

# Dominance 2021

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**Contributing editors**

**Patrick Bock, Henry Mostyn and Alexander Waksman**  
Cleary Gottlieb Steen & Hamilton LLP

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Lexology Getting The Deal Through is delighted to publish the seventeenth edition of *Dominance*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on South Korea.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Patrick Bock, Henry Mostyn and Alexander Waksman of Cleary Gottlieb Steen & Hamilton LLP, for their continued assistance with this volume.



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March 2021

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# Nigeria

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## GENERAL FRAMEWORK

### Legal framework

- 1 | What is the legal framework in your jurisdiction covering the behaviour of dominant firms?

The Federal Competition and Consumer Protection Act 2018 (FCCPA), which in section 72(1) prohibits the abuse of a dominant position by one or more undertakings.

### Definition of dominance

- 2 | How is dominance defined in the legislation and case law? What elements are taken into account when assessing dominance?

The FCCPA defines dominance in section 70(2) as a market situation where an undertaking enjoys a position of economic strength enabling it to prevent effective competition being maintained on the relevant market and having the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers. To date, no case law exists on how dominance may be defined or assessed.

In assessing dominance, pursuant to section 72(3) of the FCCPA, the following are required to be taken into account:

- the market share of the undertaking or undertakings concerned in the relevant market;
- its or their financial power;
- its or their access to suppliers or markets;
- its or their links with other undertakings;
- legal or factual barriers to market entry by other undertakings;
- actual or potential competition by undertakings established within or outside the scope of the FCCPA;
- its or their ability to shift supply or demand to other goods or services; and
- the ability of the opposite market side to resort to other undertakings.

### Purpose of legislation

- 3 | Is the purpose of the legislation and the underlying dominance standard strictly economic, or does it protect other interests?

The statutory objectives stated in the FCCPA indicate that the purpose of the legislation is purely economic and that the criteria used for assessing market dominance are based on economic considerations.

## Sector-specific dominance rules

- 4 | Are there sector-specific dominance rules, distinct from the generally applicable dominance provisions?

Yes, dominance rules also exist for the communications sector in Nigeria. The Competition Practice Regulations 2007 (CPR) enacted by the communications sector regulator, the Nigerian Communications Commission (NCC), established a comprehensive regime for assessing whether a communications licensee is dominant in a relevant communications market.

This regime and how it is applied differ in some respects from the application of the dominance provisions under the FCCPA. For instance, unlike section 72(3) of the FCCPA which appears to require that all the market conditions listed be taken into account when assessing dominance under the FCCPA, the CPR in Regulation 18(1) instead requires the NCC to consider at least one of the following market conditions when assessing dominance in a relevant communications market:

- the market share of the licensee, determined by reference to revenues, numbers of subscribers or volumes of sales;
- the overall size of the licensee in comparison to competing licensees particularly any resulting economies of scale or scope that permit the larger licensee to produce products or services at lower costs;
- control of network facilities or other infrastructure, access to which is required by competing licensees and that cannot, for commercial or technical reasons, be duplicated by competing licensees;
- the absence of buying power or negotiating position by customers or consumers, including substantial barriers to switching service providers;
- ease of market entry, and the extent to which actual or potential market entry protects against the exercise of market power such as raising prices;
- the rate of technological or other change in the market, and related effects for market entry or the continuation of a dominant position.

In addition, pursuant to Regulation 10(1) of the Telecommunications Networks Interconnection Regulations 2007 enacted by NCC, a communications licensee determined to be dominant in one or more communications market relating to interconnection shall automatically be subject to the following ex ante regulatory obligations:

- meet all reasonable requests for access to its telecommunications network, in particular access at any technically feasible point on its telecommunications network;
- adhere to the principle of non-discrimination with regard to interconnection offered to other licenced telecommunications operators, in particular, it shall apply similar conditions in similar circumstances to interconnected licenced telecommunications operators providing similar services and provide interconnection facilities and information to other licenced telecommunications operators

under the same conditions and of the same quality as it provides for its own services or those of the group of companies or partners;

- make available on request to other licenced telecommunications operators considering interconnection with its telecommunications network, all information and specifications reasonably necessary in order to facilitate conclusion of an agreement for interconnection, including information on changes planned for implementation within the next six months, unless agreed otherwise by NCC;
- submit to NCC for approval and publish a Reference Interconnection Offer, sufficiently unbundled, giving description of the interconnection offerings broken down into components according to market needs and the associated terms and conditions including tariffs; and
- provide access to the technical standards and specifications of its telecommunications network with which another operator shall be interconnected.

