

**UNRAVELLING NIGERIA'S COMPETITION LAW: AN IN-DEPTH ANALYSIS**

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### ABSTRACT

*Competition law in Nigeria has undergone a transformative journey, akin to contemporary economies, striving to harmonise the promotion of market competition while thwarting anti-competitive practices. This article presents a comprehensive analysis of this evolving legal landscape, its multifaceted dimensions, challenges, and implications. At the heart of this discourse lies the fundamental tenets of competition law, encompassing the proscription of anti-competitive agreements, the curbing of abusive dominant positions, and the nuances of merger control. The article further delves into the pivotal role of competition authorities, elucidating their enforcement strategies in countering issues such as restrictive practices and the abuse of dominant market positions. In essence, this article furnishes valuable insights for policymakers, legal practitioners, and students, shedding light on Nigeria's unwavering commitment to nurturing robust competition as a catalyst for sustained economic growth.*

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## 1.0 INTRODUCTION

In a rapidly evolving global economy, the significance of fostering healthy competition cannot be overstated. As markets expand and businesses thrive for success, ensuring a level playing field becomes imperative to drive innovation, consumer welfare, and economic growth. In Nigeria, competition law serves as the guardian of this equilibrium, striving to curb anti-competitive practices and promote fair competition.

As one of Africa's leading markets, Nigeria plays host to a multitude of industries ranging from telecommunications to manufacturing and agriculture. In such a dynamic landscape, the role of competition law takes on even greater importance to prevent monopolistic tendencies and protect consumers from exploitation.

Historically, Nigeria's competition landscape was governed by common law principles and much later, by the Investment and Securities Act 2007 and various sector-specific regulations. However, recognising the necessity of a unified and robust framework to address emerging competition challenges, the Nigerian government introduced the Federal Competition and Consumer Protection Act (FCCPA) in 2019. This landmark legislation marked a significant milestone in Nigeria's competition law landscape, ushering in a new era for the competition law landscape in Nigeria.

This article delves into the fundamental tenets of competition law in Nigeria, exploring the key provisions of Nigerian laws and the regulatory authorities charged with their enforcement. The article also sheds light on notable cases and enforcement actions that have shaped the country's competition law landscape, along with their implications for businesses operating in the Nigerian market.

By exploring the multifaceted dimensions of competition law in Nigeria, the article aims to provide a comprehensive understanding of the legal framework that governs business conduct and protects the market.

## 2.0 TENETS OF AGREEMENTS AND CONTRACTS

As a general rule, parties to a contract retain the commercial freedom to determine their terms and once they reach a lawful mutual understanding, those terms become binding and enforceable by the court. The principle of contractual autonomy underscores this fundamental aspect of contract law, as reaffirmed by the Supreme Court of Nigeria in the case of *Nika Fishing Co Limited v Lavina Corporation*.<sup>1</sup>

While contractual autonomy allows parties to freely negotiate and determine their terms, there are exceptions. One of these exceptions pertains to restrictive agreements. A restrictive agreement typically involves terms that impose limitations or restrictions on one or more parties, often in the interest of protecting a legitimate business or competitive interest. These agreements might include non-compete clauses, non-disclosure agreements, or non-solicitation agreements.

The reason for the distinct treatment of restrictive agreements lies in the potential for these agreements to impact competition, trade, and individual freedoms. Restrictive agreements can have far-reaching consequences, affecting market dynamics, consumer choice, and individual livelihoods. Therefore, to strike a balance between protecting contractual freedom and safeguarding broader societal interests, legal systems often subject restrictive agreements to closer scrutiny.

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<sup>1</sup> [2008] 16 NWLR (Part.1114) 509.

Under Nigerian law, restrictive agreements are carefully examined to ensure that they do not unduly restrict competition, stifle innovation, or harm consumers. Authorities may assess whether such agreements are reasonable in scope, duration, and geographic. For example, in *Nissan (Nig) Ltd v Yoganathan*,<sup>2</sup> the Supreme Court held that a restraint in a contract merely to prevent competition will not be enforced by the courts. The FCCPA also provides that any agreement that has the actual or likely effect of preventing, restricting or distorting competition in the market is void.<sup>3</sup> This includes price fixing, dividing markets, collusive tendering, market/customer allocation, limiting production and distribution of goods and services, etc.

