressed and freely granted consent of its customers, contrary to the provision of Section 72 of the FCCPA.

Following its investigations and findings, the FCCPC on 19 July 2024, released a notice imposing a US\$220,000,000 (Two Hundred and Twenty Million United States Dollars) fine on Meta as well as other recommendations including the reinstatement of the rights of Nigerian users to determine and control the use, processing, sharing or transfer of their data.⁴²

This decision of the FCCPC is laudable as it brought about a practical application of the provisions of the FCCPA, as well as, the FCCPC Dominance Regulations. Also, for the first time since the enactment of the Act, there was a yardstick for the proper

⁴² FCCPC Release, "In the Matter of Meta Platforms, Inc. and WhatsApp LLC," available at: <https://fccpc.gov.ng/wp-content/uploads/2024/07/Release-In-the-Matter-of-Meta-Platforms-Inc.-and-WhatsApp-LLC.pdf> (accessed 27 July 2024).

application of tests like the Small but Significant Non-Transitory Increase in Price (SSNIP), amongst others. It would also dissuade undertakings like Meta operating within the digital ecosystem from abusing their position of dominance and taking advantage of their customers as there is now a precedence showing the enforcement of the provisions of the FCCPC Dominance Regulations by the FCCPC.

Although this decision and the imposition of the fine should act as a deterrence to other companies, the enforcement of the fine imposed by the FCCPC might be difficult given the provision of Section 74(1) of the FCCPA, which provides that an undertaking that fails to cease an abusive practice after receiving an order of the FCCPC commits an offence and is liable upon conviction to a fine not exceeding 10% of its turnover in the preceding business year or a higher percentage prescribed by the court. A reading of this provision suggests that to be able to impose a fine, a court must have convicted the undertaking, in this instance, Meta, and then subsequently imposed the fine and not the FCCPC imposing the fine itself. Thus, Meta may appeal the fine imposed on it by the FCCPC. Additionally, an important question that should be asked is whether the FCCPC considered Meta's general turnover or local turnover in determining the amount of fine that was imposed on Meta.

5.0 RECOMMENDATIONS AND CONCLUSION

The Nigerian digital market is emerging and constantly developing, hence, there is a need for the development of a policy framework that fosters its growth while also establishing safeguards to prevent exploitation by dominant players within the market.

Such a framework should prioritise addressing entry barriers that hinder fair competition, particularly those related to data access and usage. Entry barriers not only stifle innovation and competition but also enable dominant companies like Meta to engage in practices that infringe on users' rights. By reducing these barriers, the market would foster a more equitable environment, preventing future infractions and encouraging sustainable development within the sector.

A comprehensive approach to policymaking in the digital market will support its growth while safeguarding the interests of users and smaller players, ensuring the Nigerian digital economy remains inclusive and competitive.