However, it is pertinent to note that although the FCCPA pursuant to Section 105(2) establishes a concurrent jurisdiction between the Federal Competition and Consumer Protection Commission (FCCPC) and NCC (and indeed other sector-specific regulators) in matters of competition and consumer protection, the FCCPC will have precedence over sector-specific regulators and according to Section 47(2) of the FCCPA, all appeals or request for review of the exercise of the competition or consumer protection power of any sector-specific regulator shall in the first instance be heard and determined by the FCCPC before such appeals can proceed to the Federal Competition and Consumer Protection Tribunal (FCCPT) established under the FCCPA.

**Exemptions from the dominance rules**

**5 | To whom do the dominance rules apply? Are any entities exempt?**

The dominance rules, and generally the FCCPA, applies to all undertakings and all commercial activities within or having effect within Nigeria. In addition, the dominance rules will also apply to a body corporate or agency of the Government of the Federation or a body corporate or agency of a subdivision of the Federation, if the body corporate or agency engages in commercial activities; and a body corporate in which a Government of the Federation or government of a state or body corporate or agency of the Government of the Federation or any state or local government has a controlling interest where such body corporate engages in economic activities.

**Transition from non-dominant to dominant**

**6 | Does the legislation only provide for the behaviour of firms that are already dominant?**

Yes, the legislation applies to only dominant undertakings, it is not applicable in circumstances where a non-dominant undertaking transitions to a dominant undertaking.

**Collective dominance**

**7 | Is collective dominance covered by the legislation? How is it defined in the legislation and case law?**

Although not expressly stated (or defined), the reference to 'one or more undertakings' in section 72(1) of the FCCPA suggests that a situation of collective dominance is contemplated and may be challenged if it is used to perpetuate an abusive conduct. In addition, an agreement among undertakings that constitutes a concerted practice within the meaning of the FCCPA, and has the purpose of actual or likely effect of preventing, restricting or distorting competition is unlawful and void and of no legal effect under the FCCPA.

**Dominant purchasers**

**8 | Does the legislation apply to dominant purchasers? Are there any differences compared with the application of the law to dominant suppliers?**

The FCCPA makes no distinction between a dominant purchaser and a dominant seller, thus the dominance provisions would equally apply to a monopsonist as they would to a monopolist.

**Market definition and share-based dominance thresholds**

**9 | How are relevant product and geographic markets defined? Are there market-share thresholds at which a company will be presumed to be dominant or not dominant?**

For the purpose of assessing dominance, the relevant market is defined on the basis of the following criteria:

- geographical boundaries that identify groups of sellers and buyers of goods and services within which competition is likely to be restrained;
- goods or services which are regarded as interchangeable or substitutable by the consumer by reason of their characteristics, prices and intended use; and
- suppliers to which consumers may turn to in the short term, if the abuse of dominance leads to a significant increase in price or to other detrimental effect upon the consumer.

However, for merger control cases, the FCCPC in the Merger Review Guidelines (MRGs) stated that it shall conduct its merger analysis on an ex ante basis that takes into consideration whether the likely future state of competition without the merger (counterfactual) would be similar to the state of competition prevailing at the time of the merger. This analysis according to the FCCPC may also be applied to market definition during the merger review process. Regarding market share-based threshold, neither the FCCPA nor the FCCPC have at this time set out a specific market share threshold that is presumptive of market power. In the communications sector, a communications licensee whose gross revenue exceeds 40 per cent of the total combined gross revenues of all communications licensees in the relevant market would be presumed by NCC to have market power.

**ABUSE OF DOMINANCE**

**Definition of abuse of dominance**

**10 | How is abuse of dominance defined and identified? What conduct is subject to a per se prohibition?**

The mere exercise of market power is not prohibited in The Federal Competition and Consumer Protection Act 2018 (FCCPA); rather it is the exercise of such market power in an abusive manner that is prohibited. In this regard, section 72(2) of the FCCPA describes situations in which one or more undertakings with market power are deemed to have abused their market power. These situations include:

- charging excessive price to the detriment of consumers; and
- refusal to give a competitor access to an essential facility when it is economically feasible to do so.