To further reiterate its stance against restrictive agreements, the Federal Competition and Consumer Protection Commission (FCCPC) which is the body responsible for enforcing the FCCPA, issued the Restrictive Agreements and Trade Practices Regulations 2022 (the “Regulations”) which provides guidance on the substantive and procedural requirements for implementing the provisions on restrictive agreements in the FCCPA.

From the provisions of the FCCPA and the Regulations, the FCCPC may authorise a restrictive agreement where it is satisfied that the agreement:

- a. enhances the production or distribution of goods and services, or advances technical and economic progress, all while ensuring consumers receive a reasonable portion of the resulting benefits; and

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<sup>2</sup> [2010] 4 NWLR (Part. 1183) 135.

<sup>3</sup> Section 59(1), FCCPA 2018.

- b. imposes only necessary restrictions on the restricted entity to achieve the goal of improving the production or distribution of goods and services or promoting technical and economic progress.<sup>4</sup>

### 3.0 ABUSE OF DOMINANT POSITION

In the Nigerian law context, an entity is considered to be in a dominant position if it is able to act without taking into account the reaction of its customers, consumers or competitors or where an undertaking enjoys a position of economic strength such that the position enables the party to prevent competition in the relevant market.<sup>5</sup> The FCCPA recognises instances of abuse of dominant position by both buyers and sellers.

An entity will be said to be abusing its dominant position where it:

- a. charges consumers excessively high prices to their detriment;
- b. refuses to grant a competitor access to an essential facility when it is economically feasible to do so;
- c. commits exclusionary acts, except for acts listed below if the anti-competitive impact of those acts outweighs their technological efficiency and other pro-competitive benefits;
- d. engages in any of the exclusionary acts below, unless the involved firm can demonstrate technological efficiency and other gains that promote competition and outweigh the anti-competitive effect of the act.<sup>6</sup>

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<sup>4</sup> Section 12(2) (a-d), Restrictive Agreements and Trade Practices Regulations 2022.

<sup>5</sup> Section 70(2), FCCPA and Section 4 (1), Abuse of Dominance Regulations.

<sup>6</sup> Section 73(2), FCCPA.

The exclusionary acts contemplated in (c) and (d) above include: (a) pressuring or persuading a supplier or customer not to engage in business with a competitor; (b) declining to provide a competitor with access to scarce goods, even when it is economically viable to do so; (c) selling goods or services with the condition that the buyer must purchase additional, unrelated goods or services that are not connected to the primary purpose of the contract, or compelling the buyer to accept conditions unrelated to the contract's primary objective; (d) selling goods or services at prices below their marginal or average cost; or (f) acquiring a limited supply of intermediate goods or resources essential to a competitor's operations.<sup>7</sup>

To assess market dominance under the FCCPA, factors like market share, financial power, links with other entities, market entry barriers, and actual and potential competition are considered.<sup>8</sup> To provide further guidance on this subject, the FCCPC has also issued the Abuse of Dominance Regulation 2022 which provides guidance on the regulatory review process for assessing whether an entity has abused its dominant position or whether collectively dominant entities have abused their dominant position and determining the applicable exception.

#### **4.0 LANDSCAPE OF ENFORCEMENT**

The enforcement of competition law in Nigeria is multi-pronged with the FCCPC, the Securities and Exchange Commission and sectoral regulators all actively taking part in

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

enforcing competition laws in Nigeria. Under the FCCPA, the consequences for contravention of competition legislation include being liable for:

- a. fines of up to N50,000,000 and imprisonment where an entity fails to cease competitive practices after receiving an order from the FCCPC to that effect;<sup>9</sup>
- b. an order by the FCCPC to cease its anti-competitive practices;<sup>10</sup>
- c. an order by the Competition and Consumer Protection Tribunal for an individual/entity to sell any portion or all of its shares, interests or assets, in cases where the action cannot be adequately remedied or where it is a repeat offence;<sup>11</sup>
- d. personal liability on the part of the directors of the entity who participated in the anti-competitive behaviour; and<sup>12</sup>
- e. a revocation of a merger where the merger approval was based on incorrect information furnished by a merging party or the merger approval was obtained deceitfully among others.<sup>13</sup>

The FCCPC also carries out investigations and market inquiries into anti-competitive practices alone and with other regulators. For example, as will be discussed below, the FCCPC is one of the regulators that make up the Joint Regulatory and Enforcement Task Force (JRETF) set up to investigate rights violations in the digital-lending industry. The FCCPC has also issued the FCCPC Administrative Penalties Regulation to provide a

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<sup>9</sup> Section 74(1), FCCPA.

