WHEN MARKET SUCCESS BECOMES MARKET DOMINANCE OR ABUSE OF POWER: BALANCING BUSINESS GROWTH, FAIR COMPETITION AND CONSUMER PROTECTION IN NIGERIA*

Abstract

A business environment where one or more dominant firms engage in conducts that are exclusionary of other competitors and exploitative of the consumers is noxious, encourages abuse of dominant position and breeds unhealthy competition. The need to check such unfair market practices led to the enthronement of competition law. The core objective of competition law is the prevention of unfair market practices and protection of consumers. To achieve that aim, the law provides for healthy competition in the markets at all levels, prohibits exploitative pricing and establishes legal framework for redress. This paper examines when market success becomes market dominance and abuse of power, and how competition law can prevent unfair market practices and protect consumers in Nigeria. The methodology adopted is doctrinal and comparative. The finding is that there exists a legislation and a regulatory framework on the subject in Nigeria which has proved helpful in regulating market practices. However, a robust legislative and regulatory framework that not only addresses the already identified unfair market practices but also creates sufficient room for innovative provisions that are adaptable to the ever-changing nature of the markets, will ensure that the law effectively plays its pivotal role in maintaining the delicate balance between business growth, fair competition and consumer protection in Nigeria.

Keywords: Market success, Fair competition, Business growth, Consumer protection, Market Dominance, Abuse of power.

1. Introduction

Every market is characterized by competition among business concerns to gain market advantage. Competition law does not necessarily protect competitors from this competition: it rather protects the competition process itself. Such conducts as optimal utilization of resources, adopting best available technology, producing quality goods, becoming cost efficient, investing in research and technology *et cetera*, have been identified as some instances of fair competition. On the other hand, instances of unfair competition include fixing prices below cost of production in order to throw out competitors from the market, advertisements that belittle or diminish similar products, fixing prices with rivals, among others. Competition in the markets, no doubt, leads to success in terms of market growth. If left unchecked by law and regulations, however, this competition may impede economic growth in diverse ways and lead to abuse of dominant position or market power by a few undertakings to the detriment of the ultimate consumers and overall economic growth of a country. The concern, therefore, is what happens when market success becomes the means by which competition is threatened or weakened. As such, competition should also be a process which restrains individuals from colluding on prices at the expense of the society and protects the welfare of the consumers, for example. In cases of hard-core cartels and horizontal agreements or mergers which could create monopolies or facilitate cartelisation by reducing the number of sellers in the market, the government should also intervene so as to engender healthy competition and protect consumers, as a vital role of the Government in enthroning fair market practices.

Owing to the negative economic implications of market practices that are patently anti-competitive and exploitative of customers or consumer, the law has made provisions for the prevention of such conducts and for the protection of consumers. The advent of modern competition law is traceable to the common law doctrine of restraint of trade,[1] and one of the responses of the law to anti-competitive and exploitative market practices is the development of competition law as a remedy to abuse of dominance by rival firms in a free market economy. To that end, the pursuit of efficiency in the markets becomes the goal of competition while the market should be trusted to be robust in terms of competition. This paper thus examines the provisions of the FCCPA relating to achieving market growth in Nigeria through fair market practices and consumer protection as part of the core objectives of the law.

2. Legal and Regulatory Framework

The principal legislation in Nigeria on competition law is the Federal Competition and Consumer Protection Act (FCCPA)[2]. This law aims to maintain and promote: competition, economic efficiency, interest and welfare of consumers; prohibit restrictive and unfair business practices and generally contribute to the development of the Nigerian economy. Elaborate provisions on the objectives of the Act[3] can be found in section 1 thereof wherein its objectives are stated as follows:

(a) promoting and maintaining of competitive markets in the Nigerian economy;

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[1] This doctrine emphasises the unenforceability of contracts in restraint of trade as being anti-competitive. See the case of *Nordenfelt v. Maxim, Nordenfelt Gun Co. (1894) AC 535*

[2] 2018, with commencement date of 30th January 2019.

