DOI: https://doi.org/10.67203/abulj.2024.q6o7n615

Vol. 42 (No. 2) 2024

ISSN: 3043-6958

AHMADU BELLO UNIVERSITY LAW JOURNAL

FACULTY OF LAW

AHMADU BELLO UNIVERSITY, ZARIA - NIGERIA.

website: https://abulj.org.ng | **e-mail:** abulj@abu.edu.ng

Enforcement of Competition Law in the Nigerian Telecommunication Sector: A Run-Through

Aliyu Abdullahi*[311]
Department of Private Law,
Faculty of Law,
Ahmadu Bello University, Zaria-Nigeria

1.2 Enforcements of Competition Law

Compliance with competition legal framework can be enforced in either of two ways, namely, the public enforcement and private enforcement. Each of these two ways of enforcement is discussed below.

1.2.1 Public enforcement of competition law

In Competition Law, public enforcement means the enforcement of competition law by the state authorities.[312] That is to say, enforcement of competition rules by the state officials or agencies mostly designated to do so by the competition legal framework. To make understanding of this procedure easier, it is discussed under the following sub-heads.

* PhD, Department of Private Law, Faculty of Law, Ahmadu Bello University, Zaria, Competition and Computational Law, aliyuabdullahi2019@gmail.com/ aliyua@abu.edu.ng 08062065488

[312] Kai, H. and Peyer, S. (2013). "Public and Private Enforcement of Competition Law. A Differentiated Approach". Discussion Paper No. 13-029. Retrieved from http://ftp.zew.de/pub/zew-does/dp/pd13029.pdf.p2

1.2.1.1 *The institutional framework*

The global practice of enforcing competition rules by the state is to designate institutions whose sole responsibility is to enforce compliance with a given nation's competition framework. In the Nigerian telecommunication sector, the National Communications Commission is made the sole enforcer of the Nigerian legal framework on competition in the sector. Section 90 of the Act[313] provides, "Notwithstanding the provisions of any other written law, the Commission shall have exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and regulations, whether of a general or specific nature, as it relates to the Nigerian communications market". (Underlined for emphasis). Therefore, as far the telecommunication sector is concerned, the newly established Competition and Consumer Protection Commission does not have power to enforce compliance with competition legal framework, notwithstanding the provisions of Sections 17 and 104 of the Competition Act.[314]

The import of Section 90 of the Nigeria Communication Act is therefore to make the Commission an "integrated enforcer" of the competition legal framework in the sector. It is called "integrated enforcer", because it has the power to receive complaint from any person of an alleged non-compliance with the competition legal framework and investigate same or to on its own initiative commence investigating an alleged non-compliance by a licensee. In either case, the Commission can decide whether to prosecute the alleged offender or not. If it decides to prosecute the offender, the Commission will be both the prosecutor and a judge by finding of liability or otherwise at the end of the prosecution. It can enforce sanction if it finds the offender liable. In doing all these, the Commission does not have the burden of proving an alleged non-compliance with the competition legal framework before an independent body. It is the prosecutor and the judge at the same time, hence called an integrated enforcer. Its findings can however be appealed against before a competent court of jurisdiction. In this light, sections 86 to 88of the Act specifically, section 88 of the Act provides:

[313] The Act

[314] Gazette No. 18 Vol. 106 (herein after called the Competition Act)

(1) Subject to section 87 of this Act and subsections (2) and (3) of this section, an aggrieved person may appeal to the Court for a judicial review of the Commission's decision or other action.

(2) The decision or direction of the Commission that is the subject matter of an application for judicial review shall subsist and remain binding and valid until it is expressly reversed in a final judgment or order of the Court.

(3) A person shall not apply to the Court for a judicial review unless that person has first exhausted all other remedies provided under this Act.

The remedies expected to be exhausted by the aggrieved person before approaching the court for judicial review of the Commission's decisions are that, he must first of all apply to the Commission for a copy of its decision against his conduct containing its reasons for arriving at that decision. The next is making application to the Commission, if he is not satisfied with the decision requesting it to review same in his favour and the reasons for his request (grounds for his request). If the Commission still stands on its finding against him and refuse his application he can then approach the Court for Judicial review.[315]

Argument in favour of this kind of integrated enforcement agency model posits that, it affords the enforcement agency the opportunity to acquire expertise and specialise in developing a coherent competition policy;[316] and that state authorities are better positioned to having access to privileged information concerning likely breach which may lead to appropriate sanction.[317] It is however lamented that, the use of integrated enforcement model does not provide for hearing before a neutral adjudicatory body. This leads to the denial of fair hearing since the accuser which is the Commission is also the decision maker. Thus, it opens door or chance of bias and injustice.[318]