<sup>10</sup> Section 73(1)(b), FCCPA.

<sup>11</sup> Section 52(1), FCCPA.

<sup>12</sup> Section 69(2), FCCPA.

<sup>13</sup> Section 99(1), FCCPA.



regulatory framework for the administration and imposition of administrative penalties under the FCCPA. The fines under the regulation range from N500,000 (five hundred thousand naira) to N12,500,000 (twelve million and five hundred thousand naira).<sup>14</sup>

## 5.0 MERGERS

### 5.1. Mergers Under Nigerian Law

A merger is considered to take place when one or more entities acquire or establish control, either directly or indirectly, over all or a portion of another entity's operations using any of the following methods:

- a. acquiring or leasing shares, interests, or assets of the target entity;
- b. an amalgamation or other combination with the target entity; or
- c. a joint venture.<sup>15</sup>

Control will be deemed present if the acquiring entity:

- a. beneficially owns more than one-half of the issued share capital or assets of the target;
- b. is entitled to cast a majority of the votes that may be cast at a general meeting of the target or has the ability to control the voting of a majority of those votes;
- c. is a holding company and the target is a subsidiary of that company as contemplated under the extant company law; or

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<sup>14</sup> Schedule 1, FCCPC Administrative Penalties Regulations 2020.

<sup>15</sup> Section 92(1) (a & b), FCCPA.

d. has the ability to materially influence the policy of the target in a manner comparable to a person who in ordinary practice can exercise an element of control referred to in paragraphs (a)-(c).<sup>16</sup>

It is noteworthy that a merger will only be subject to regulatory approval if the merger is large, that is, the threshold for merger control filing in Nigeria is met, which is a combined annual turnover of the acquirer and the target in, into or from Nigeria, of N1,000 000,000 (one billion naira) or above; or an annual turnover of the target in, into or from Nigeria, of N500,000,000 (five hundred million naira) or above.<sup>17</sup>

Thus, where a merger transaction results in a change of control and also meets the merger threshold, the entities involved are required to seek the approval of the FCCPC prior to implementing the change of control. It is noteworthy that the FCCPC may require notification even where a merger does not meet the thresholds above where in the FCCPC's opinion, the merger may substantially prevent or lessen competition in the Nigerian market.<sup>18</sup>

## 5.2 Foreign Mergers

It is important to highlight that the scope of merger review extends beyond mergers involving only Nigerian entities. The FCCPA regime has introduced a process for reviewing foreign-to-foreign mergers, which was not the case previously. Therefore, a transaction may now be subject to mandatory notification in Nigeria even if the target company does not have a physical presence in the country, provided that the

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<sup>16</sup> Section 92(2), FCCPA.

<sup>17</sup> The Federal Competition and Consumer Protection Act, 2018 - Notice of Threshold for Merger Notification, Pursuant to Section 93(4), para 1.

<sup>18</sup> Section 95(3), FCCPA.

transaction has a local connection. A foreign merger is considered to have a "local component/nexus" if it includes aspects such as having a subsidiary in Nigeria, manufacturing goods and services sold in Nigeria, or if either or both of the merging parties (the acquirer or the target) have met the turnover threshold mentioned above in previous financial periods.<sup>19</sup>

### 5.3 Estimated Merger Review Timeline

For small mergers notified upon instruction by the FCCPC, the typical time frame for approving straightforward transactions is approximately 20 business days, counted from the moment all merger notification requirements are satisfied.<sup>20</sup> However, for more intricate transactions, this approval process generally extends to about 40 business days from the date when all notification requirements are met.<sup>21</sup>

For large mergers, the average processing time for uncomplicated transactions is roughly 60 business days,<sup>22</sup> while complex transactions tend to require approximately 120 business days from the point at which all merger notification requirements are fulfilled.<sup>23</sup>

It is important to mention that there is an option to accelerate the review of applications by paying an additional fee. This expedited process reduces the approval timeline by 40%. This fast-track procedure applies to several types of transactions, including:

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<sup>19</sup> Section 22, Federal Competition and Consumer Protection Act Merger Review Regulations 2020 and para. 2.12 of the Merger Review Guidelines of the Federal Competition and Consumer Protection Commission.

<sup>20</sup> Section 95(6), FCCPA.

<sup>21</sup> *Ibid.*

<sup>22</sup> Section 97(1), FCCPA.

<sup>23</sup> Section 97(1)(a), FCCPA.