[3] FCCPA

(b) promoting economic efficiency;
(c) protecting and promoting the interests and welfare of consumers by providing consumers with wider variety of quality products at competitive prices;
(d) prohibiting restrictive or unfair business practices which prevent, restrict or distort competition or constitute an abuse of dominant position of market power in Nigeria; and
(e) contributing to the sustainable development of the Nigerian economy.[4]

To achieve the foregoing, the Act also established the Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Tribunal (CCPT).[5] On account of susceptibility of controlling a large market share to abuse by a business undertaking in such a dominant position, the law specifically prohibits abuse of a dominant position by an undertaking in the relevant market. By prohibiting abuse of a dominant power or position, the law strives to strike a balance between market success which leads to market dominance and fair utilisation of such a position in the protection of consumers and promotion of healthy competition. For the avoidance of doubt, attaining a dominant position in a market is not violative of the law, but abusing that position is. Thus, the 'special responsibility' of a dominant undertaking under competition law is to ensure that it does not abuse its position of dominance, as doing otherwise discloses an act that breaches the law. Accordingly, the legal and regulatory framework aims at ensuring that every business gets the same market share which does not necessarily translate to every competitor surviving or Government deciding which company wins or survives in terms of market success.

Market Dominance

An undertaking is considered to be in a dominant position if it is able to act without taking account of the reactions of its customers or competitors. Where a business undertaking enjoys a position of economic strength enabling it to prevent effective competition being maintained in the relevant market having the power to behave to an appreciable extent independently of its competitors, customers or consumers, the undertaking is said to enjoy a dominant position in the relevant market[6]. For the purpose of determining or assessing market dominance, the following are taken into account in respect of the undertaking concerned: (a) market share, (b) financial power, (c) access to supplies or markets, (d) links with other undertakings, (e) legal or factual barriers to market entry by other undertakings, (f) actual or potential competition by undertakings established within or outside the scope of the Act, (g) ability to shift supply or demand to other goods or services, and (h) the ability of the opposite side to resort to other undertakings.[7] If it is difficult for new businesses to enter into a particular market or expand its position; consumers of goods and services of a firm are unable to effectively negotiate prices; there is a wide market share gap between the largest undertaking in the market and the nearest competitor; and there is a high market share of, say, 40 *per centum* and above which has been stable over a period of time, clearly those can be indications of undertakings holding dominant positions in the relevant markets. Thus, dominance entails that a business concern faces limited competition and enjoys a position of economic growth in a market which enables it to conduct itself largely independently of its competitors, customers or consumers.

Abuse of Dominance

It is not really a problem that a business is profitable, successful, large and, therefore, dominant. The problem is using that attained success or dominant position to hinder competition and exploit consumers. For the reason that the law does not discourage occupying a dominant position by a business undertaking in a market but prohibits abuse of such a position, the pertinent question then is: when is this dominant position said to have been abused so as to constitute an infraction of the law? The answer to this poser can be found in the FCCPA which specifies instances of what constitute abuse of dominant position in relevant markets and prohibits same. On what constitute abuse of dominant power and prohibition of same by the law, section 72(1) & (2) of the Act[8] provides as follows:

72(1) Subject to the provisions of subsection (3), any abuse by one or more undertakings of a dominant position in a market is prohibited.[9]
(2) For the purpose of this Act, an abuse of dominant position occurs where one or more undertakings in a dominant position -
(a) charge an excessive price to the detriment of consumers;
(b) refuse to give a competitor access to an essential facility when it is economically feasible to do so;
(c) engage in an exclusionary act, other than an act listed in paragraph (d), if the anti-competition effect of that act outweighs its technological efficiency and other pro-competitive gains; or

