UDO UDOMA &
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CLARIFYING REGULATORY AUTHORITY II

WASPAN V FCCPC: REGULATORY CONCURRENCY AND THE MERGERS & ACQUISITIONS DEAL APPROVAL PERIMETER, REVISITED

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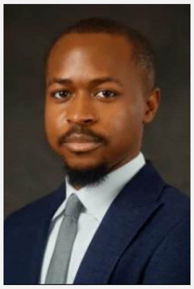

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INTRODUCTION

In February 2025, we considered the Federal High Court's decision in Emeka ***Nnubia v. Honourable Minister of Industry, Trade and Investment, Federal Competition and Consumer Protection Commission & MTN Communications Nigeria Plc, Suit No. FHC/L/CS/1009/2024*** (***Nnubia***). The decision addressed an important question for businesses operating in regulated sectors: where a sector-specific regulator has statutory responsibility for an industry, does that responsibility exclude the economy-wide competition and consumer protection jurisdiction of the Federal Competition and Consumer Protection Commission (FCCPC)?

The Federal High Court held that it did not. Although the Nigerian Communications Commission (NCC) is the primary regulator of the telecommunications sector, its jurisdiction over competition matters is not exclusive. The Nigerian Communications Act 2003 (NCA) and the Federal Competition and Consumer Protection Act 2018 (FCCPA) must instead operate concurrently, with the FCCPC retaining its statutory mandate in relation to competition and consumer protection. That was the central principle examined in our earlier update, "***Clarifying Regulatory Authority: Federal High Court Affirms FCCPC's Oversight in Competition Matters*.**"

Nnubia was itself appealed to the Court of Appeal within days of judgment, on grounds that the NCA, as legislation of specific application to the communications industry, should prevail over the FCCPA as legislation of general application. No decision on that appeal had been reported as at the date of this update. The principle it established should accordingly be read as the Federal High Court's most recent articulation of concurrency at the time, not as a settled, unappealed rule.

18 months later, that principle has returned to the Federal High Court in a more difficult form.

In ***Wireless Application Service Providers Association of Nigeria Ltd/Gte*** **v. Federal Competition and Consumer Protection Commission, Suit No. FHC/L/CS/760/2026** (***WASPAN***), the question was no longer simply whether the FCCPC could investigate conduct within the telecommunications sector. The Court was required to consider whether the FCCPC

could make and enforce a regulatory regime affecting businesses already licensed and regulated by the NCC.

On 20th July 2026, the Federal High Court, Lagos Division, per Lewis-Allagoa J., dismissed **WASPAN**'s challenge to the FCCPC's Digital, Electronic, Online or Non-Traditional Consumer Lending Regulations, 2025 (DEON Regulations). The Court reaffirmed the principle of concurrent regulatory jurisdiction, while recognising an important limit: the FCCPC cannot issue telecommunications licences or exercise, indirectly, powers reserved to the NCC.

The implications extend beyond telecommunications and digital lending. For acquisitions and investments involving regulated businesses, **WASPAN** goes directly to the regulatory perimeter of a deal: whether identifying and obtaining the approval of a target's primary sector regulator is sufficient, or whether the transaction, the target's underlying business or its post-completion operations may engage additional FCCPC requirements.

The decision therefore matters not only to regulated operators, but also to acquirers, sellers, financial sponsors and lenders assessing regulatory diligence, transaction conditionality, execution timetables and post-completion compliance risk.

WASPAN has appealed. The appeal places a question left at the boundary of ***Nnubia*** squarely before the Court of Appeal: where does legitimate concurrent oversight end and impermissible parallel regulation begin, and what does that boundary mean for the regulatory risk and approval perimeter of a deal?

BACKGROUND

WASPAN is an association whose members it describes as Nigerian-registered companies holding valid NCC licences and participating in the airtime and data credit market.

