Nigerian Meta decision: the link between ensuring competition and protecting fundamental rights is a global issue

In May 2021, the Federal Competition and Consumer Protection Commission of Nigeria (FCCPC) began investigating WhatsApp's updated privacy policy. Central to the investigation was the recognition that in this case substantial data and consumer protection violations also raised serious competition issues. After communicating the investigative report to Meta, the collaboration proposals offered by Meta in April 2024 were deemed inadequate by the FCCPC to address the concerns raised. Consequently, on July 18, 2024, the Commission imposed a $220 million USD penalty on Meta and outlined specific obligations as part of the remedies.

The recognition of the link between protecting fundamental rights, such as data protection, and safeguarding competition is becoming a global issue, as highlighted by this decision. We live in an era where a few companies offering key digital services have amassed enormous economic power and shaped markets to their advantage. The growth of these few has been significantly driven by data, often personal, produced by users of these services. This issue is set to become a real emergency in the age of AI, as we are already witnessing in this early phase. More broadly, the voices linking the defence of democratic values to the protection of competition are becoming increasingly loud and credible. This aspect of the antitrust debate, highlighting the incompatibility between holding and exercising such power and the protection of the democracy and fundamental rights, was previously considered fringe. However, as the immense power of a few companies has become evident, this issue has taken centre stage. ARTICLE 19, focusing particularly on safeguarding fundamental rights like freedom of expression, has been working for several years to create and strengthen this awareness—initially within the European Union and increasingly on a global scale.

Viewed from the specific angle that characterizes ARTICLE 19's action as a civil society organization increasingly involved in global competition policy, the case recently concluded by the Nigerian authority is remarkable for several reasons. This brief analysis aims to highlight at least three of them.

The **first** point to emphasize is how the investigation was holistically and organically conducted by the Nigerian authority. The case originates from a January 2021 change in WhatsApp's privacy policy, the most used messaging app worldwide. WhatsApp was acquired by Facebook, now Meta, in 2014, in a deal that, in hindsight, many in the global antitrust community believe should have then been blocked by merger control authorities. The changes made to WhatsApp's privacy policy on January 4 affected both the European Region version of the app and the version for the rest of the world. Some of the changes were primarily informational, while others related to how commercial companies can use the WhatsApp platform, what data they can collect, and who they can share it with. Those changes were accompanied by a global message informing users that they needed to accept them by February 8 to continue using the app. Outraged reactions to WhatsApp's announced changes were swift, first among the service's users, some of whom began seeking alternative messaging apps, and subsequently among regulators in various jurisdictions. In Nigeria, starting in May 2021, the FCCPC became aware of the updated privacy policy and began a preliminary investigation, of which Meta was notified the following month. The findings of the investigation, which involved continuous exchanges with Meta over its duration, were concluded in January 2024. In the following phase, Meta presented a remedy package to the FCCPC, but it was deemed inadequate to resolve the issues identified in the Investigative Report.

The Nigerian authority concluded that Meta's behaviour constituted several violations of consumer protection, data protection, and competition law. Compared to other regions of the world, particularly the European Union, it is interesting to note how the decision involved the simultaneous enforcement of these different legislations, given the authority granted to the FCCPC by the legislator. In the EU, instead, Meta's behaviour was assessed in a largely uncoordinated manner by the various competent authorities within the complex regulatory mosaic at both national and EU levels, which has likely affected the effectiveness of their actions. Another noteworthy aspect in this regard is that the investigation conducted by the FCCPC received substantial technological support from the Nigerian National Information Technology Development Agency (NITDA). ARTICLE 19 emphasizes the importance of viewing the actions of Big Tech as potential violations of various laws within the same jurisdiction. Moreover, technological expertise is essential for successfully

conducting such complex investigations. As demonstrated in the Nigerian case, this expertise can be effectively sourced through fruitful collaborations with other agencies, when not directly available in-house.

The **second** aspect to highlight is that the Nigerian authority considered the violation of data protection law as an abuse of dominant position. As noted by the FCCPC in their Executive Summary, "[d]ata protection has been vastly recognized as a consumer protection issue, but very few have recognized the increasing concern and challenges it raises as a competition issue." Among these now stands the Nigerian authority, aligning with a more progressive view of antitrust legislation that addresses the significant challenges posed by Big Tech. These challenges are globally similar yet often manifest differently across jurisdictions, depending also on the applicable legislation in specific abuse cases. As in other parts of the globe, in Nigeria, citizens/data subjects enjoy a constitutionally guaranteed fundamental right to privacy. Its violation can, in some circumstances, also constitute an abuse of dominant position, as in the present case.

The **third** and final remark concerns the dispositive part of the Nigerian authority's decision. In addition to a fine of $220 million USD, which for a global enterprise like Meta might be considered merely a "cost of doing business" in Nigeria, the behavioural obligations imposed on the US company are highly significant, such as the requirement "to establish an opt-in screen that allows users to consent to or withhold consent for the sharing of additional personal data with third parties affiliated with WhatsApp… to be approved in advance by the Commission and the NDPC." These obligations, which align with regulatory solutions already implemented in other parts of the world, will require appropriate monitoring by the Nigerian authority to ensure effective compliance. Experiences from other jurisdictions indicate that this will be particularly challenging, given Meta's combative stance during the investigation and its announced intention to appeal the decision.