[4] Section 1 of the FCCPA
[5] Sections 3 and 39(1), respectively of the FCCPA
[6] Section 70(1)(2) of the FCCPA
[7] Section 72(3)(a) – (c) of the FCCPA
[8] FCCPA 2018
[9] The equivalent of section 72(1) of the FCCPA can be found in section 5 of the Irish Competition Act 2002, and Article 102 of the Treaty on the Functioning of the European Union (TFEU)

(d) engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency and other pro-competitive gains which outweigh the anti-competitive effects of its act –
  (i) requiring or inducing a supplier or customer not to deal with a competitor;
  (ii) refusing to supply scarce goods to a competitor when supplying those goods is economically feasible,
  (iii) selling goods or services on condition that the buyer purchases separate goods or services unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to object of a contract,
  (iv) selling goods or services below their marginal or average cost, or
  (v) buying up a scarce supply of intermediate goods or resources required by a competitor.

Decipherable from the foregoing is that it is not a breach of the law or an abuse if an undertaking which is not in a dominant position engages in any of the above-listed conducts. Accordingly, the first factor to consider is whether the firm occupies a dominant position, before determining the second which is whether the conduct of that dominant firm is abusive of its position and, therefore, infracts the law.

Although there is no fixed list of conducts that constitute abuse of dominant power, such conducts are broadly divided into two categories, namely; exclusionary abuses and exploitative abuses. Exclusionary abuse of dominance is constituted by such conducts which make it difficult for other businesses to compete in the market beyond normal competition practices. Typically, they are practices by dominant businesses which do not offer quality innovation and/or better prices in their competition but also use their dominant position in a manner that excludes or puts in a disadvantaged position both existing and prospective competitors. These conducts are anti-competitive, for they limit choices and innovations in the market. These practices prevent access to customers or key inputs and impede economic viability for other competitors to remain in the market. With respect to exploitative abuse, a dominant firm or an undertaking uses its market position to take undue advantage of its customers, suppliers or consumers by charging or fixing unfairly high prices or imposing unreasonable trading conditions. Succinctly put, while exploitative abuse is targeted at directly harming the consumers or customers, exclusionary abuse targets the exclusion of competitors in the market. Thus, where a dominant undertaking controls access, dictates the terms on which others participate, forecloses rivals and/or exploits consumers without meaningful competitive constraints in the relevant market, that undertaking clearly abuses its dominant position.

The Act also specifies actions which do not constitute abuse of a dominant position. In providing clarity on acts or practices that do not amount to abuse of market dominance, the FCCPA stipulates in section 72(3) thereof as follows:

72(3) An undertaking shall not be treated as abusing a dominant position if its conduct –
  (a) contributes to the improvement of production or distribution of goods or services or the promotion of technological or economic progress, while allowing consumers a fair share of the resulting benefit;
  (b) is indispensable to the attainment of the objectives referred to in paragraph (a); and
  (c) does not afford the undertaking the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

For the avoidance of doubt, despite that it shall not be treated as abusive of a dominant position in a market if the conduct of that undertaking does not afford it the possibility of eliminating competition in respect of a substantial part of the goods or services concerned, the conduct of such an undertaking may still be considered abusive of its dominant position, if the Federal Competition and Consumer Protection Commission (FCCPC) is satisfied that the activities of the undertaking have the effect of unreasonably lessening competition in a market and impeded the transfer or dissemination of technology.[10]

Conceptual Inter-relationship in Market Success, Market Dominance and Abuse of Dominance

When a high market share is achieved through efficiency, innovation and superior products, market success is attained. This means that the business undertaking attains and maintains that position through fair practices that are not anti-competitive and anti-consumer protection. Expectedly, the law does not prohibit or penalise market success attained through conducts that are fair and legal. Rather, the law frowns at unfair use of market success. In most cases, market success leads to dominance of that market in which the undertaking is successful.