On 14th April 2026, ***WASPAN*** commenced proceedings by originating summons challenging provisions of the DEON Regulations. Its case raised a fundamental jurisdictional objection: businesses operating within the telecommunications ecosystem are already subject to the NCA and the regulatory authority of the NCC, and the FCCPC could not, through subsidiary legislation, establish a parallel regulatory framework governing their activities.

The following day, the Federal High Court granted four interim *ex parte* orders restraining the FCCPC from enforcing the disputed provisions pending determination of the suit. The FCCPC subsequently applied to discharge those orders, but the application was refused on 28th April 2026.

On 22nd May 2026, the FCCPC publicly confirmed that, in obedience to the Court's orders, it was suspending implementation and enforcement of the DEON Regulations, while instructing counsel to challenge both the interim restraint and the competence of the proceedings.

The dispute nevertheless continued beyond the substantive jurisdictional arguments. WASPAN alleged that the FCCPC had expanded its list of approved digital lending operators while the interim orders remained in force and pursued contempt proceedings. The parties subsequently resolved that aspect of the dispute, and the substantive action proceeded to a further hearing, which the Commission's own public statements record as having been fixed for 20th July 2026.

The underlying commercial market is significant. Public reporting places the airtime and data credit market at approximately ₦400 billion annually, with an estimated 40 million consumers, many accessing relatively small advances of between ₦100 and ₦200.

The dispute was therefore not simply an institutional disagreement between two regulators. Its resolution would determine the extent to which participants in an NCC-regulated market could also be subjected to an FCCPC approval and compliance framework, a question with direct consequences for the regulatory profile, valuation and transaction readiness of businesses operating within overlapping regulatory regimes.

THE COURT'S DECISION

On 20th July 2026, the Federal High Court dismissed WASPAN's challenge and upheld the validity of the DEON Regulations.

Three aspects of the judgment are particularly significant.

1. The FCCPC's mandate is economy-wide

The Court located the FCCPC's jurisdiction not only in the FCCPA but also in the constitutional foundations underlying the legislation.

The Commission's own account of the judgment confirms that the DEON Regulations were held to have been issued pursuant to the FCCPC's statutory and constitutional powers and are accordingly intra vires. Contemporaneous reports of the judgment identify sections 16(2)(c), 16(3) and 17(2)(d) of the Constitution of the Federal Republic of Nigeria 1999 and Item 60(a) of the Exclusive Legislative List as the specific provisions relied upon; that level of detail is reported rather than independently verified against the certified judgment. On this reasoning, the FCCPA gives institutional effect to constitutional objectives concerning economic welfare and consumer protection and consequently confers an economy-wide mandate on the FCCPC.

This aspect of the judgment potentially gives the concurrency principle a broader foundation than the statutory analysis considered in ***Nnubia***. The question is not merely which of two statutes regulates telecommunications. It is also, on the Court's reasoning, whether the FCCPC is exercising functions assigned to it within a wider national competition and consumer protection framework.

For dealmakers, that distinction matters. The regulatory perimeter of a target cannot necessarily be determined solely by identifying its principal sector regulator. A target operating under a valid sector licence may nevertheless be subject to economy-wide regulatory requirements arising from the FCCPA and the nature of its products, customers or market conduct.

2. Concurrency means coexistence, not displacement

The Court then considered the relationship between the FCCPA and the NCA.

It held that sections 104 and 105 of the FCCPA, read together with section 90 of the NCA, establish concurrent rather than mutually exclusive jurisdiction between the FCCPC and NCC. The Court's formulation was that "concurrency means coexistence, not displacement."

This substantially reinforces the position taken in ***Nnubia***.

In ***Nnubia***, the Federal High Court held that the NCC's position as the primary telecommunications regulator did not exclude the FCCPC's competition and consumer protection jurisdiction. Our earlier update noted that the decision required section 90 of the NCA to be read

together with section 104 of the FCCPA and treated the FCCPC as the principal economy-wide competition and consumer protection regulator.