Other abusive conducts are identified on the basis of whether they are exclusionary and having an anticompetitive effect devoid of any technological efficiency or pro-competitive gain. However, pursuant to section 72(3) of the FCCPA, an undertaking shall be deemed as not abusing its market position if its conduct:

- 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;

- is indispensable to the attainment of the objects of paragraph (a); or
- does not afford the undertaking the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

Lastly, the FCCPA prohibits certain types of restrictive agreement because of their per se illegality irrespective of whether or not a party to this agreement exercises market power. The prohibited agreements are those that provide for the following:

- directly or indirectly fixing a purchase or selling price;
- dividing markets by allocating customers, suppliers, territories or specific types of goods or services;
- limiting or controlling production or distribution of any goods or services, markets, technical development or investment;
- engaging in collusive tendering; and
- making the conclusion of an agreement subject to acceptance by other parties of complementary obligations, which by their nature or according to commercial usage have no connection with the subject of the agreement.

### Exploitative and exclusionary practices

#### 11 | Does the concept of abuse cover both exploitative and exclusionary practices?

Yes. Under the FCCPA, an abusive conduct could constitute either an exploitative practice that is detrimental to consumer welfare or an exclusionary practice that anticompetitively forecloses a competitor.

### Link between dominance and abuse

#### 12 | What link must be shown between dominance and abuse? May conduct by a dominant company also be abusive if it occurs on an adjacent market to the dominated market?

Owing to the absence of competition case law, it is not clear whether it is necessary to show a causal connection between dominance and an abusive practice, although it does appear that conducts listed in section 72(2) of the FCCPA will constitute an abuse if committed by a dominant undertaking.

It is also not clear whether a conduct by a dominant undertaking will constitute an abuse of a dominant position if it occurs in a market other than the market in which the undertaking is dominant. However, in 2013, the Nigerian Communications Commission (NCC), in imposing the ex ante regulatory obligations of price-cap for wholesale services and price floor for retail services on two communications licensees determined to be collectively dominant in these communications markets, was concerned that the market power exercised by these licensees in the market for wholesale service could be leveraged to distort competition in the market for retail communications services.

### Defences

#### 13 | What defences may be raised to allegations of abuse of dominance? When exclusionary intent is shown, are defences an option?

An undertaking challenged for exercising its market power in an abusive manner may argue pursuant to section 72(3) of the FCCPA that the challenged conduct falls into one of the exceptions to an otherwise abusive conduct. In addition, pursuant to section 73(2) that the challenged conduct constitutes an exclusive dealing arrangement or market restriction between or among affiliated or interconnected undertakings is an arguable defence. In the same vein, a merger that raises an

anti-competitive concern may be approved by the Federal Competition and Consumer Protection Commission (FCCPC), provided the merging parties are able to establish in line with the criteria set out in the Merger Review Guidelines (MRGs) that the efficiency gains resulting from the merger outweighs its anti-competitive effects.

As a preliminary remark, it is pertinent to note that since January 2019 when the FCCPA was enacted, there are yet to be competition case laws or FCCPC advisories that gives guidance on how the following underlisted abusive practices by a dominant undertaking may be analysed for the purpose of challenging them. In addition, as these conducts all constitute original issue of law, it is conceivable for Nigeria courts, the Federal Competition and Consumer Protection Tribunal (FCCPT) or the FCCPC to look to body of jurisprudence from well-established competition jurisdictions as persuasive authority in analysing them.

## SPECIFIC FORMS OF ABUSE

### Types of conduct

#### 14 | Rebate schemes

Although The Federal Competition and Consumer Protection Act 2018 (FCCPA) lists several examples of abusive practices that are prohibited, this list is not exhaustive and rebate schemes are neither listed as abusive nor expressly prohibited. However, conducts not expressly mentioned in FCCPA may still constitute an abusive practice if it has the same effect similar to another prohibited abusive practice, or is exclusionary and has an anticompetitive effect that outweighs its technological efficiency and other pro-competitive gains.

#### 15 | Tying and bundling

Contractual tying, technical tying and bundling are prohibited as an abusive practice in section 72(2)(d)(iii) of the FCCPA.

#### 16 | Exclusive dealing

Exclusive dealing is not expressly mentioned in the FCCPA as one of the examples of a conduct that constitutes an instance of an abuse of a dominant position. However, to the extent that exclusive dealing has the same effect as a contractual tying, it may be challenged pursuant to section 72(2)(d)(iii) of the FCCPA.

Lastly, exclusive dealing arrangement or market restriction between or among affiliated or interconnected undertakings, does not constitute an abusive conduct by a dominant undertaking.