When an undertaking occupies a position or possesses substantial power in a market to such an extent that it operates independently of competitive pressures, customers or the consumers, it is said to be in a dominant position in the relevant

[10] Section 72(4) of the FCCPA

market. In effect, market dominance is the ability to act independently of competitors, customers or consumers.[11] As a result of the market power enjoyed by a dominant undertaking, effective and fair competition is hardly maintained in the relevant market. If not properly managed, therefore, there is the palpable proclivity of market dominance being abused.

When the dominant power is used to lessen or eliminate competition and to the detriment of the consumer's welfare, market success or dominant position has been abused. In a typical abuse of market dominance scenario, an undertaking or a business concern uses its power to fix prices of goods and services above competitive levels. In such an instance, consumers are exploited through high cost of those goods and services which do not necessarily match up with quality of the products offered for sale, and competitors are forced out of business due to predatory pricing conducts such as extending questionable discounts and price discrimination by dominant business concerns. Usually, dominance is held by a single firm in a relevant market. In very limited and exceptional circumstances, it is held by two or more firms thereby making holding such positions susceptible to abuse. On the other hand, effective competition in a market exists where no business concern holds a significantly dominant position. Denying competitors access to essential facilities or network (refusal to deal), fixing prices below cost of production in order to force competitors out of business (predatory pricing), forcing customers to buy goods only from the dominant firm(exclusive dealing), compelling customers to buy unwanted products to get a desired one (tying/bundling), have also been identified as some forms of abuse of market dominance.

In a business environment where efficiency, innovation and consumer satisfaction are achieved through legitimate business activities (market success) a relatively high market share (market dominance) is the result; while attaining and sustaining such a market power in a manner that is anti-competitive and anti-consumer protection, is abusive of such a position (abuse of dominance). This is the conceptual interplay or inter-relationship in the three concepts. Understanding this interplay is necessary so as to appreciate what the law specifically approves of and what it prohibits with respect to market dominance and abuse of same, and in pursuit of attaining balance between achieving market dominance/success and resisting the 'temptation' of abusing that dominant market power.

3. Striking a Balance

Analysing the harm suffered by a consumer through assessing whether the conduct of the dominant undertaking raises prices, limits choices or lowers quality of the products available to the consumer; assessing the specific economic context and justification for a particular corporate behaviour(that is, applying rule of reason), focusing enforcement on behaviours that prevent competitors from entering the market(protecting entry barriers); and regulators refraining from punishing undertaking that succeeded through innovations that are not illicit (encouraging innovation), are some instances that will lead to achieving the balance between business growth, fair competition and consumer protection. It is axiomatic that not every successful business is a threat to competition. In view thereof, punishing a business for the reason that it is successful *per se,* will obviously discourage innovation, entrepreneurship and investment. This is why achieving balance in market success, abuse of dominance and fair competition becomes imperative. Achieving this balance also entails that while the law and regulatory framework should not decide who wins the market, it should equally ensure that the market 'game' is capable of being won by someone else other than the today's dominant 'player'; especially ensuring that a young entrepreneur is able to enter the market and effectively challenge an established player while the consumers have good or even better alternatives in the market as one of the eventual outcomes of a fairly competitive market. This balance is underscored by implicit recognition in the framework that it is not every successful business that is dominant; not every dominant business is abusive and not every price increase is exploitative of consumers. In this wise, it is pertinent to examine the role of the regulatory agency in this regard with main focus on the Federal Competition and Consumer Protection Commission established under the Act.

