

THE ROLE OF TRIBUNALS IN REGULATOR-IMPOSED PENALTIES:

**INSIGHTS FROM THE FCCPC'S SANCTION
ON COCA-COLA IN NIGERIA**

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1. Introduction

In recent years, the authority of regulatory bodies such as the Federal Competition and Consumer Protection Commission (“FCCPC or the Commission”) in Nigeria has grown considerably and often brings them into direct confrontation with large corporations. However, the authority of regulatory agencies to impose penalties on regulated entities is a critical tool for regulators which is usually designed to enforce compliance and deter misconduct. The recent dispute between the Commission and Coca-Cola Nigeria (“CCNL”) over a N186,666,666.67 sanction reveals the complex role of tribunals in shaping the contours of regulatory justice in Nigeria.

This commentary takes a closer look at how tribunals step in to either uphold or check penalties imposed by regulators. Using the Coca-Cola case as a reference point, it explores key issues such as the extent of discretion regulators should really have, the importance of fair hearing, and whether consent settlements, especially in matters of public interest, can truly stand without proper oversight.

2 Background

In 2023, the Federal Competition and Consumer Protection Commission accused Coca-Cola Nigeria Limited of misleading Nigerian consumers through the marketing of two beverage variants, “Original Taste” and “Less Sugar.” The Commission claimed that the branding suggested that both products were identical in formulation whereas there are significant differences in sugar content. The FCCPC saw this as deceptive labelling and unfair marketing, especially in a market where people are paying more attention to their health.

In a Supplementary Order dated 26th August 2024 the Commission pursuant to its powers under the FCCPA ordered against CCNL as follows:

Coca-Cola Nigeria Limited shall pay a penalty under and pursuant to Sections 112, 116 (1)(3), 123 and 124 of the FCCPA, and Clauses 24, 28, 31 and 32 of Schedule 1 to the Federal Competition and Consumer Protection Commission's Administrative Penalties Regulations, 2020 in the sum of One Hundred and Eighty-Six Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Sixty-Seven Kobo Only (N186, 666,666.67).

That shall be paid on or before Friday, 6th September 2024.

Dissatisfied with the Final Order and the Supplementary Order, findings and directives of the Commission, CCNL filed an Appeal vide an Amended Notice of Appeal dated 5th September 2024 predicated on sixteen (16) grounds of appeal.

While the matter was still pending before the Competition and Consumer Protection Tribunal (“CCPT or Tribunal”), the Commission and CCNL entered into a Terms of Settlement and proposed to resolve the matter through a consent agreement. The agreement was reached and reduced into writing as consent order pursuant to *section 149* of the Federal Competition and Consumer Protection Act (FCCPA). The Consent order was thereafter filed before the Tribunal without notifying it that settlement discussions were ongoing. The proposed settlement reframed the N186 million penalty as a reimbursement for investigative and administrative expenses, rather than a fine. This revision effectively absolved CCNL of any wrongdoing. But also retained basically the entire financial burden, reduced by a mere ₦666.67. However, in a decision delivered on April 30, 2025, the CCPT invalidated both the Terms of Settlement and the consent order and reinstated the original fine.

3. Key Legal Issues considered by the Tribunal and its Decision

The matter was scheduled for judgement on April 30, 2025, after the parties adopted their final written addresses. However, the Commission informed the Tribunal of the “Notice of Terms of Settlement,” which they filed. Upon review of the process, the Tribunal observed that the process did not meet the criteria for a valid application under its Rules and held that it is not acceptable by it.

Nevertheless, in the interest of justice and fairness, the Tribunal considered the process filed and made a few observations as follows:

- a. **Right to Settle:** The Tribunal acknowledged that regulators and regulated entities can reach settlement agreements. However, it emphasised that in administrative enforcement matters, such as those handled by the FCCPC, a regulator cannot enter into a settlement that restricts its statutory powers, particularly those outlined in Section 17 and other provisions of the FCCPA. The Tribunal noted that the proposed Terms of Settlement appeared to hinder the ability of the Commission to conduct investigations which is a fundamental aspect of its mandate under the Act. It further stated that no policy or rule should allow a settlement that compromises the capacity of the Commission to fulfill its duties and serve the interests of the Nigerian people.
- b. **Terms of Settlement will not arrest the Tribunal's Judgment:** The Tribunal regarded the Notice of Terms of Settlement as an attempt to arrest its judgment. It emphasised that even though the agreement was made mutually by both parties, this does not change its nature. Whether submitted by one or both parties, such a process if accepted, would prevent the Tribunal from delivering its judgment, which is procedurally incorrect.¹

¹ The Tribunal referred to the Supreme Court's ruling in *NewsWatch Communications Ltd v. Atta (2006) LPELR-1986(SC)*, which stated that “an application to arrest judgment is improper and unknown to our jurisprudence.”