WASPAN carries that principle further. Rather than considering the FCCPC's investigatory powers in relation to a particular telecommunications operator, the Court has applied concurrency to the FCCPC's exercise of substantive rulemaking and enforcement powers affecting participants in an NCC-regulated market.

3. Concurrency nevertheless has limits

The third aspect of the judgment is perhaps the most important for determining the future boundary between the two regulators.

The Court accepted that the FCCPC does not have power to issue telecommunications licences. Nor, in principle, may it accomplish indirectly what it has no statutory authority to do directly.

The Court nevertheless upheld the challenged provisions of the DEON Regulations.

Paragraph 8, which conditions relevant lending activity on FCCPC approval, was construed as operating in deference to the NCC's licensing authority rather than replacing it. Paragraph 24, which requires a minimum of 2 intermediaries in the lending structure, one of which must be a wholly Nigerian-owned service provider, within 60 days of commencement, was similarly upheld as a proportionate competition safeguard rather than a telecommunications licensing requirement.

The result is an important distinction.

An NCC licence does not, on the Federal High Court's reasoning, exclude additional FCCPC requirements directed at competition and consumer protection. At the same time, those requirements cannot cross the line into the exercise of telecommunications licensing powers reserved to the NCC.

For transaction parties, the distinction is not academic. If an additional regulatory approval is validly required, it may affect the target's compliance status, the diligence exercise, the conditions to completion, the transaction timetable and the allocation of

regulatory risk between buyer and seller. The difficulty lies in determining precisely where permissible concurrent regulation ends and duplicative authorisation begins.

THE APPEAL: WHERE THE BOUNDARY IS NOW BEING TESTED

On 21st July 2026, within 24 hours of the judgment, WASPAN filed a notice of appeal to the Court of Appeal containing nine grounds of appeal. It also sought an injunction restraining the FCCPC from enforcing the DEON Regulations pending determination of the appeal.

3 issues raised by the appeal are likely to be particularly important for regulated businesses and transactions involving them.

1st, which statute takes precedence?

WASPAN contends that the NCA, as legislation specifically regulating the telecommunications sector, should prevail over the FCCPA as legislation of more general application.

That argument puts directly in issue the statutory reasoning underpinning both ***Nnubia*** and ***WASPAN***. If accepted, it could materially narrow the circumstances in which the FCCPC may intervene in sectors governed by specialist legislation.

2nd, how far does the FCCPC's regulation-making power extend?

WASPAN also challenges the scope of the FCCPC's power under sections 17, 18 and 163 of the FCCPA, the provisions under which the DEON Regulations were made. In substance, the argument is that the Commission's power to make regulations must remain within the matters entrusted to it by the FCCPA and cannot be used to assume regulatory authority already conferred on the NCC.

This raises a question wider than telecommunications. Economy-wide regulators routinely operate alongside banking, insurance, pensions, energy, communications and other sector-specific regulators. It is therefore particularly relevant to M&A involving regulated businesses. A purchaser cannot necessarily determine the regulatory perimeter of a target simply by confirming that it holds the licences issued by its principal regulator. Diligence may also need to establish whether the target's activities trigger additional FCCPC approvals,

registrations or conduct requirements and whether historic non-compliance creates exposure that could transfer with, or affect the value of, the acquired business.

3rd, when does an approval become a licence?

This may be the most consequential issue raised by the appeal.

The Federal High Court held both that the FCCPC cannot issue telecommunications licences and that Paragraph 8's FCCPC approval requirement is valid.

WASPAN's challenge puts the functional relationship between those propositions in issue. If a business already requires an NCC licence to undertake an activity, when does a mandatory approval from another regulator amount merely to a permissible consumer protection or competition control, and when does it become a second authorisation to carry on the same business?

The answer may ultimately determine not only the limits of regulatory concurrency but also which approvals transaction parties must identify, obtain and allocate responsibility for in deals involving regulated businesses.