4. Federal Competition and Consumer Protection Commission (FCCPC)

For the purpose of enforcing the provisions of the FCCPA and other related functions, the FCCPA established the Federal Competition and Consumer Protection Commission (FCCPC or the Commission). In addition to being a body corporate with perpetual succession and a common seal with powers to acquire, hold and dispose of property, the FCCPC was established to be independent in carrying out its functions, powers, duties and responsibilities conferred upon it by the Act.[12] Elaborate provision is made in section 17 of the Act enumerating the functions of the FCCPC, the first of which is the responsibility for the administration and enforcement of the provisions of the FCCPA and any other enactment with respect to competition and protection of consumers. Others include, but not limited to, initiating broad-based policies and reviewing economic activities in Nigeria to identify anti-competitive, anti-consumer protection and restrictive practices which may adversely affect the economic interest of consumers and make necessary rules and regulations in that regard; advising the Federal Government generally on national policies and matters pertaining to all goods and services and on the determination of national norms and standards relating to competition and consumer protection; reporting market

[11] Section 70(1) of the FCCPA
[12] Section 3(1)(2)(3) of the FCCPA

practices and the implications for consumer choice and competition in the consumer market; carrying out investigations or inquiries considered necessary or desirable in connection with any matter falling within the purview of the Act.[13]

In the performance of one of its key functions, the FCCPC has the power of investigation of activities of undertakings that have abused their dominant positions. To that end, sections 73 and 74 of Part IX of the FCCPA provide for the consequences of abuse of dominant position and penalties for failure by an undertaking to comply with a cease order as stated hereunder. The said sections provide thus –

73(1) Where the Commission finds that an undertaking has abused or is abusing its dominant position in a market, the Commission shall prepare a report indicating the practices that constitute the abuse and shall –
(a) notify the undertaking of its findings accompanied by a copy of the report; and
(b) direct the undertaking to immediately cease the abusive practice.

(2) The provisions of this section shall not apply to exclusive dealing arrangements or market restrictions between or among affiliated or interconnected undertakings.

(3) An undertaking that abuses its dominant position in a market commits an offence under this Act and is liable on conviction to a fine of not less than 10% of its turnover in the preceding business year or such higher percentage as the court may determine under the circumstances of the particular case.

74(1) An undertaking that fails to cease an abusive practice after receiving an order of the Commission to that effect commits an offence and is liable on conviction to a fine not exceeding 10% of its turnover in the preceding business year or to such higher percentage as the court may determine given the circumstances of the particular case.

(2) Any director of an undertaking that commits an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding three years, or to payment of a fine not exceeding N50, 000, 000.00 or to both the fine and imprisonment.

The Act[14] equally imbues the FCCPC with some measure of discretionary powers in halting the enforcement of penalties against an undertaking which has abused its dominant position. This takes the form of suspension of the punishment provided for in section 73(1)(b) of the Act to the effect that if upon the receipt of the directive of the FCCPC, the undertaking concerned submits to the Commission the measures it proposes to take to cease the abusive practice and a timetable for giving effect to the measure, and the Commission is satisfied as to the measure, the Commission may decide not to proceed with the institution of action that leads to penalties prescribed in section 74 of the Act against the undertaking. Notwithstanding that it is abuse of a dominant position that triggers legal sanctions, by suspending punishment in the face of a breach, the FCCPC shows that it emphasises behavioural correction and de-emphasises punishments or sanctions in the discharge of its functions. The effectiveness of that approach is however yet to be determined.

In exercise of its power also, the FCCPC has produced a regulation that deals with and relates to abuse of dominant power and which further clarifies what constitute dominance and abuse of market power.[15] Some examples of the investigation activities of the FCCPC in the discharge of its statutory functions can be found in the cases of Multichoice Nigeria, the MTN telecommunication and Dangote Cement companies in Nigeria. The case of Multichoice bordered on repeated subscription increase and disregard for regulatory directive. In the Multichoice Nigeria Limited case, the proceedings at the FCCPC and CCPT reveal that the allegations against the company was that as a dominant pay-TV provider, it engaged in conducts amounting to abuse through unilateral price increases and restrictive conditions of service. Where, for instance, the exclusive right to premium content, large subscriber base and high cost of switching give one company in the cable television (pay-TV) business make it difficult for new entrants into the same market to access the market, a dominance abuse would at least be suspected. In the *FCCPC v. Multi-Choice Nigeria Ltd* investigation, the Commission acting under section 72 of the FCCPA carried out investigation of the activities of Multichoice Ltd in relation to complaints of non-competitive subscription model, exclusionary content licensing and unfair pricing and ordered the company to allow consumer choice subscription validity and improve transparency in price adjustments.[16] The Courts, however, upheld the right of the company to set prices in a liberalized market. The case demonstrates the rising tension between freedom to engage in business activities and abuse of dominance in a relevant market.[17]

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[13] See generally section 17(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y) & (z) of the FCCPA.