- a. Transactions involving parties that do not have any existing or potential overlapping business relationships.
- b. Mergers involving foreign entities whose subsidiaries in Nigeria primarily function as manufacturers or assemblers, and at least 95% of their products are exported.
- c. Mergers between foreign companies, especially those with a global presence but limited operations in Nigeria.
- d. Joint ventures specifically established for the construction and development of residential and/or commercial real estate projects.<sup>24</sup>

#### **5.4 The Regulation of Mergers in Nigeria**

Mergers and corporate restructuring in general were administered by the Securities and Exchange Commission (SEC) under the Investment and Securities Act of 2007.<sup>25</sup> However, this is now primarily administered by the FCCPC save for mergers involving public companies and capital market operators which is still primarily regulated by the SEC. The FCCPC also runs a concurrent mergers regime with sectoral regulators like the Nigeria Electricity Regulatory Commission (NERC), the regulator of the power sector, the Nigerian Communications Commission (NCC) for telecommunications, the Central Bank of Nigeria (CBN) for the financial sector, Nigeria Civil Aviation Authority (NCAA) for aviation, and Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) for the oil and gas sector, etc.

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<sup>24</sup> Para. 2.12, Merger Review Guidelines.

<sup>25</sup> Cap 29, Laws of the Federation of Nigeria.

By virtue of these overlapping merger review regimes, there is a potential for jurisdictional conflict between the FCCPC and sectoral regulators in the regulation of mergers in Nigeria. For example, a merger may be subject to the jurisdiction of both the FCCPC and a sectoral regulator. In such cases, it is not clear which authority has primary jurisdiction over the merger. Furthermore, it is worth noting that the FCCPC and sector-specific regulatory bodies can have varying criteria that trigger the need for a merger review. To illustrate, under the NCC Competition Practices Regulation, specific types of transactions prompt the NCC to conduct a merger review, including:

- a. Transactions that involve the acquisition of more than 10% of the shares of a Licensee.
- b. Any other transaction resulting in a change in control of the Licensee.
- c. Transactions that lead to the direct or indirect transfer or acquisition of an individual license previously granted by the Commission under the Act.
- d. Situations in which the NCC, based on the preliminary information provided by a Licensee in its initial transaction notification, determines that the transaction could potentially result in a significant reduction in competition or the emergence of a dominant entity in one or more communication markets.<sup>26</sup>

This NCC regulatory framework significantly differs from the merger review triggers set forth by the FCCPC. Consequently, companies operating in the telecommunications sector find themselves grappling with the challenge of determining which specific merger review regime governs their transactions. The FCCPA attempts to address this

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<sup>26</sup> Section 27, NCC Competition Practices Regulation 2007.

issue by providing that the FCCPC and sectoral regulators should enter into agreements on how they will exercise their concurrent jurisdiction.<sup>27</sup> However, the sectoral regulators are yet to enter into such agreements with the FCCPC. In the absence of an agreement, the FCCPC and sectoral regulators may need to resolve any jurisdictional conflict on a case-by-case basis. This can be time-consuming and costly for businesses. To avoid jurisdictional conflicts, it is important for businesses to carefully consider the jurisdiction of the FCCPC and sectoral regulators when planning a merger. Businesses should also consult with the relevant authorities to determine which authority has primary jurisdiction over the merger.

## **6.0 STATE AND MARKET REGULATION**

The Nigerian government places great importance on competition as a catalyst for economic growth and development. To achieve this, it employs a regulatory framework through various agencies to oversee and control markets, preventing unfair practices. This approach extends to the review of mergers and encompasses both the broader competition regulatory landscape. The FCCPC and sector-specific regulators each play significant roles. In succeeding paragraphs, this article delves into specific sectors and how these sectoral regulators have worked to promote fair competition within their respective industries.

### **6.1 The FCCPC**

One of the primary objectives of the Federal Competition and Consumer Protection Act (FCCPA) is to foster and sustain competitive markets within Nigeria, as outlined in

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<sup>27</sup> Sections 104-106, FCCPA.