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- c. Terms of settlement and consent judgment cannot override public interest:** The Tribunal clarified that *Section 149* empowers the Commission to issue Consent Orders, which are formal outcomes based on investigations between the Commission and the regulated entity. These orders are not discretionary or private agreements but are made with full awareness of their legal implications. Unlike Consent Orders, which carry immediate legal force and can be enforced under the FCCPA, Terms of Settlement are not automatically enforceable unless explicitly stated. In this case, no such provision was included.

After making the above observations, the Tribunal proceeded to deliver judgment on the substantive appeal before it. The Tribunal considered ten (10) issues for determination submitted by the Appellant (CCNL). We shall briefly highlight the issues and the decision of the Tribunal in the respective issues.

i. Issue One

On the first issue which is whether the Respondent has the power to issue the Final Order and to enforce the Orders contained therein against CCNL, the Tribunal examined the provisions of *Section 36(2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)* and *Sections 17(b), 18(1)(h), 38(4) and 47 of the FCCPA*. It held that the Commission acted well within the scope of its constitutionally and statutorily conferred powers. Contrary to the CCNL's argument, the Tribunal found that the Commission did not encroach upon the judicial powers vested in the courts under *Section 6(1) and (2) of the Constitution*. The Tribunal further affirmed that the Commission's actions were consistent with its enabling statute and were not restricted by any constitutional or legal provision.

ii. Issue Two

Similarly, the second issue was whether the Commission violated CCNL's right to a fair hearing by acting simultaneously as complainant, investigator, prosecutor, and adjudicator in relation to the allegations against CCNL. The Tribunal held that the Commission acted in a quasi-judicial capacity and was therefore obligated to adhere to the principles of natural justice and fair hearing. Based on the evidence before it, the Tribunal found that the Commission had fulfilled this obligation. CCNL was afforded ample opportunity to present its case, its submissions were thoroughly considered, and the investigative process was conducted in accordance with applicable legal standards.

Furthermore, the Tribunal was of the view that the combination of investigative and adjudicative functions within the Commission does not violate the provisions of the Constitution, nor does it, by itself, infringe upon the *nemo iudex in causa sua* principle or give rise to a real likelihood of bias. The Tribunal firmly concluded that the essential elements of due process and fair hearing were duly observed, and that, in the circumstances, no additional procedural safeguards could reasonably have been expected.

iii. Issue Three

The third issue was whether the Final and Supplementary Orders issued by the Commission's Acting Director of Legal Services, Achimugu A.W., who did not participate in the investigation violated CCNL's right to a fair hearing or were otherwise unlawful. The Tribunal held that both Orders were validly executed in accordance with *Section 160(1) of the FCCPA*, which provides three alternative methods for executing a decision. In this case, two of those methods were properly employed. Relying on the legal presumptions under the FCCPA and *Sections 168(1) and (2) of the Evidence Act*, the Tribunal

found that the Orders were presumed valid unless proven otherwise. CCNL failed to discharge the burden of rebutting this presumption with credible evidence.

iv. Issue Four

The fourth issue was whether the trade description used by CCNL for the Coca-Cola "Less Sugar" variant misled consumers into believing it was the same as the "Original Taste" variant. The Tribunal relied on *Sections 116(1) and 148(2) of the FCCPA*, which vest the Commission with authority to regulate trade descriptions, including labelling, packaging, and advertising, in order to prevent consumer deception. It held that there was no doubt the Commission had the statutory power to intervene in such matters. The Tribunal also rejected CCNL's argument that prior approvals from NAFDAC and ARCON shielded it from liability and affirmed that such approvals do not preclude a finding of misleading representation under the FCCPA.²

v. Issue Five

The fifth issue concerned whether in view of the Commission's earlier communication that it had insufficient information to demonstrate abuse of market position, the Commission was right when it made a finding that the pricing model employed by CCNL was indicative of anti-competitive conduct such as abuse of market position. Upon review, the Tribunal held that this issue did not arise from the actual decision of the Commission and therefore lacked merit. As a result, the Tribunal struck out the issue for being incompetent.

vi. Issue Six

The sixth issue was whether there is any legal basis for the Commission to request from CCNL, Written Assurances to the effect that CCNL shall refrain from any continuation of violation of the FCCPA, without more. The Tribunal considered *Section 153(1) of the*

² The Tribunal relied on the provision of Section 104 of the FCCPA which confers superior consumer protection powers on the Commission.