[14] FCCPA

[15] See Abuse of Dominance Regulations 2022.

[16] Federal Competition and Consumer Protection Commission (FCCPC), FCPC directs MultiChoice Nigeria to maintain current prices pending investigation (27 February 2025), https://fccpc.gov.ng/fccpc-directs-multichoice-to-maintain-current-prices-pending-investigation/ Accessed 4 August 2026; Premium Times, 'FCCPC sues Nultichoice over DStv, GOtv price hike' 5 March 2025, https://www.premiumtimeng.com/news/top-news/778682-fccpc-sues-multi-choice-over-dstv-gotv-price-hike.html. Accessed 4th August 2026.

[17] Federal Competition & Consumer Protection Commission. 'Subscription Hike: FCCPC Floors MultiChoice. 8 May 2025, https://fccpc.gov.ng/violations.fccpc-files-charges-against-multichoice/ Accessed 8 August 2026.

Between the years 2024 and 2025, the FCCPC and the Competition and Consumer Protection Tribunal (CCPT) have decided similar issues. This is a reflection of the tensions between the freedom of an undertaking to carry on its business activities and regulatory control.[18] The FCCPC has also indicated that it will continue to monitor the activities of the telecommunication service provider, MTN, whose significant market share in the telecommunication market in Nigeria raises concerns about fair competition and protection of the welfare of the consumers and customers.[19] Similar concerns have also been raised about Dangote Cement company which unarguably maintains a dominant position in the cement industry. Within the cement industry in Nigeria dominated by Dangote Cement Plc, BUA Cement Plc and Lafarge Africa Plc, the FCCPC has expressed concern of exploitative pricing and exclusionary conduct even though no formal finding of abuse has been established. The ongoing Market Study of the Commission on Building Materials shows that the regulatory agency is intentional about subjecting the industry to competition review. This has also revealed the difficulty in achieving fair competition without significant investment liberalisation and infrastructure expansion.[20] The FCCPC has also intervened in the Petroleum industry.[21] Thus, in the face of non-viability of the four petroleum refineries in Nigeria, the coming on board of Dangote Refinery has also raised questions about its dominance in the market and the ability to determine and influence prices of the petroleum products which it deals in, in terms of fair competition and consumer protection.[22]

Clearly, market dominance exists in the Nigerian commercial ecosystem thereby putting the regulatory agencies on the lookout for possible abuse of market dominant position. In doing so, the FCCPC is expected to carefully conduct economic and legal analysis of the markets with a view to determining the impact of the conducts of these dominant firms on competition and consumer protection, ascertaining whether such conducts are abusive of their market powers *vel non* and taking appropriate actions as the Commission is empowered to do.

As can be gleaned from the above, the practical function of the FCCPC is not only that of a regulator but that of a custodian which ensures that market dominance does not metamorphose into abuse. The rationale for this is that market dominance as a by-product of market success, if unchecked, may diminish the competitive intention which conduces to economic growth and healthy economy for the country. At the receiving end of abuse of market dominance are the competitors who may be forced out of the market and the consumers who are exploited in the process. For that reason, while it should be ensured that businesses compete to gain large market share, they should not compete to prevent other competitors from participating effectively in the market and it should equally be ensured that consumers have meaningful choices in the market.