Most jurisdictions, both developing and developed ones have moved away or slightly modified the integrated model of public enforcement of competition law by establishing additional specialised institutions to partake in enforcing

[315] Ss. 86, and 87 of the Act
[316] Jones, A. Op. Cit p.3
[317] Kai, H. and Peyer, S. Op. Cit. pp. 13 - 14
[318] Jones, A. op.cit p.3

compliance with their competition legal frameworks.[319] For example, there is the Competition Tribunals[320] to review the regulatory agencies administrative finding, and the competition appeal courts[321] that listen or preside over appeals that may lie against the findings of the competition tribunals. These two sets of courts are specialised courts mainly meant to try noncompliance with the competition legal framework. Putting these courts in place has in a way taken care of the concerns expressed against integrated model of enforcement which is denial of fair hearing since the prosecutor is also the judge. Presence of these courts now makes the state regulatory agencies responsibilities to be more of investigation and prosecution only before an independent umpire.

The practice of putting in place a Tribunal or a Court to review the decision of the Commission is manifestly absent in the Nigerian telecommunication sector but under the Competition and Consumer Protection Act which establishes Competition and Consumer Protection Tribunal to adjudicate over conducts prohibited under the Act by way of appeals or review of the Competition and Consumer Protection Commission's findings.[322]

This development now makes it possible for undertakings to challenge the findings of the Communication Commission before an independent arbiter just the same way other jurisdictions do. Before someone celebrates this, it must however be quickly pointed out that, the provision of Section 47 (2) complicates matters when it provides, "notwithstanding the provisions of subsection (1) (b) all appeals or request for the review of the exercise of any sector specific authority shall first be heard and determined by the Commission before such appeals can lie before or to be determined by the Tribunal."

One must ask therefore, in what capacity is the Competition and Consumer Protection Commission sitting to hear or determine the decisions of sector specific regulators before same lies on appeal to the Tribunal? What could have been the philosophy behind making review by the Competition and Consumer

---

[319] Cento, V. (2010) "Economic Approaches to Regulation" In: Robert, B., Martin, C. and Martin, L.(eds.) *Alexidias Regulation and Competition Law in the Telecommunications and other Network Industries*. The Oxford Handbook on Regulation, Oxford University Press, Oxford, UK..pp. 21-35

[320]Hartzenberg, T. (2006). "Competition Policy and Practice in South Africa: Promoting Competition for Development". *Northwestern Journal of International Law and Business*, No. 26 p.668

[321] Ibid p.669

[322] Section 39 of the Competition Act

Protection Commission of a sector specific regulator's decisions a condition precedent before those decisions lie on appeal to the Tribunal? Whatever the reason might be, this provision triggers two issues. The first one is, it has the effect of causing delay before the final determination of the matter at the Tribunal and may likely render the finding of the sector specific regulator nugatory or at best, there might be substitution of findings from that of the sector specific regulator to that of the Competition and Consumer Protection Commission. Perhaps, this was what the Act intended, to render useless the findings of any sector specific regulator on competition matters in order to make Competition and Consumer Protection Commission sole regulator of competition legal framework violations in all sectors.

The second issue is the apparent conflict between the provisions of Sections 90 of the Nigeria Communication Act and 17 (a) and 104 of the Competition and Consumer Protection Commission Act. Both Sections gave the two Commissions exclusive powers to implement provisions on competition matters. Argument on which of the two Acts of the National Assembly may override the other was canvassed in page three above thus, does not need to be repeated here.

Be that as it may, in Nigeria, the Communication Commission is saddled with the exclusive competence of enforcing compliance with the competition legal framework in the telecommunication sector. In doing this, the Commission is guided by the provisions of certain regulations it came up with pursuant to the provisions of section 70 of the Communications Act.[323] The next sub-head, discussed the procedures followed by the Commission to accomplish its enforcement responsibility.