FCCPA and held that the Commission's directive was lawful, valid, and justified. It further found that the purpose of such Written Assurances is to prevent the continuation of conduct which, in the view of the Commission, is harmful to consumer interests which is the very interests the Commission is mandated to protect.

vii. Issue Seven

The seventh issue was whether there is any legal basis for the Commission to request for CCNL's financial statements and any other information, the Commission having concluded its investigations and issued the financial order. The Tribunal held that the Commission was well within its legal rights to request CCNL's audited financial statements for the year 2023. It reasoned that such information was necessary for the proper assessment and determination of the administrative penalty to be imposed, as required under the FCCPA.

viii. Issue Eight

The eight issue was whether the Commission was right to mandate that CCNL shall conduct a robust advertorial campaign of all its product variants and be placed under the Commission's monitoring and supervision despite the plans and the approval of the ARCON and NAFDAC obtained before the deployment of the proposed communication materials. The Tribunal held that *Section 116(1)(c) of the FCCPA* clearly and unambiguously grants the Commission authority over advertising and commercial communications, regardless of the roles of NAFDAC and ARCON. It further noted that *Section 104 of the FCCPA* affirms the supremacy of the Commission in matters relating to competition and consumer protection which is a position reinforced by *Section 164 of the Act*.³

3 Note: Issue nine was omitted from the Certified True Copy of the judgment we obtained.

ix. Issue Nine

The ninth issue is whether the Respondent was right when it held that the violations of the FCCPA that allegedly "commenced in October, 2018" continue still, even though the Appellant had taken sufficient steps to comply with the requirements of the Respondent and the Appellant was not heard on the sufficiency or otherwise of those steps it took?

The Appellant argued that the findings in the order which held that the violations of the FCCPA by the Appellant that allegedly "commenced in October, 2018" continues up to the present time, is baseless and should be set aside. The Appellant relied on its arguments on issue 4, 6 and 8 which were already determined. The Tribunal observed that having already resolved Issues 4, 6 and 8 against the Appellant, it also resolved issue nine against the Appellant as was earlier determined in issues 4, 6 and 8 in this Appeal.

x. Issue Ten

The tenth issue was whether the Commission rightly imposed the penalty sum of N186,666,666.67 (One Hundred and Eighty-Six Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira and Sixty-Seven Kobo) on the Appellant in the Supplementary Order. The Tribunal relied on *Sections 150(4) and 163(1)(c) of the FCCPA, as well as Regulation 3(3)(a) of the Federal Competition and Consumer Protection Commission (Administrative Penalties) Regulations, 2020*, to conclude that the Commission is empowered to determine the applicable penalty based on the relevant annual turnover of the offending undertaking. The Tribunal further held that this method of assessment is consistent with the provisions of *Sections 18(4)(b) and (e) of the FCCPA*. Accordingly, the Tribunal found that the penalty was lawfully and appropriately imposed.

In its final decision, the Tribunal upheld both the Final Order and the Supplementary Order issued by the Commission. It directed CCNL to comply fully with the terms of those Orders. Additionally, the Tribunal ordered CCNL to pay the imposed penalty of N186,666,666.67 (One Hundred and Eighty-Six Million, Six Hundred and Sixty-Six Thousand, Six Hundred and Sixty-Six Naira, Sixty-Seven Kobo), which was earlier imposed by the Commission.

4. Legal and Regulatory Implications of the Decision of the Tribunal

It is noteworthy that the Tribunal reversed the fine against CCNL on the basis that the Commission filed a terms of settlement which sought to amicably resolve the fine it had previously imposed and reclassified the penalty as administrative costs. This action was found to exceed the powers granted to the Commission under *Section 149 of the FCCPA*⁴. For clarity, *section 149 of the Act* provides for consent order. Under the Act, a Consent Order refers to a legally binding agreement between the Commission and a regulated entity under investigation or enforcement, where the entity agrees to comply with certain terms or remedies. The provision outlines the procedure for issuing a consent order, which the Tribunal noted the Commission failed to follow. Thus the Tribunal found that where the law prescribes a particular method for the exercise of power, that method must be followed exclusively. As such, any procedure not traceable to *Section 149* or any other enabling provision in the FCCA is impermissible. *Section 149(1)* provides as follows:

149 - (1) Where a matter has been investigated by the Commission, and the Commission and the respondent agree on the proposed terms of an appropriate order, the agreed terms shall be made on the order of the Commission.

(2) The Commission may, if it deems fit, register the order in a court of competent jurisdiction and the court, without hearing any evidence, may confirm that agreement as a consent order.

⁴ See the Supreme Court's decision in *Skye Bank v. Kwara State IRS* (2017) LPELR-42595(SC), where the apex court emphasized that administrative authorities must act within the limits of the statute conferring their powers.