#### 17 | Predatory pricing

Predatory pricing is prohibited by section 72(2)(d)(iv) of the FCCPA, which provides that an abuse of a dominant position occurs where the dominant undertaking engages in the selling of goods or services below their marginal or average cost. Accordingly, by virtue of this provision, the primary cost model for assessing a predatory pricing conduct under the FCCPA is whether it is below marginal or average cost or conversely, any pricing of goods or services by a dominant undertaking below marginal or average cost will be presumed to be predatory.

Owing to the absence of competition case law or FCCPC advisory, it is not clear whether proof of recoupment is an essential element of a predatory pricing conduct.

## 18 | Price or margin squeezes

A margin squeeze occurs where a vertically integrated undertaking prices an upstream (or wholesale) input that it sells to its own downstream (or retail) competitors at an excessive price and/or predatorily prices its own retail services, thus making it impossible for its retail competitors to compete profitably. A margin squeeze is not expressly prohibited in the FCCPA, however both excessive pricing and predatory pricing are separate abusive conducts and individually constitute an abuse of a dominant position pursuant to sections 72(2)(a) and 72(2)(d) (iv) of the FCCPA respectively. As at this time, it is not clear whether a situation of margin squeeze would be challenged under either (or both) of these provisions or in the alternative challenged under the broadly phrased 'exclusionary act' conduct referenced in section 72(2)(c), which is broad enough to cover an otherwise abusive conduct not expressly mentioned in the FCCPA.

## 19 | Refusals to deal and denied access to essential facilities

The FCCPA does not expressly make any provision that a refusal to deal by a dominant undertaking constitutes an abusive conduct, however conducts not expressly prohibited in the FCCPA may still be caught by section 72(2)(c) if it is exclusionary and has an anti-competitive effect that outweighs its technological efficiency and other pro-competitive gains. The FCCPA in section 72(2)(d)(i) also provides that requiring or inducing a supplier or customer not to deal with a competitor constitutes an abusive conduct by a dominant undertaking, to the extent that the anti-competitive effect of this conduct outweighs its technological efficiency and pro-competitive gains.

The refusal by a dominant undertaking to grant a competitor access to an essential facility constitutes an abuse of a dominant position which can be challenged. It is also important to state that the refusal by a dominant undertaking to supply scarce goods to a competitor when supplying those goods is economically feasible constitutes an abuse of a dominant position.

## 20 | Predatory product design or a failure to disclose new technology

Both predatory product design and failure to disclose new technology are not expressly mentioned in the FCCPA as statutory examples of an abuse of a dominant position. However, to the extent that any of these conducts is exclusionary and has an anticompetitive effect that outweighs its technological efficiency and other pro-competitive gains, it may be interpreted as constituting an abusive conduct and will come within the scope of section 72(2)(c) if engaged by an undertaking with market power in the relevant market.

## 21 | Price discrimination

Price discrimination is not a statutory example of an abusive conduct engaged by a dominant undertaking mentioned in the FCCPA. However, Regulation 8(b) of the Competition Practice Regulations 2007 (CPR) applicable in the communications sector, provides that 'discriminating in the provision of interconnection or other communications services or facilities to competing licensees, except under circumstances that are objectively justified based on supply conditions, such as discrimination based on the costs of supply' is a conduct deemed to result in a substantial lessening of competition.

## 22 | Exploitative prices or terms of supply

Exploitative prices practices such as the charging of excessive price by a dominant undertaking constitutes an instance of an abuse of a dominant position pursuant to section 72(2)(a) of the FCCPA.

On the other hand, exploitative terms of supply while not expressly mentioned in the FCCPA may fall under prohibitions relating to abusive conducts engaged by a dominant undertaking. For instance, selling goods or services on the 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 the object of a contract constitutes an exploitative term of supply if it is imposed by a dominant undertaking as part of its contractual stipulation of supply.

## 23 | Abuse of administrative or government process

Abuse of administrative or government process is not listed as an abusive conduct in the FCCPA.

## 24 | Mergers and acquisitions as exclusionary practices

The dominance rules of the FCCPA do not apply to mergers and acquisitions; rather mergers are assessed on the basis of whether it is likely to substantially prevent or lessen competition. In this regard, mergers that would result in a dominant position of the merged undertaking would also be caught by the substantial lessening of the competition test used for assessing mergers under the FCCPA.