1.2.1.2 *The procedure of public enforcement*

Public enforcement of competition law normally follows two consecutive stages which are, the detection stage as the first, followed by the intervention stage which is the final.[324] The consecutive stages are observed in discussing this subhead. Commencing with the first stage –which is the detection stage, the state authority (the enforcing institution) has either of two ways to go about it and in some instances the combination of the two. The two ways are, starting

[323] The Act, Op. Cit.
[324] Kai, H. and Peyer, S. op.cit p .2

investigation by the authority *suo moto* or on its own initiative to detect a breach or an infringement by a licensee. The other option is to commence fact finding proceedings upon receiving complaint to that effect by an interested party.[325]
Schedule to the Competition Rules contains the procedure to be followed by the Commission in enforcing compliance with the provisions of the Act and the Regulations. A careful look at the provisions of the schedule shows that, the procedure provided for detecting an alleged infringement is that of receiving complaint from an interested party. The schedule does not expressly empower the Commission to act on its own initiative in order to detect non-compliance. Scavenging through the provision of the Act and other Regulations made by the Commission however shows, the other alternative is also intended, i.e., the Commission to *suo moto* initiate detection proceeding of a suspected infringement.

1.2.3 Decision of the Commission

Upon completing either of the procedures (Request for Investigation or the Commission Proceeding) adopted by the Commission to detect information and arrive at necessary finding(s), the Commission may now exercise its powers of intervention. In general, three types of interventions tools are available for an antitrust authority namely, fines, behavioural remedies and structural remedies. Structural remedies are meant to remedy the structural effects that business combination produces or is likely to produce. For example, a particular merger or acquisition may lead to given a particular undertaking dominant position that may likely be abused.[326] Behavioural remedies are meant to prevent or tackle anti-competition behaviour of an undertaking in the market. It therefore means, while fine is an *ex post* intervention tool – applied to sanction or penalise a concluded conduct, structural and behavioural remedies are mostly *ex ante* intervention tool.[327] Whichever intervention tool the Commission decides to use, the key objective of public enforcement is usually seen in the creation of deterrence effect.[328]

---

[325] Jones, A. op.cit p.5
[326] Orojo, J. O. (2008) *Company Law and Practice in Nigeria. 5th ed.* Lexis Nexis Butterworth South Africa.
[327] Kai, H. and Peryer S. Op. Cit. p.3
[328] Jones, A. Op. Cit p.8

Specifically, the schedule to the Competition Regulations provides for penalties that the Commission may impose upon completing the proceedings in Rule 17. A careful reading of the provisions of Rules 17 and 18 shows that, the principal actions the Commission can take after making its findings or determination is either to issue an injunctive order or to order the payment of fine or compensation. The injunctive order or relief is specifically provided for in Rule 17 (a) for "issue a direction, requiring the responding party to or any other party, to undertake specific actions or cease to specific actions or to resolve any conduct contrary to the Act or any or any Regulation, rule, direction, license condition, related right or obligation". Direction to undertake specific action or cease specific action or resolve any conduct can be used to achieve both structural and behavioural remedies. Rule 17 (b) and (c) provide for the power of the Commission to make order for the payment of compensation or fine respectively to be determined by the court as appropriate.

1.3 Private Enforcement of Competition Law

Private enforcement is enforcement by private individuals (the victims) who might have been negatively affected by the prohibited conduct of a competitor. Nigerian legal framework does not expressly provide for this kind of enforcement of competition law in the telecommunication sector.[329] Discussion under this head therefore is aimed at first of all, illustrating how it operates in other jurisdictions; highlight its importance in competition law enforcement; explore the possibility of practicing it under our present legal regime; and finally, to make case for its proper introduction into our *corpus juris*.

This form of enforcement is relatively of recent origin across the globe with the exception of the United States is the only jurisdiction that seemed to have it since 1914.[330] The practice is however getting prominence in both the developed and the developing countries. For example, private enforcement is expressly provided for in the United Kingdom.[331] It is also provided for in both the South

[329] Ohioma,O. J. and Nwachukwu, O. C. (2016) "Antitrust Jurisprudence and Regulation for Economic Growth: The Nigerian Situation". A paper presented at the 49th*Nigeria Law Teachers Conference 2016.* Held at Nassarawa State University Keffi (NSUK) pp.257

[330] Sections. 4,5 and 16 of the Clyton's Act, U.S.A.

[331] The European Commission's Damages Directive, 2014

African[332] and Indian[333] legal regimes on competition. After extensive debate and discussion on whether private enforcement should be adopted, and if so how to develop a European approach to private enforcement, the European Commission proposed a package of measures on private antitrust actions in 2013 and a final draft known as Damages Directive was issued for implementation by member countries in 2018.[334]

Whereas it was generally believed that, the primary objectives of public enforcement are, to cause deterrence and achieve corrective justice.[335] The goals or objectives of private enforcement are however not certain.[336] Two reasons are however put forward as the objective of private enforcement of competition law. These are (1) allowing victims of infringements of competition law to obtain compensation; (2) create an additional incentive for undertakings to respect competition rules.[337]

The first reason or objective relates to the provision of compensation for victims of antitrust conduct who may suffer damage or injury but cannot benefit from the success of public enforcement which always terminates with fines paid to the state coffers. Two cases are: *Courage Ltd. vs. Crehon*[338] and *Vincenzo Manfredi Lloyd Adriatico AssicurazioniSpA* [339].