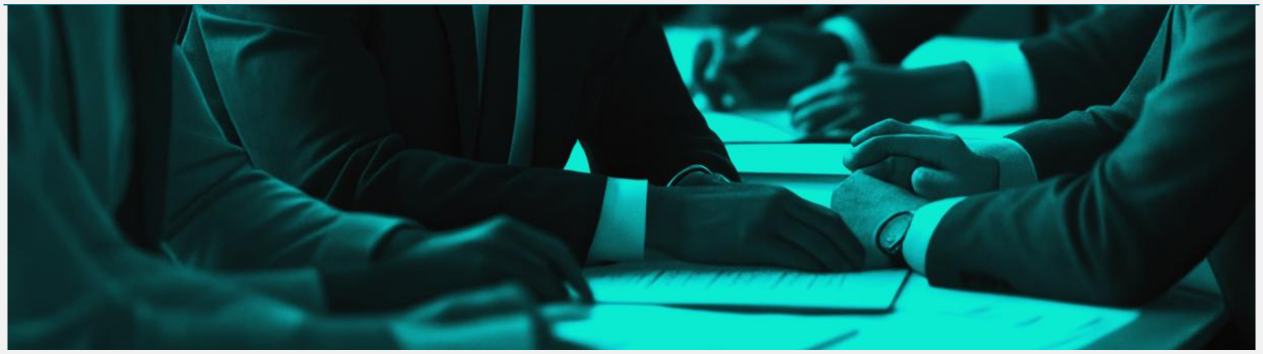
FROM *NNUBIA* TO *WASPAN:* THE PRINCIPLE EVOLVES

The relationship between the two cases is significant.

Nnubia established the principle in an investigatory context. The FCCPC sought information and documents from MTN in connection with an investigation into alleged anti-competitive conduct. The Federal High Court rejected the proposition that the NCC's sectoral jurisdiction prevented the FCCPC from exercising its statutory competition mandate.

WASPAN tests the same principle in a rulemaking and authorisation context.

That is a materially different regulatory intervention. Investigation concerns the FCCPC's ability to examine conduct falling within its statutory remit. The DEON Regulations potentially determine whether, and subject to what conditions, affected businesses may participate in a particular market.



The progression can therefore be expressed simply: *Nnubia* established concurrency. WASPAN tests its limits.

There is also an important deal-specific progression.

Our ***Nnubia*** update identified one practical manifestation of regulatory concurrency in the M&A context: the FCCPC's practice of requiring parties in certain transactions to obtain a "no-objection" from the relevant sector regulator before unconditional approval is granted.

WASPAN brings the converse question into focus. If sector-regulator approval does not displace the FCCPC's substantive jurisdiction over the underlying business, transaction parties must assess both sides of the regulatory interface.

The issue for deal execution is therefore not simply whether two regulators possess jurisdiction. The more practical questions are: which approvals are required, in what sequence, whether one approval depends upon another, and who bears the timing and execution risk if the regulatory perimeter is contested or changes between signing and completion.

DEAL RELEVANCE: WHAT *WASPAN* MEANS FOR M&A AND INVESTMENT TRANSACTIONS

For transaction parties, ***WASPAN*** reinforces an important distinction between a target's operating regulatory perimeter and a transaction's approval perimeter. The two overlap, but they are not necessarily co-extensive.

A target may hold all licences required by its principal sector regulator while remaining subject to additional FCCPC requirements arising from the nature of its products, customers or market conduct. Conversely, an acquisition may independently require merger-control engagement with the FCCPC and consent, notification or a no-objection from the relevant sector regulator.

That distinction has consequences across the transaction lifecycle.

Due diligence: Regulatory diligence should go beyond confirming the existence and validity of a target's principal operating licences. For businesses operating across regulated sectors, diligence should map overlapping regulatory mandates, identify registrations and approvals required under each regime, test compliance history and determine whether an apparent regulatory gap could expose the target to sanctions, remediation costs or restrictions on its business.

