

## Court Affirms FCCPC's Multi-Sectoral Jurisdiction in Telecom Industry and Public Interest Justification for Data Disclosure

The Federal High Court has affirmed the regulatory jurisdiction of the Federal Competition and Consumer Protection Commission (FCCPC) over anti-competitive practices and consumer protection in the telecommunications industry in *Suit No: FHC/L/CS/1009/2024 – Emeka Nnubia v. Honourable Minister of Industry, Trade and Investment & Others* (FCCPC and MTN Communications Nigeria Plc).

Slingstone LP is pleased to have represented FCCPC in this landmark case, which provides critical clarity on the primacy of the Commission's regulatory powers and the statutory framework for inter-agency collaboration for effective enforcement, particularly in industries where sector-specific legislation exists. The judgment also confirms that disclosures made to FCCPC during regulatory investigations are justified under the public interest exemption of the Nigeria Data Protection Act 2023, setting a strong precedent for market surveillance, regulatory monitoring, and enforcement across multiple sectors

# Facts of the Case

On 17 May 2024, FCCPC issued a Notice of Limited Initial Inquiry and Possible Investigation (LIIPPI) to MTN, informing the company that the Commission was evaluating the propriety of certain arrangements that might constitute infringements of the Federal Competition and Consumer Protection Act, 2018 (FCCPA).

MTN acknowledged receipt of the Commission’s letter and Summons and requested an extension of the compliance timeline. FCCPC granted an initial 14-day extension until 18 June 2024, followed by a further extension to 24 June 2024.

Approximately three days before the extended deadline, the Plaintiff, a shareholder of MTN, filed an Originating Summons on 11 June 2024, seeking to challenge FCCPC’s authority and restrain its investigation. The Plaintiff argued that any inquiry or investigation by the Commission was ultra vires and violated the Nigeria Data Protection Act and the guidelines for disclosure to public authorities. He further contended that, as a telecommunications company, MTN fell solely under the jurisdiction of the Nigerian Communications Commission (NCC) and not FCCPC. The Plaintiff sought to nullify FCCPC’s summons, notices to produce, and all regulatory actions related to the investigation. Additionally, he claimed that the data requested by FCCPC constituted personal data and should not be subject to disclosure.

On 26 June 2024, MTN, through its Counsel, declined to comply with the Summons, citing the pending lawsuit as a reason for its inability to adhere to FCCPC’s regulatory directives. The Court reached the following key conclusions:

## Key Take Aways



### **FCCPC’s Authority Upheld**

The court reaffirmed FCCPC’s jurisdiction over competition and consumer protection across all sectors, including telecommunications.



### **Public Interest Justifies Data Disclosure**

FCCPC’s request for information from MTN was lawful and did not violate data privacy laws.



### **Inter-Agency Collaboration Clarified and Strengthened**

FCCPC can act independently of sector regulators, though cooperation is encouraged.



### **Judicial Rejection of Regulatory Interference**

Courts do not restrain lawful regulatory investigations.

## **Affirmation of FCCPC's Regulatory Authority**

FCCPC is the primary regulator of anti-competitive practices in Nigeria, with its mandate clearly established under Sections 17 and 18 of the FCCPA 2018. The Commission's broad functions include preventing the abuse of dominant positions and ensuring fair competition. The Court acknowledged MTN's position as a leading telecommunications provider and affirmed the necessity of FCCPC's oversight, particularly given the telecommunications industry's significant role in Nigeria's economy.

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***The judgment is a resounding victory for FCCPC, providing critical clarity on the primacy of the Commission's regulatory powers and the statutory framework for inter-agency collaboration for effective enforcement, particularly in industries where sector-specific legislation exists.***

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# FCCPA's Authority on Anti-Competition and Relationship with Sectoral Legislations

A key issue in the case was the interpretation of Section 90 of the Nigerian Communications Act 2003 (NCA 2003), which appears to grant the Nigerian Communications Commission (NCC) exclusive jurisdiction over competition matters in the telecommunications sector. The Court held that Section 90 must be read in alignment with Section 104 of the FCCPA 2018, a later legislation reflecting the legislature's intent to grant FCCPC jurisdiction across all sectors, including telecommunications.