Section 1(a) of the FCCPA. To achieve this goal, the FCCPC is granted authority to investigate and prosecute instances of anti-competitive behaviour, including practices such as price-fixing, cartel formation, and the misuse of dominant market positions. The FCCPC has actively exercised this authority in the past, conducting investigations and market inquiries in various domains, including the following:

#### **6.1.1 Abuse of Dominance by WhatsApp LLC and Meta Inc.**

On 19 July 2024, the FCCPC fined Meta Platforms \$220 million after investigations revealed that data-sharing on its social platforms violated local consumer, data protection, and privacy laws. The FCCPC found that Meta appropriated the data of Nigerian users without their consent, abused its market dominance by imposing exploitative privacy policies, and subjected Nigerians to discriminatory and disparate treatment compared to other jurisdictions with similar regulations.<sup>28</sup>

#### **6.1.2 Examination of Potential Competition Violations and Consumer Rights Infringements by Dominant PayTV Service Providers**

Notably, the FCCPC in 2022 issued a directive to MultiChoice, a prominent broadcasting and PayTV company, to introduce a price lock initiative (enabling subscribers to maintain a consistent subscription fee for one year) and establish toll-free customer service lines for its customers. Subsequently, a fine of N25,000,000 (Twenty-Five

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<sup>28</sup> FCCPC, “In the matter of investigation into Possible Violations of the Rights of Nigerian Consumers in the Provision of Contact-Based Instant Messaging Service in Nigeria and Enquiries into Obnoxious, Exploitative, and Unscrupulous Business Practices by WhatsApp LLC and Meta Platforms, Inc. under the Federal Competition And Consumer Protection Act, 2018,” available at: <https://fccpc.gov.ng/wp-content/uploads/2024/07/Release-In-the-Matter-of-Meta-Platforms-Inc.-and-WhatsApp-LLC.pdf> (accessed 25 July 2024).

Thousand Naira) was imposed on MultiChoice for non-compliance with the FCCPC's directive.<sup>29</sup>

### **6.1.3 Investigation into Anti-competitive Practices Within the Shipping and Freight Forwarding Industry, Involving Five Companies**

In October 2021, the FCCPC executed a judicial search warrant and a Federal High Court order to collect information and evidence for an ongoing investigation into potential violations of the FCCPA by five companies in the shipping and freight forwarding industry. These companies, along with others not covered by the warrant or under investigation, were found to have engaged in or coordinated anti-competitive activities, both within and outside Nigeria, significantly distorting the market in Nigeria. Their actions included hindering fair competition and leading to persistently high freight rates and related costs within Nigeria.<sup>30</sup>

Other ways the FCCPC has exercised its authority include:

- a. Examination of distribution companies for arbitrary billing and large-scale disconnection of electricity within the power sector.<sup>31</sup>

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<sup>29</sup> "FCCPC Orders Multi-Choice to Introduce Price Lock," *Punch* 21 March 2022, available at: <https://punchng.com/fccpc-orders-multichoice-to-introduce-price-lock/> (accessed 20 July 2024).

<sup>30</sup> FCCPC, "FCCPC Launches Cartel and Other Anti-Competitive Conduct Investigation into Shipping and Freight Forwarding Industry," available at: <https://fccpc.gov.ng/federal-competition-consumer-protection-commission-launches-cartel-and-other-anti-competitive-conduct-investigation-into-shipping-and-freight-forwarding-industry/> (accessed 22 July 2024).

<sup>31</sup> FCCPC, "Arbitrary Billing, Group Disconnection of Electricity Consumers Constitute Gross Consumer Abuse-FCCPC Raps DISCOs," available at: <https://fccpc.gov.ng/arbitrary-billing-group-disconnection-of-electricity-consumers-constitute-gross-consumer-abuse-fccpc-raps-discos/> (accessed 26 July 2024).



- b. Establishment of a regulatory committee to investigate consumer rights violations in the money lending industry, with the aim of shutting down illegal money lending operations.<sup>32</sup>

In addition to its enforcement efforts, the FCCPC also engages in competition advocacy. This involves educating businesses and consumers about the importance of competition and the benefits it offers. The FCCPC regularly publishes guidelines and guidance notices on competition law matters. For example, the Federal Competition and Consumer Protection Commission Notice on Market Definition 2020<sup>33</sup>, the Federal Competition and Consumer Protection Commission Leniency Rules 2022<sup>34</sup> and the Federal Competition and Consumer Protection Commission Merger Review Guidelines.<sup>35</sup> The FCCPC also collaborates with other regulatory bodies, such as the Central CBN and the SEC, to uphold competition and safeguard consumer interests. In 2021, the FCCPC joined forces with the Independent Corrupt Practices Commission (ICPC), the National Information Technology Development Agency (NITDA), the CBN, the Economic and Financial Crimes Commission (EFCC), and the National Human Rights Commission (NHRC) to create the Joint Regulatory and Enforcement Task Force (JRETF). The JRETF is dedicated to addressing and investigating violations of rights in the digital lending industry. The FCCPC has also entered into Memorandums of Understanding (MOUs) with the CBN and EFCC and is in the process of executing an MOU with NITDA.<sup>36</sup>

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<sup>32</sup> 'FG to shut down illegal money lenders violating consumer rights' The Cable. Available at: <https://www.thecable.ng/fg-to-shut-down-illegal-money-lenders-violating-consumer-rights/> (accessed 26 July 2024).