5. Echoes from Some Other Jurisdictions

The Chapter II prohibition under section 18 of the UK Competition Act[23] prohibits conduct by an undertaking which amounts to an abuse of dominant position where it may affect trade within the UK. Influenced by the TFEU, the Office of Fair Trading (OFT) adopts an effect-based model in its enforcement which emphasises market behaviour and structure, particularly the anti-competitive effect of a conduct. Following the establishment of Competition and Markets Authority, the UK has adopted also the approach of defining the relevant market, assessing dominance and focusing enforcement on conducts that demonstrably impede competition or harm consumers.[24]

In the South African jurisdiction, by virtue of section 8 of its Competition Act,[25] abuse of market dominance is fashioned to respond to that country's socio-economic context with concentration in key sectors and the legacy of exclusion. Where dominant undertakings use loyalty rebates, exclusivity or refusal to supply to foreclose rival companies, the authorities have actively prosecuted such abuses. In that clime, the Competition Commission Tribunal from which appeals lie to the Competition Appeal Court and the Constitutional Court, have fashioned out doctrines around margin squeeze, exclusionary rebates and essential facilities. Where exclusionary conduct is disclosed and competition lessens materially, remedies may take the forms of behavioural order or significant structural or conduct remedies. The lessons to be learned from the South African experience are that specialized tribunal with requisite expertise to fashion out appropriate remedies in developing markets is essential and that legal standards should be tailored where essential facilities or distribution control are decisive. Although balancing structures and effect in the determination of dominance and abuse diverged in different jurisdictions, there is convergence on the need to maintain a process-oriented test, publish detailed guidelines and decisions, not punishing size alone and building a

[18] Federal Competition & Consumer Protection Commission. 'VIOLATION: FCCPC Files Charges Against MultiChoice.' 5 March 2021, https://fccpc.gov.ng/violations-fccpc-files-charges-against -multichoice/. Accessed on 4 August 2026

[19] O M Akinola and M A Agugua, 'Abuse of Dominant Market Position in the Nigerian Economy: Cancerous or Curable; Nnamdi Azikiwe University Journal of Law and Clinical Legal Education (NAU-JLCLE) Vol. 2 Issue 2, December 2025.

[20] The Cable, 'Dangote, BUA' destructive trade war' (26th November 2023) https://www.thecable.ng/dangote-bua-destructive-trade-war/ Accessed 3rd August 2026

[21] FCCPC & NMDPRA Joint Statements and coordination notice; https://fccpc.gov.ng/media/releases/and https://nmdpra.gov.ng Accessed on 7th August 2026; Nigerian Communications Commission (NCC), 2024 year -End Performance Report.pdf https://ncc.gov.ng/sites/default/files 2025 11/2024-Year-End Performance Report.pdf Accessed 7th August 2026.

[22] Financial Times, reporting on Dangote Refinery and monopoly allegations (2024 – 2025). https://www.ft.com/content/290d6195-5f46-4548-944c-107d49e3f07d. Accessed 5 August 2026

[23] 1998

[24] https://www.legislation.gov.uk/ukpga/1998/41/section/18/ Accessed on 5th August 2026; Office of Fair trading, Abuse of Dominant Position: OFT402 1st December 2004) https://assets.publishing.service.gov.uk/media/5a74c497ed915d4d83b5ecd7/oft402.pdf. Accessed 4th August 2026

[25] 1998

predictable enforcement regime. The FCCPA separates market dominance from its misuse but retains an analytical awareness of structural concentration of business activities. In other words, the law does not penalize size of market share. It is rather concerned with whether the conduct of a firm impedes rivalry or competition and/or exploits consumers.

