



Court Validates FCCPC's Consumer Protection Jurisdiction over Banker's Advance Payment Guarantee

The Federal High Court's Judgment in Suit No: FHC/L/CS/450/2021 - Wema Bank Plc v. Federal Competition and Consumer Protection Commission (FCCPC) delivered on January 16, 2023, sparks renewed debates on FCCPC's authority in resolving consumer complaints related to banker-customer disputes. This case highlights the depth of FCCPC's jurisdiction in a consumer protection matter arising from banking services. The case not only underscores the scope of the FCCPC's jurisdiction but also highlights the delicate balance between regulatory bodies and constitutional courts - reigniting discussions on the constitutional validity of the consumer complaints mechanisms in various statutes conferring expansive authority on regulatory bodies to address consumer complaints.

In the final consideration, the Court gave judicial assent to the superiority of FCCPC's multi-sectoral jurisdiction on competition and consumer protection under the Federal Competition and Consumer Protection Act 2018 (FCCPA). The Court specifically affirmed that the exercise of FCCPC's powers to resolve a bank customer's consumer complaint and to provide redress does not oust the Federal High Court's constitutional jurisdiction regarding banker-customer disputes.

Slingstone LP successfully defended FCCPC's regulatory jurisdiction in this significant matter and we share the highlights of the decision in this case note.

The Facts

Bluecrest Global Consults Limited filed a complaint with FCCPC against Wema Bank Plc, alleging unethical practices in providing an Advance Payment Guarantee (APG) service. Wema had issued an APG for a Scrap Metal Purchase Agreement between Bluecrest and Glonik Industries Limited. After the APG expired twice, Wema rejected Bluecrest's renewal application, leading to a complaint to FCCPC.

FCCPC initiated an investigation, inviting Wema to present its case. Following a complaints hearing, FCCPC directed Wema to return the entire APG sum within a specified timeframe. Dissatisfied, Wema challenged FCCPC's jurisdiction at the Federal High Court, contending that it interferes with the court's constitutional jurisdiction over banker-customer disputes.

The Court was invited to consider Section 251(1)(d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Sections 1(c), 2(1), 17(h), 17(l), 17(s), 146, 152, 104 and 164 of the Federal Competition and Consumer Protection Act 2018 ("FCCPA"), to determine whether FCCPC has validly exercised its statutory powers to receive and resolve a consumer complaint against Wema Bank Plc regarding alleged unethical practices in the provision of Advance Payment Guarantee service to a consumer.

This case highlights the depth of FCCPC's jurisdiction in a consumer protection matter arising from banking services. Further, it highlights the delicate balance between judicial decision making by regulatory bodies and constitutional courts - reigniting discussions on the constitutional validity of the consumer complaints mechanisms in various statutes conferring expansive authority on regulatory bodies to address consumer complaints.

Highlight of the Court's Decision

The Court made the following key conclusions in the Judgment:

- Section 104 of the FCCPA grants FCCPC superior jurisdiction in consumer protection and competition, without conflicting with Section 251 of the 1999 Constitution (as amended).
- FCCPA's Section 146 outlines a layered grievance procedure, recognizing recourse to the service or goods supplier, industry regulator, or filing a complaint with FCCPC.
- FCCPC's jurisdiction covers "all matters of dispute or complaint on consumer protection," empowering the commission to ensure consumer interests are considered and redress provided for exploitation by companies, firms, trade associations, or individuals.

Considering the factual element of the consumer complaint as one arising from provision of banking services, the decision of the Court which recognizes FCCPC's superior jurisdiction in "all matters of dispute or complaint on consumer protection" strikes a new trend of court's decisions on navigating the regulatory overlap between the FCCPC and specific industry regulators on consumer protection and competition issues. These questions are just being judicially determined as FCCPC enforcement initiatives under its relatively new law increase.

The court's recognition of FCCPC's jurisdiction in this banking services dispute raises intriguing questions for determination by the Court of Appeal. An appellate decision on these questions will offer final clarity on the scope of FCCPC's enforcement, surveillance, supervisory, and consumer complaints resolution powers, providing greater certainty on the evolving landscape of consumer protection and competition in the banking sector.

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