<sup>33</sup> The Federal Competition and Consumer Protection Commission's Notice on Market Definition, 2021.

<sup>34</sup> Federal Competition and Consumer Protection Commission Leniency Rules, 2022.

<sup>35</sup> Merger Review Guidelines of the Federal Competition and Consumer Protection Commission, 2020.

<sup>36</sup> FCCPC, "Civil Society/Consumer Protection Alliances," available at: <https://fccpc.gov.ng/about-us/civil-society-consumer-protection-alliances/> (accessed 26 July 2024).

## 6.2 Telecommunications

Concerning the regulation of competition-related matters by the NCC, as outlined in Section 4(d) of the Nigeria Communications Act (NCA), the NCC is entrusted with the responsibility of fostering fair competition within the communications industry. It also has the mandate to safeguard communications services and facilities providers from the misuse of market power or any anti-competitive and unfair practices by other service or facilities providers or equipment suppliers.

According to the provisions of the NCA, the NCC holds exclusive authority to determine, declare, oversee, supervise, and enforce compliance with competition laws and regulations that pertain to the Nigerian communications industry. Notably, the NCC has the power to decline the issuance of an individual license to an applicant who holds a controlling influence on another licensee if such issuance is deemed likely to give rise to anti-competitive concerns. Furthermore, the NCC can reject share transfers if it determines that the acquisition of ownership or control of the license could potentially lead to anti-competitive issues within the telecommunications market. The NCA also prohibits licensees from engaging in any conduct with the intention or effect of significantly reducing competition in any segment of the Nigerian communications market, unless such conduct is specifically authorised by the NCC.

In accordance with its authority under the NCA, the NCC issued the Competition Practices Regulations to provide clarity on anti-competitive behaviours. These Regulations address topics such as determining whether an undertaking possesses dominant powers, defining actions that constitute a significant reduction in competition, and outlining what constitutes an abuse of dominance. These Regulations

additionally empower the NCC to review agreements aimed at, or that would have the effect of, significantly reducing competition.

The NCC has also implemented various competition-strengthening measures. For instance, in 2013, the NCC declared MTN Nigeria a dominant operator in the retail mobile voice market segment of the telecommunications industry. As a result, the NCC directed MTN to eliminate the price differential between on-net and off-net retail voice tariffs, a concession that was later reversed when the NCC granted MTN Nigeria a 30% concession on these tariffs.<sup>37</sup> In November 2016, the NCC introduced a price floor for data services to promote a level playing field for all operators in the industry, thereby encouraging smaller operators and new entrants.<sup>38</sup> This measure was subsequently suspended by the NCC.<sup>39</sup>

### 6.3 Power/Electricity Sector

Prior to the enactment of the Electricity Act 2023, the Electric Power Sector Reform Act, No.6 2005 (EPSRA) assigned the Nigerian Electricity Regulatory Commission (NERC) the role of assessing the potential for increased competition within the Nigerian electricity supply industry and reporting on it.<sup>40</sup> The NERC was also responsible for considering the prevention or mitigation of market power abuses when making decisions

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<sup>37</sup> "NCC and Determination of Telecoms Dominance," *The Guardian*, 28 July 2015, available at: <https://guardian.ng/opinion/ncc-and-determination-of-telecoms-dominance/> (accessed 18 July 2024).

<sup>38</sup> "Why NCC Asked Big operators to Raise Data Tariffs," *The Cable*, 29 November 2016, available at: <https://www.thecable.ng/exclusive-ncc-asked-big-operators-raise-data-tariffs/> (accessed 19 July 2024).

<sup>39</sup> "NCC Suspends Directive on Data Segment Price Floor," *Business Day*, 30 November 2016, available at: <https://businessday.ng/exclusives/article/ncc-suspends-directive-on-data-segment-price-floor/> (accessed 20 July 2024).