On its part and consistent with international best practices, the FCCPC adopts a three-tier analytical test in assessing the structure of the markets and behaviour of the business concerns operating in them for purpose of determining compliance with the law. This analytical parameter comprises: market definition and determination of dominance in which the relevant market is defined and assessed with a view to determining whether an undertaking possesses market power. The second is assessing the conduct of a business entity with a view to determining whether its conduct constitutes an abuse; and the third is the evaluation of the effect of the conduct of the firm on competition and consumers while considering legitimate business justifications or efficiencies.[26]

Comparatively, Experience from the Nigerian competition law and regulation reveals a growing yet-to-be-adequate framework for addressing abuse of market dominance in a growing economy. The collaborative efforts between sector-based regulators and the FCCPC are also commendable and necessary to achieve intersectoral harmony for the overall economic growth of the country. While there is a sound legal infrastructure for competition law in Nigeria, enforcement of abuse of dominant cases are reactive and occasional rather than certain and systematic. However, the problem is not necessarily legislative but structural, as the overlapping function of the FCCPC and other sector-specific regulators sometimes blurs jurisdictional boundaries and may create conflicts.

6. Conclusion

Examination of the legal and regulatory framework in Nigeria reveals an interplay in structure of the market, consumer vulnerability and regulatory response under the law and the regulations made pursuant thereto. As such, the scrutiny is focused on dominance, not with a view to penalising it, but with a view to ensuring that where it is either exclusionary or exploitative or both thereby limiting market access or consumer choices, the law intervenes to remedy or at least ameliorate the harmful effect of such conducts. The FCCPA in its provisions integrates both competition and consumer protection as an approach intended to balance the power of an undertaking in a market with the welfare of the ultimate consumer or customer. It does not punish large market share *per se*, but forbids and punishes unfair market practices by a dominant player or an undertaking in a relevant market in a manner that undermines such intentions as specified in the law. By promoting allocative and productive efficiency, the FCCPA mirrors the economic policy objective of Nigeria. The enforcement posture of the FCCPC even as provided for in the Act as exemplified in some of the sectors examined here, shows awareness of dominance in those essential sectors and at the same time inadequate public transparency, limited prosecutorial resources and inadequate investigative independence. No doubt, if dominant firms in a market compete on the merit rather than leveraging market success in a manner that is unfair, market dominance can effectively be achieved in the face of vibrant competition without breaching the law. As competition law aims to balance the seeming friction between achieving market dominance (an indication of success in the market) and abusing such a position, fairness in the conduct of undertakings entails that no firm, irrespective of its market share, manipulates market conditions to exclude competitors or exploit consumers. That is, achieving fair play and fair price in the markets which is the hallmark of healthy competition that encourages innovation and overall business growth.

For the reason that leveraging dominance to distort market dynamics, exclude rivalry or exploit consumers are viewed by law as pernicious and are thus prohibited, the regulatory framework should be one that ensures that power of market dominance in not exercised outside the legally permissible scope of competition. In the same vein, regulatory agencies should consistently enforce the law and regulations among players in the market so as to ensure a level-playing field for all in the relevant market.

The FCCPC and the CCPT should be manned by personnel specially trained in competition economics and comparative jurisprudence so as to enhance the regulatory functions of both institutions. No doubt, the FCCPA has made reasonably adequate provisions enabling the FCCPC to function optimally, but the Commission needs to improve on technical capacity, strong investigative capacity, and inter-regulatory synergy, as these will determine whether dominant players in the various markets will continue to stifle competition and exploit consumers.

At the core of competition law should be ensuring that market success does not lead to control by one or a few undertakings of the conditions under which everyone else in the marked must operate. Achieving effective competition enforcement requires more than existence of robust legislations. It requires strengthening institutional capabilities and credibility which will go a long way in achieving the desired balance between market success with its attendant dominant position, and checking abuse of the dominant position so as to consistently encourage fair competition and consumer protection for the good of the growing Nigerian economy.

All these, when implemented, will go a long way in placing the FCCPC in a veritable position to check abuse and ensure that balance is maintained between business growth, fair competition and consumer protection achieved through preventing abuse of a dominant position when market success has been achieved by one or more business undertakings.

[26] O B Akinola and A M Agugua, *supra* p.17. See also Regulations 3 and 5 of the Abuse of Dominance Regulations