Section 104 of the FCCPA states: "Notwithstanding the provisions of any 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." As a result, Section 104 of the FCCPA supersedes any interpretation of Section 90 of the NCA that suggests exclusive competition regulation by the NCC. Instead, Section 90 can only be understood as conferring concurrent regulatory powers.

The judgment also clarified the relationship between FCCPC and sector-specific regulators such as NCC under Section 105 of the FCCPA. In line with international best practices, Section 105 establishes a framework for FCCPC, as the primary competition authority, to collaborate with industry-specific regulators for effective enforcement. The decision lends judicial assent to active inter-agency collaboration and concurrent regulatory oversight within the telecommunications sector.

While Section 105 of the FCCPA encourages cooperation, the Court confirmed that entering an agreement with a sectoral regulator is not a prerequisite for FCCPC to exercise its statutory authority. The obligation to initiate cooperation rests on industry regulators rather than FCCPC, dismissing claims that the Commission must secure agreements with sector regulators before taking action on competition and consumer protection matters within the sector.

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# Validity of FCCPC's Summons to MTN and Public Interest Exemption for Data Disclosure

The Court upheld FCCPC's issuance of a Summons and Request to Produce to MTN, affirming that the Commission acted within its statutory authority. The Summons, issued alongside a Notice of Limited Initial Inquiry and Possible Prospective Investigation (LIIPPI) dated May 17, 2024, was deemed lawful and justified.

Furthermore, the Court held that the Summons did not violate the privacy principles of the Nigeria Data Protection Act 2023 (NDPA), upholding FCCPC's submissions. In its arguments, FCCPC maintained that "personal data" under Section 65 of NDPA and relevant privacy regulations refers to information that uniquely identifies an individual and relates to one or more factors specific to their physical, physiological, genetic, psychological, cultural, social, or economic identity. The information requested from MTN did not meet this definition, as it did not "individuate" the Plaintiff in any manner and nothing qualifies as protectable personal data under the NDPA in the circumstance. Accordingly, the Court found, as a matter of fact, that no personal data belonging to the Plaintiff was requested.

The Court upheld FCCPC's submissions that regulatory obligations, including disclosure in the public interest, provide a lawful basis for information-sharing. This is consistent with Section 25(1)(b)(ii) and (iv) of the NDPA 2023, which recognises compliance with legal obligations and performance of public interest duties as lawful bases for data processing, provided they adhere to established principles for personal data handling. Notably, Section 24(1) of the NDPA, provides appropriate safeguards for lawful processing, fairness, transparency, and proportionality amongst others.

## Judicial Non-Intervention in Valid Regulatory Enforcement Processes

In a decisive pronouncement, the Court reaffirmed that it lacks the power to restrain a regulatory authority from carrying out its legitimate statutory functions. It upheld FCCPC's argument that injunctive orders aimed at impeding, frustrating, compromising, or interfering with a lawful regulatory enforcement process are unconstitutional, as they violate the doctrine of separation of powers enshrined in the Constitution.

This judgment delivers a strong judicial rebuke against litigations aimed at obstructing regulatory investigations or enforcement actions, affirming the regulator's power to carry out its statutory mandate without undue interference.

## Concluding Remark

This landmark judgment is a resounding victory for FCCPC, setting an important precedent for multi-sectoral competition law enforcement in Nigeria.

While it echoes the fundamental conclusions of previous Federal High Court decisions in cases challenging the FCCPA across other sectors, this decision stands out as the most comprehensive judicial exposition on the scope of FCCPC's competition regulation, the limits of sector-specific regulations, and the statutory framework for inter-agency cooperation to close enforcement gaps and eliminate regulatory arbitrage.



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