

THE CHANGING LANDSCAPE:

FEDERAL COMPETITION AND CONSUMER
PROTECTION ACT



Jackson, Etti & Edu



ANALYSIS OF THE JURISDICTION OF THE COMPETITION AND CONSUMER PROTECTION TRIBUNAL

The Federal Competition and Consumer Protection Act ("FCCPA") establishes the Competition and Consumer Protection Tribunal ("the Tribunal") to adjudicate over conducts prohibited under the FCCPA. The Tribunal will be made up of a chairman and six other members with experience in the fields of competition, consumer protection, commercial law, and industrial law, amongst others.

Members of the Tribunal are appointed by the President on the recommendation of the National Judicial Council; with their appointment being subject to confirmation by the Senate. A member of the Tribunal is to occupy the office for a single period of five years from the date of assumption of office or when he/she attains the retirement age of 70.

Jurisdiction of the Competition and Consumer Protection Tribunal

The Tribunal is vested with jurisdiction over the following matters;

- i. Appeals from, or review of decisions

of the Federal Competition and Consumer Protection Commission (the "Commission") taken in the course of the implementation of the provisions of the Act; and

- ii. Appeals from, or review of decisions from the exercise of the powers of any sector specific regulatory authority in relation to competition and consumer protection.

With respect to the Tribunal's jurisdiction over decisions of sector specific regulatory authorities, the jurisdiction of the Tribunal can only be invoked after the matter has been determined by the Commission. As such, the Tribunal only entertains appeals or reviews from the decisions of the Commission.

In the discharge of its duties, the Tribunal is empowered to amongst other things, summon and enforce the attendance of any person, call for and examine witnesses under oath, receive evidence on affidavits

and do anything necessary to issue a final and reasoned decision on the merits of the matter before it.

Imposition of penalties by the Tribunal

In addition to the fines that may be imposed for contravening the provisions of the FCCPA, the Tribunal is also empowered to exercise its discretion to impose administrative penalties where an undertaking has been involved in a prohibited practice under the Act or for the contravention of, or failure to comply with an interim order of the Tribunal. An administrative penalty imposed by the Tribunal however, must not exceed 10% of the combination of an undertaking's annual turnover and its exports from Nigeria in the preceding financial year.

Furthermore, in determining an appropriate penalty, the Tribunal is enjoined to consider the nature, duration, gravity and extent of the contravention; loss or damage suffered due to the contravention; profit derived from the contravention; defaulter's cooperation with the Commission, amongst others.

In addition to imposing penalties, the Tribunal can make an order directing an undertaking to sell a part or all of its shares, interest or assets if the practice prohibited by the FCCPA cannot be remedied or is a repetition of a conduct previously prohibited by the Tribunal.

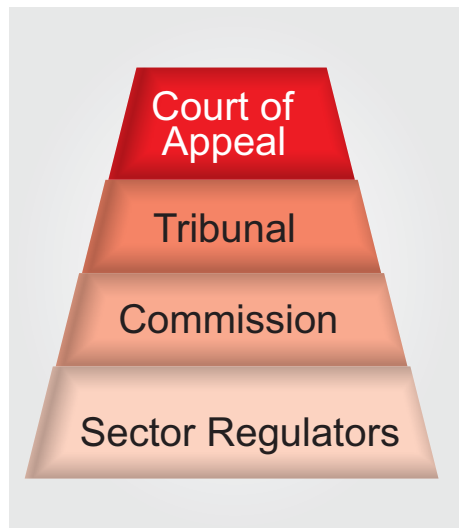
Enforcement and Appeals of the decisions of the Tribunal

The orders, ruling, award or judgment of the Tribunal are binding on the parties and

are to be registered with the Federal High Court for enforcement purposes. An aggrieved party to a proceeding before the Tribunal may appeal its decision within 30 days of delivery of the ruling, award or judgment to the Court of Appeal. The FCCPA is although silent on the time limit within which an appeal may lie from the Commission to the Tribunal.

Also, the time limit within which the decision of the Tribunal may be appealed to the Court of Appeal is much shorter than the time within which an appeal may lie from the State or Federal High Court to the Court of Appeal⁴³. While an appeal to the Court of Appeal in a civil cause or matter shall be filed at the Court of Appeal within three months of the final decision, a decision of the Tribunal as provided in the FCCPA shall be filed within 30 days of the Tribunal's decision.

As the FCCPA did not stipulate that the Court of Appeal will have final appellate



⁴³Section 25 of the Court of Appeal Act

jurisdiction over disputes, complaints or decisions arising from competition or consumer protection matters, it is certain that the Supreme Court will have the final appellate jurisdiction to hear and determine further appeals from decisions of the Court of Appeal in line with the provisions of the Constitution.

Jurisdictional conflict of the Tribunal

Subject to the provisions of the Constitution of the Federal Republic of Nigeria ("Constitution"), the FCCPA is now the overriding law on competition and consumer protection in Nigeria with its provisions taking precedence over any other law in matters relating to competition and consumer protection.