For private equity and other financial investors, the issue may be particularly important where the investment thesis depends on expansion into adjacent products or services after completion. A business that is appropriately licensed for its current activities may require additional approvals as its product offering, customer base or distribution model develops.

Conditions precedent and transaction timetables: Where multiple regulatory regimes apply, the transaction documents should identify the relevant approvals accurately and reflect any sequencing between them. Conditions precedent, regulatory co-operation covenants and long-stop dates should be calibrated to the actual approval pathway rather than an assumption that approval from the principal sector regulator exhausts the regulatory process.

Risk allocation: Where the jurisdictional position is uncertain, the parties may need to address expressly who bears the risk of an additional approval being required after signing. Depending on the transaction, that may affect regulatory efforts covenants, termination rights, longstop extensions, pre-completion undertakings and the allocation of costs associated with satisfying additional regulatory requirements.

Valuation and deal certainty: Regulatory overlap can become an economic issue where compliance requires changes to a target's business model, contractual arrangements or operating structure. An unresolved approval requirement may also affect the certainty or timing of completion. Regulatory diligence should therefore inform not only the conditions to the transaction but, where material, valuation and the commercial assessment of execution risk.

Post-completion integration: Completion does not necessarily end the analysis. Changes in ownership, control, operating structure, product architecture or intra-group arrangements may engage regulatory requirements that did not apply to the target on a standalone basis. Integration

planning for regulated targets should therefore incorporate the regulatory perimeter identified during diligence.

IMPLICATIONS FOR OPERATORS, LENDERS AND INVESTORS

The decision also has immediate implications outside M&A.

For telecommunications and digital lending operators, holding an NCC licence should not presently be treated as excluding compliance obligations imposed by the FCCPC where those obligations fall within competition or consumer protection regulation. Businesses operating at the intersection of telecommunications, digital lending and consumer services should therefore map their obligations under both regulatory regimes.

For lenders, the same issue may affect regulatory due diligence, representations, undertakings and events of default. Where the legality or continuity of a borrower's material business depends upon multiple regulatory approvals, financing diligence should test the complete regulatory perimeter rather than the existence of a single principal licence.

For investors, particularly investors in businesses whose models cut across conventional regulatory classifications, ***WASPAN*** illustrates the importance of assessing regulatory architecture as part of the investment thesis. Overlapping jurisdiction may affect the cost of compliance, the ability to introduce new products, expansion strategy and ultimately exit readiness.

WHAT COMES NEXT?

As at the date of this update, no reported decision of the Court of Appeal has been identified on either ***WASPAN***'s substantive appeal or its application for an injunction pending appeal.

The matter therefore remains sub judice, and the Federal High Court's judgment should not be treated as the final appellate determination of the jurisdictional questions it raises.

The Court of Appeal's eventual decision may do considerably more than determine the validity of the DEON Regulations. It could provide important guidance on the architecture of overlapping regulation in Nigeria: the relationship between economy-wide and sector-specific mandates, the

scope of subsidiary rule-making powers, and the point at which concurrent oversight becomes duplicative authorisation.

For now, ***Nnubia*** and ***WASPAN*** point in the same direction: sectoral regulation does not, without more, displace the FCCPC's competition and consumer protection jurisdiction. Both remain, at the time of writing, Federal High Court decisions under unresolved appellate challenge rather than settled law.

The Court of Appeal must now address the harder boundary question: how far can concurrent jurisdiction go before oversight becomes parallel authorisation?

For dealmakers, there is an equally practical question: when regulatory mandates overlap, where does the approval perimeter of the deal actually end?

Until the appellate courts provide greater clarity, acquirers, sellers, financial sponsors, lenders and regulated businesses should approach that perimeter as a matter to be established through substantive regulatory analysis, rather than inferred from the identity of the target's primary regulator.

This update has been prepared by the ***Private Equity, and Mergers & Acquisitions, and Competition*** teams at Udo Udoma & Belo-Osagie.

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