<sup>40</sup> Electricity Power Sector Reform Act.

related to license applications, terms, price setting, mergers, acquisitions, and affiliations. This responsibility was retained in the Electricity Act of 2023.<sup>41</sup>

In compliance with its EPSRA obligations, NERC introduced the NERC Eligible Customer Regulation in 2017, aimed at promoting competition in the electricity supply sector and enabling third-party access to transmission and distribution infrastructure for enhanced retail competition.

NERC also has a specialised division, the Market Competition and Rates Division, tasked with determining tariffs and monitoring the electricity market to prevent market power abuse. Additionally, NERC releases reports like the 2022 Market Competition Report, evaluating competition levels in the Nigerian Electricity Supply Industry and the progress toward a more competitive market.

Recently, the NERC took enforcement actions against the Abuja Electricity Distribution Company (AEDC) for violating the Supplementary Order to the Multi-Year Tariff Order (MYTO) 2024 for AEDC. This action includes a mandate for AEDC to reimburse all customers in Bands B, C, D, and E who were billed above the allowed tariff bands and to pay a fine of ₦200 million.<sup>42</sup>

#### **6.4 Aviation Industry**

Competition in the Aviation industry is primarily governed by the Civil Aviation Act 2022 (CAA), which replaced the Civil Aviation (Repeal and Re-Enactment) Act of 2006. The NCAA is entrusted with regulating and fostering competition, promoting fair and

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<sup>41</sup> Section 121(3), Electricity Act 2023.

<sup>42</sup> FCCPC, "FCCPC Applauds NERC for Fines, Demands Actions to Promote Consumers," available at <https://fccpc.gov.ng/release-fccpc-applauds-nerc-for-fines-demands-actions-to-protect-consumers/> (accessed 18 July 2024).

efficient conduct among industry operators, and preventing monopolies as authorised by the CAA.<sup>43</sup> These regulations are subject to the provisions of the FCCPA. The NCAA is also empowered to create and enforce regulations that ensure equitable competition in the provision of air transport services and protect the interests of aviation and related services consumers.<sup>44</sup>

Pursuant to the 2006 Act, the NCAA introduced the Nigeria Civil Aviation Regulations of 2015 (NCAR). The NCAR forbids aviation industry entities from engaging in any contracts, arrangements, understandings, or conspiracies that would result in a restraint of competition without prior authorisation from the NCAA. Additionally, it prohibits both restrictive practices and the abuse of dominant market positions.<sup>45</sup>

## 6.5 Banking

The Bank and Other Financial Institutions (BOFIA) Act 2020 differs from the CAA in how it handles competition matters. While the CAA makes its competition authority subject to the FCCPA, BOFIA, explicitly states that the FCCPA does not apply to transactions, acts, financial services, or undertakings conducted by banks and other financial institutions licensed by the CBN.<sup>46</sup> In particular, the provisions related to mergers under the FCCPA do not apply to mergers, acquisitions, or any form of business combination involving a bank, specialised bank, or financial institution. For these entities, all references to the FCCPC should be understood as references to the CBN. Additionally, the BOFIA mandates that the consent of the Governor of the CBN is required for any

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<sup>43</sup> Section 8(1)(l), Civil Aviation Act 2022.

<sup>44</sup> Section 95(7), Civil Aviation Act 2022.

<sup>45</sup> Para. 18.15, Nigerian Civil Aviation Regulations 2015.

<sup>46</sup> Section 65, BOFIA 2020.

agreement involving the transfer of significant shareholding in a bank or other financial institution.<sup>47</sup> "Significant shareholding" is defined as the beneficial ownership of 5% or more of the paid-up share capital of a bank or financial institution.<sup>48</sup>

Similarly, the CBN, in accordance with its mandate under the CBN Act, has issued the Consumer Protection Framework (CPF) to protect consumer rights and discourage anti-competitive practices in the financial services sector. The CPF requires financial institutions to collaborate with financial regulators and other stakeholders to enhance competition within the financial services industry. The CBN, as per the CPF, is also responsible for monitoring the market to discourage anti-competitive practices, including price-fixing, market allocation, abuse of dominance, and tied selling.<sup>49</sup>

## **6.6 International Collaborations**

The FCCPC actively engages in international collaborations aimed at fostering cooperation, enhancing regulatory effectiveness, and combating cross-border challenges in the realm of competition and consumer protection. These collaborative efforts demonstrate Nigeria's commitment to promoting fair competition and safeguarding consumer interests on a global scale.