The implication of this overriding status of the FCCPA is that provisions on competition and consumer protection in statutes such as the Nigerian Communications Act 2003, Electric Power Sector Reform Act 2005, Civil Aviation Act 2006, amongst others, are now subject to the provisions of the FCCPA, and the exercise of the powers of the regulators established under these laws with respect to competition and consumer protection are subject to the FCCPC and the Tribunal.

Against this background, the FCCPA has vested the Tribunal with the original jurisdiction over decisions on competition and consumer protection determined by the Commission. The vesting of original jurisdiction on the Tribunal has created jurisdictional issues, some of which include;

a. Tribunal's jurisdiction over competition and consumer protection matters

The Commission is vested with the power to review the decision of a sector regulator in respect to competition and consumer protection related matters, while the Tribunal has an oversight function over the decisions of the Commission. Also, decisions of the Tribunal lie to the Court of Appeal. A question then arises whether the exclusive jurisdiction of the Federal High Court under Section 251 (1) of the Constitution is now limited in view of the provisions of the FCCPA which excludes competition and consumer protection matters from its purview. Another question is, can the FCCPA alter the exclusive jurisdiction of the Federal High Court conferred on it by the Constitution, particularly as the FCCPA is subject to the provisions of the Constitution?

b. Tribunal's jurisdiction over the decisions of the Commission

Another issue which may arise with the Tribunal's jurisdiction over the decisions of the Commission is also in terms of the exclusive jurisdiction of the Federal High Court over actions or disputes involving the Federal Government and any of its agencies. In **Central Bank of Nigeria & Ors v. Aite Okojie**⁴⁴, the Supreme Court in interpreting Section 251 (1) (p) (q) and (r) of the 1999 constitution held that...notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes

⁴⁴(2015) LPELR-24740(SC)

and matters –® any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies...

Administration is the management or direction of the affairs of an organization, while executive is a person or group of people who run an organization. The malicious prosecution of the Respondent by the Appellants' police officers, who are agents of the Federal Government gave rise to the filing of this case culminating in this appeal. Malicious prosecution, unlawful arrest and wrongful detention of the respondent by the Appellants are all wrong executive or administrative decisions of the Nigeria Police, an agency of the Federal Government. A right of action accrued to the Respondent to seek redress and the proper forum to hear this action is the Federal High Court.

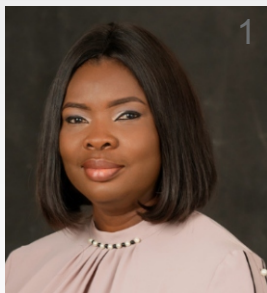
Flowing from the decision above, it can be argued that the decisions of the Commission are executive decisions of a Federal government agency and any suit against such agency should ordinarily be initiated at the Federal High Court. This position appears conflicting with the FCCPA which gives the Tribunal the power to review the decisions of the Commission. It however remains to be seen how this would play out in the Nigerian courts.

Conclusion

In conclusion, the establishment of the Competition and Consumer Protection Tribunal is an integral requirement for the attainment of the objectives of the FCCPA; and it is expected that the jurisdictional issues arising from the FCCPA would be subsequently resolved by case law. In any case, it is apparent that the FCCPA if properly implemented would promote and maintain competitive markets in the Nigerian economy.



CONTRIBUTORS



1



2



3



4



5



6



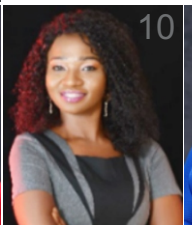
7



8



9



10



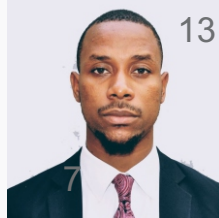
11



12

- 1 **Folasade Olusanya**
Partner
Head, Corporate Commercial
- 2 **Taiwo Adeshina**
Partner, Corporate Commercial
- 3 **Kunle Soyibo**
Managing Associate
Co-Sector Head
Financial Services
- 4 **Yeye Nwidaa**
Senior Associate
Co- Deputy Sector Head
Financial Services
- 5 **Adewale Fajana**
Senior Associate
Deputy Sector Head
Energy & Natural Resources
- 6 **Okey Nnebedum**
Senior Associate
Deputy Sector Head
Health & Pharmaceuticals

- 7 **Marshal Mapondera**
Business Development Manager
Africa Practice
- 8 **'Azeez Akande**
Associate
Member, Energy & Natural Resources
- 9 **Ekiomado Ewere-Isaiah**
Associate
Member, FMCG Sector
- 10 **Obioma Okonkwo**
Associate
Member, FMCG Sector
- 11 **Oluwatoyin Aiyepola**
Associate
Member, FMCG Sector
- 12 **Modupe Balogun**
Associate
Member, Tech. Media
& Entertainment Sector
- 13 **Vincent Okonkwo**
Trainee Associate



13



3-5 Sinari Daranijo Street, Off Ajoye Adeogun, Victoria Island, Lagos, Nigeria.
Tel: +234 (1) 4626843 | +234 (1) 4626841 | +234 (1) 2806989
Fax: +234-1-2716889 | Email: jacksonettiedu@jacksonettiandedu.com
Website: www.jacksonettiandedu.com