## 25 | Other abuses

The statutory examples of abusive practices have been listed in the responses to specific forms of abuse above. However, the list is not exhaustive and conduct not expressly mentioned in the FCCPA may still constitute an abusive practice if it has the same effect similar to another prohibited abusive conduct, or is exclusionary and has an anti-competitive effect that outweighs its technological efficiency and other pro-competitive gains.

## ENFORCEMENT PROCEEDINGS

### Enforcement authorities

## 26 | Which authorities are responsible for enforcement of the dominance rules and what powers of investigation do they have?

The Federal Competition and Consumer Protection Commission (FCCPC) is statutorily authorised by the Federal Competition and Consumer Protection Act 2018 (FCCPA) to enforce the provisions of the FCCPA. In carrying out its enforcement powers, the FCCPA, inter alia, authorises the FCCPC to enter and search any premises, inspect and remove from the premises any article, document or extract in the possession or under the control of any person. The FCCPC is also authorised by the FCCPA in circumstances where there are grounds to believe that a violation, civil or criminal of the provisions of the FCCPA or any regulation made thereunder, was, is being or will be committed, take any interim measure including authorising an authorised officer to exercise its powers pending the issuance of a warrant to that effect. The FCCPC is also authorised by the FCCPA to request for information or document from any person.

In addition to the enforcement power of the FCCPC, the FCCPA authorises the Federal Competition and Consumer Protection Tribunal (FCCPT) to adjudicate over conducts prohibited under the FCCPA. The Court of Appeal is charged with the responsibility of reviewing petitions



by the FCCPC and issuing warrants for the commencement of investigation into activities of undertakings presumed to be anticompetitive.

A warrant issued in this regard confers on the authorised officer the powers to:

- enter and search the place or premises specified in the warrant within 30 days of issuance;
- use such assistance as is reasonable in the circumstance;
- use force for gaining entry and for breaking open any article or thing as is reasonable in the circumstance;
- search for and remove documents or any article or thing that the person executing the warrant believes on reasonable grounds may be relevant;
- where necessary, make copies of documents or extract from documents, that the person executing the warrant believes on reasonable grounds may be relevant; and
- where necessary, to require a person to reproduce or assist any person executing the warrant to reproduce, in usable form, information recorded or stored in a document or retrieval system.

### Sanctions and remedies

**27** | What sanctions and remedies may the authorities impose? May individuals be fined or sanctioned?

Where the FCCPC establishes that an undertaking has abused or is abusing its position of dominance, the FCCPC may direct the undertaking to immediately cease its abusive practice. An undertaking that abuses its dominant position commits an offence and is liable on conviction to a fine of not less than 10 per cent of its turnover in the previous financial year or to such higher percentage as the Court of Appeal may determine given the circumstance of the particular case. A director of an undertaking that fails to cease an abusive practice after receiving an order of the FCCPC to that effect is liable on conviction to imprisonment for a term not exceeding three years, or to the payment of a fine not exceeding 50 million Nigerian naira or to both fine and imprisonment.

The FCCPT and the Court of Appeal are also empowered to impose sanctions on an undertaking found to be conducting its activities in a manner that is in contravention of the FCCPA. The sanctions range from monetary fines that could be a percentage of the turnover of the preceding business year or such other percentage as the Court of Appeal may determine under the circumstances of the particular case. It should be noted that the FCCPT is only able to impose administrative penalties which are stated in the FCCPA whereas the Court of Appeal has some discretion on the sanctions to be imposed.

### Enforcement process

**28** | Can the competition enforcers impose sanctions directly or must they petition a court or other authority?

The FCCPC and other sector-specific regulators with competition enforcement mandate can impose sanctions directly without recourse to the court or the FCCPT. However, all appeals or request for review of the exercise of the competition or consumer protection powers of any sector-specific regulator shall in the first instance be heard and determined by the FCCPC before such appeals can proceed to FCCPT. Any sanction imposed by the FCCPC is subject to review by the FCCPT in the first instance.

### Enforcement record

**29** | What is the recent enforcement record in your jurisdiction?

On 1 September 2020, the FCCPC commenced an inquiry into the activities of pay-TV providers in order to determine inter alia, whether any particular pay-TV provider has abused (or is abusing) its dominant

position in the TV broadcasting industry. As at the time of this writing, this inquiry is ongoing and the FCCPC is yet to provide any update. In the communications sector, the Nigerian Communications Commission (NCC) has imposed accounting separation on the following communications licencees; four mobile network operators, one tower company and one submarine cable operator to inter alia, ensure that their charges for telecommunication services are cost based, transparent and non-discriminatory and to prevent any undue discrimination or practices that substantially lessens competition such as cross-subsidisation, margin squeezes, etc. The accounting separation commenced from 15 July 2020 and will remain valid until reviewed by the NCC.