(3) An order of the Commission or a consent order confirmed pursuant to the provision of this section may include an award of damages to the complainant.

The Tribunal observed that for a consent order to be valid under the relevant section, it must be mutually agreed upon by the parties involved, formally issued by the Commission, and registered with a court of competent jurisdiction to ensure its enforceability. Additionally, the order must align with the consumer protection mandate of the FCCPC, as outlined in *Section 1(c) of the FCCA*, by addressing and promoting consumer welfare.

The Tribunal held that where these conditions are not met and especially where the agreement appears to be more of a private arrangement without proper legal backing, it goes beyond the powers legally granted to the FCCPC and, as such, cannot be enforced. While Nigerian law allows settlements in civil cases, the Tribunal emphasised that, because the FCCPC serves the public interest, any settlement must not only resolve the dispute but also promote the wider interests of Nigerian consumers.

The decision of the Tribunal to reinstate the fine against CCNL serves as a significant pronouncement on the limits of regulatory authority and the essential role of judicial oversight in administrative enforcement. It emphasises the principle that regulatory bodies must exercise their powers strictly in accordance with the procedures set out in their enabling statutes. The Tribunal drew a clear boundary against what could otherwise evolve into unchecked regulatory powers. No agency regardless of its mandate or the public interest it seeks to serve can unilaterally investigate, prosecute, and resolve disputes in a manner that circumvents judicial scrutiny. This decision emphasises that the rule of law takes precedence over administrative convenience.

The implications for companies operating in Nigeria are equally significant. The assumption that a negotiated settlement automatically

brings a regulatory dispute to an end is no longer dependable. Businesses must now assess enforcement risks not only in terms of financial exposure but also in relation to the legal robustness of the process followed. Legal departments must understand that entering into a consent order does not guarantee finality. Such agreements can be set aside by the courts if they fail to comply with the required legal standards. This means that regulatory risk is no longer just about the size of a fine or penalty, but also about whether the process used in reaching such an agreement can stand up to legal scrutiny.

The Tribunal has therefore recalibrated the balance of power and reminds both regulators and regulated entities that legal procedures cannot be bypassed for convenience. It is a message that should resonate across all sectors: regulatory authority is potent, but it is not absolute.

5. Commentary

There are two key takeaways derivable from the decision of the CCPT in the above matter. The first is that the decision highlights that even when regulators and regulated entities decide to settle disputes, there are still legal boundaries that must be respected. It highlights important questions about how much freedom public institutions have when making decisions that affect public and consumer interests.

In regard to the fine imposed on CCNL, the issue was not just whether the fine was fair, but whether the Commission could, after initiating enforcement action and facing an appeal, unilaterally enter into a negotiated settlement with the company that attempted to recharacterise the fine as mere administrative costs and sought to avoid a formal finding of wrongdoing. We are of the opinion that the Tribunal rightly took a principled stance in its resolution of the dispute. The Tribunal's reasoning reflects an understanding that the enforcement powers granted to agencies like the FCCPC are not personal privileges. These powers are held in trust

for the public and must be exercised transparently, accountably, and within the boundaries of the law.

The second point in this decision is that while regulators are encouraged to pursue settlements in deserving circumstances, such settlements must not conflict with express provisions of their enabling statutes. In this case the Commission deviated from the procedure laid down under section 149 of its enabling law for settlement of disputes by consent of parties. It is important to stress that when a law sets out a specific method or procedure for exercising a given power, that power must be exercised strictly in accordance with the prescribed procedure.⁵

For the business community, this decision should serve as a reality check. In settling with the regulators, it is very necessary that the settlement process does not violate any provision of the law authorising such settlement or public interest. It therefore means that the Legal departments of such businesses must now think beyond negotiation and assess whether any consent agreement can stand judicial review.

6. Conclusion

The decision of the Tribunal serves as a crucial reminder that while regulatory bodies like the FCCPC possess significant powers to enforce compliance and protect consumer interests, these powers are not limitless. The decision shows the necessity for such regulatory authorities to operate strictly within the legal frameworks established by the enabling statutes. Moreover, it reaffirms the indispensable role of judicial oversight in ensuring that administrative actions are fair, transparent, and justifiable. For businesses and regulators alike, this decision highlights the importance of adhering to due process and respecting the rule of law to maintain legitimacy and trust in the regulatory system. Ultimately, the balance between robust regulation and legal accountability remains central to the integrity of the Nigerian competition and consumer protection landscape.

⁵ See *Unity Bank Plc v. Igala Constr. Co. Ltd.* (2021) 10 NWLR (Pt. 1785) 407.

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