### **6.6.1 ECOWAS Regional Competition Rules**

One significant avenue through which this occurs is Nigeria's membership in the Economic Community of West African States (ECOWAS). Within this regional economic bloc, ECOWAS has established a comprehensive competition regulatory framework

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<sup>47</sup> Section 7(1)(a)(ii), BOFIA 2020.

<sup>48</sup> Section 131, BOFIA.

<sup>49</sup> Para. 2.8.1, Consumer Protection Framework of the CBN.

known as the ECOWAS Regional Competition Rules. To oversee the implementation of these rules, the ECOWAS Regional Competition Authority (ERCA) was launched on 31 May 2019. This framework and authority are critical in promoting fair competition within the ECOWAS member states.

#### **6.6.2 Memorandum of Understanding (MOU) with the U.S. Federal Trade Commission**

The FCCPC, in collaboration with the EFCC in Nigeria, has signed a significant Memorandum of Understanding (MOU) with the United States Federal Trade Commission. This MOU serves a dual purpose. Firstly, it enhances communication and cooperation to jointly address cross-border fraud, and secondly, it facilitates collaboration in consumer protection investigations. The MOU establishes a joint implementation committee dedicated to developing training programs and providing assistance for specific investigations, further strengthening the cooperation between the two countries.<sup>50</sup>

#### **6.6.3 MOU with the Egyptian Competition Authority**

In a bid to enhance collaboration, strengthen economies, and promote shared prosperity, the FCCPC signed an MoU with the Egyptian Competition Authority (ECA) on 31 January 2023. This agreement underscores the importance of international partnerships in advancing economic growth and regulatory effectiveness.<sup>51</sup>

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<sup>50</sup> EFCC, “EFCC, FCCPC Sign MOU with U.S. Trade Commission to Combat Cross Border Fraud,” available at: <https://www.efcc.gov.ng/efcc/news-and-information/news-release/6194-efcc-fccpc-sign-mou-with-u-s-trade-commission-to-combat-cross-border-fraud> (accessed 20 July 2024).

<sup>51</sup> FCCPC, “Egyptian Competition Authority (ECA) and Federal Competition and Consumer Protection Commission (FCCPC) Execute Memorandum of Understanding,” available at: <https://fccpc.gov.ng/egyptian-competition-authority-eca-and-federal-competition-and-consumer-protection-commission-fccpc-execute->

#### 6.6.4 Membership in the International Competition Network (ICN)

The FCCPC is also a member of the International Competition Network (ICN), which provides a global platform for competition authorities to collaborate and exchange knowledge and best practices. Through its membership, the FCCPC is well-positioned to address cases involving non-resident entities engaged in anti-competitive practices, leveraging its international network to enforce competition regulations effectively.<sup>52</sup>

In summary, the FCCPC's international collaborations are vital to its mission of ensuring fair competition, protecting consumers, and fostering economic growth both regionally and globally. These partnerships underscore the FCCPC's dedication to addressing cross-border challenges and harmonising efforts with like-minded organisations to achieve shared goals.

### 7.0 CONCLUSION

In summary, while the examination of competition law in Nigeria highlights the presence of robust legislation and regulatory bodies, such as the FCCPA and sectoral agencies, as a strong foundational framework, it also reveals the potential for enhanced enforcement measures.

Despite the existing legal infrastructure, there remains room for improvement in enforcement. To optimise competition regulation, greater focus can be placed on the proactive identification of anti-competitive practices, fostering increased cooperation

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[memorandum-of-understanding/#::~text=Considering%20that%20both%20countries%20are,%2C%20Egypt%2C%20executed%20the%20MoU](#) (accessed 20 July 2024).

<sup>52</sup> International Competition Network, "Members," available at: <https://www.internationalcompetitionnetwork.org/members/?location=africa> (accessed 29 July 2024).



between the regulatory bodies, and streamlining the enforcement process. Additionally, the regulatory agencies can enhance their investigative and monitoring capabilities to ensure a more comprehensive oversight of market activities.

In addition, public awareness and education campaigns about the importance of competition law, both for businesses and consumers, can play a pivotal role. By promoting a culture of compliance and understanding, enforcement agencies can gain stronger public support, making it easier to detect and report violations.

In conclusion, while Nigeria's competition framework is commendable, there exists a significant opportunity for improvement in terms of enforcement. A combination of enhanced investigative capabilities, inter-agency cooperation, public awareness campaigns, and stricter penalties can collectively elevate the effectiveness of competition law enforcement in the country.