### Contractual consequences

**30** | Where a clause in a contract involving a dominant company is inconsistent with the legislation, is the clause (or the entire contract) invalidated?

Under Nigerian law, a clause that is illegal and violates any law is void and unenforceable and may be severed from the rest of the contract, insofar as the illegal part is not fundamental to the performance of the contract and the rest of the contract can be enforced without the void part.

### Private enforcement

**31** | To what extent is private enforcement possible? Does the legislation provide a basis for a court or other authority to order a dominant firm to grant access, supply goods or services, conclude a contract or invalidate a provision or contract?

Yes, private enforcement is possible. Under the FCCPA, a private party who is a consumer may file a complaint with the FCCPC in the prescribed manner and form alleging that an undertaking has acted in a manner inconsistent with the provisions of the FCCPA. Notwithstanding the redress which the FCCPC may impose, the consumer also has a right of civil action for compensation or restitution in a court of competent jurisdiction under the FCCPA.

In addition, a consumer protection group accredited by the FCCPC has a right to commence or undertake any act to protect the interests of a consumer individually or of consumers collectively in any matter before the FCCPC or a court of competent jurisdiction.

### Damages

**32** | Do companies harmed by abusive practices have a claim for damages? Who adjudicates claims and how are damages calculated or assessed?

Yes, a company harmed by an abusive practice may request for a compensation order pursuant to section 154(1) of the FCCPA from the court that an undertaking was convicted for an offence under the FCCPA, requiring the undertaking to pay compensation for any personal injury, loss or damage resulting from that offence of such an amount as it may deem fit or assessed by a competent professional authority.

As at the time of writing, the provisions of the FCCPA have not been tested before the courts. However, damages under Nigerian law of tort is guided by the Latin principle of *restitutio in integrum*, that is insofar as the damages are not too remote, the plaintiff shall be restored, as far as money can do it, into the position he or she would have been if the tort had not occurred.

## Appeals

33 | To what court may authority decisions finding an abuse be appealed?

Decisions emanating from sector-specific regulators may, in the first instance, be reviewed by the FCCPC before an appeal can be made to the FCCPT. Decisions from the FCCPC are in the first instance determined by the FCCPT before an appeal can be made to the Court of Appeal. Both the FCCPC and FCCPT may review the facts and the law as the case may be.

## UNILATERAL CONDUCT

### Unilateral conduct by non-dominant firms

34 | Are there any rules applying to the unilateral conduct of non-dominant firms?

The Federal Competition and Consumer Protection Commission (FCCPC) contains no provision that applies to the unilateral conduct of non-dominant firms.

## UPDATE AND TRENDS

### Forthcoming changes

35 | Are changes expected to the legislation or other measures that will have an impact on this area in the near future? Are there shifts of emphasis in the enforcement practice?

In the past year, the FCCPC engaged in massive consumer education initiatives which seemed to be concentrated in the fast moving consumer-goods and pharmaceutical industries and also took a number of enforcement activities within these sectors. The FCCPC continues to maintain that companies operating in these industries improve their mechanisms for resolving consumer disputes to benefit of their consumers.

### Coronavirus

36 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

During the coronavirus pandemic, the FCCPC issued the Business Guidance Relating to COVID-19 On Business Co-operation/Collaboration and Certain Consumer Rights Under the Federal Competition and Consumer Protection Act (FCCPA) which is intended to provide clarity for businesses and consumers in relation to the following; (1) authorisations for cooperation among businesses during the covid-19 pandemic; and (2) certain consumer rights under Part XV of the FCCPA during the covid-19 pandemic. With respect to (1), the FCCPC exempted in certain circumstances, categories of agreements or practices between companies made in response to the pandemic and also provides a process by which these companies may seek authorisation from the FCCPC to engage in such agreements or practices. Regarding (b), the FCCPC spelt certain rights of consumers having regard to prices of goods and services considered essential to protect the health of consumers during the pandemic, to ensure that their prices are not artificially inflated as a result of collusion or the abusive exercise of market power in the market, or both.

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