In *Courage Ltd. vs Crehon* (supra) the court held that, full effectiveness of Article 85 of the Treaty (now Article 81 EC) and, in particular, the practical effect of the prohibition laid down in Article 85(1) would be put at risk, if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition. Indeed, the existence of such a right strengthens the working of the Community competition rules and discourages agreements or practices, which are frequently covert, which are liable to restrict or distort competition. Article 85 of the Treaty therefore precludes a rule of national law under which a party to a contract liable to restrict or distort competition within the meaning of that provision is barred

[332] Section 65(6) of the South African Competition Act
[333] The Competition Act of India, 2002.
[334]Jones, A. *Op.cit* p.3
[335] 2007
[336] Kai, H. and Peyer S. *Op.cit* ps.5
[337] Ibid p.5
[338] (2001) ECR 1-6297
[339] (C-295/04)

from claiming damages for loss caused by performance of that contract on the sole ground that the claimant is a party to that contract.

Vincenzo Manfredi vs. Lloyd Adriatico AssicurazioniSpA[340] here, the Plaintiff sought to obtain an order against those insurance companies for repayment of the increase in the cost of premiums for compulsory civil liability insurance relating to accidents caused by motor vehicles, vessels and mopeds ('civil liability auto insurance') paid due to the increases implemented by those companies under an agreement declared unlawful by the national competition authority.

The Defendant argued among other things that, the plaintiff as a private person lacked capacity to enforce compliance with the provisions of the European Competition legal framework. The European Court of Justice rejected that argument and held, it should also be borne in mind that Articles 81(1) EC and 82 EC produce direct effects on relations between individuals and create rights for the individuals concerned which the national courts must safeguard

The second objective of private enforcement is creating incentive for compliance with the provision of competition legal framework. This is because, if competitors know that in addition to the public enforcement which normally ends in imposition of fines, private parties can also sue the competitor who violates competition legal framework for damages such competitors will be more careful. The damages claim which in most cases involves very huge amount of money may cause unnecessary burden on the survival of such competitor. This therefore will encourage compliance by competitors with the competition legal framework.

1.3.1 Types of private enforcement of competition law

Generally, the types of private enforcement of competition that are known and preached are two, namely; the "stand-alone" and "follow-on action" enforcement. Each of these types is briefly discussed below.[341]

---

[340] supra

[341] Moodaliyar, K. *etal* (2010). "The Relationship between Public and Private Enforcement in Competition Law – A Comparative Analysis of South Africa, European Union and Swiss Law". *South African Law Journal 127* p. 154 Retrieved from http://heinonline.org/HOL/License on 26/06/17 at 2:00pm

1.3.1.1 *Stand-Alone Enforcement*

The stand-alone enforcement as the name implies, signifies a situation whereby the enforcement procedure is initiated right from the beginning by a private enforcer, victim or the plaintiff on his own and by himself before the court of law independent of any intervention by the state authority i.e., the competition commission. Here, a victim who is normally the plaintiff is the one that identifies a breach of the competition legal framework by a supplier or a competitor and he is negatively affected as a result. He then proceeds to gather evidence and subsequently commences legal proceeding that may eventually lead to judgement pronounced in his favour. Because of the absence of the competition commission involvement in the proceeding, the procedure is called stand-alone.[342]

This kind of private enforcement is provided under section 146 (1) of the Competition and Consumer Protection Act. It reads, "a consumer may seek to enforce any right under this Act, a transaction or agreement, otherwise resolve any dispute with an undertaking that supplied the goods or services to the consumer." In doing so, "... an aggrieved consumer can directly approach a court with appropriate jurisdiction to seek redress."[343] Meaning once a consumer supers from the breach of any provision of the Competition and Consumer Protection Act, he can approach the court direct to seek for its redress without necessarily reporting the breach to the Competition and Consumer Protection Commission nor waiting for its findings.[344]

1.3.1.2 *Follow-On Action*

Follow-on action is almost a direct opposite of stand-along action. Under this kind of enforcement procedure, the plaintiff cannot initiate the proceeding on his own. He has to wait for the competition commission to identify an anti-competition conduct by a competitor. The competitor must either be found guilty by the competition commission or the court of law. If that happens, then the judgement so pronounced or the decision so given against the erring competitor

---

[342] Ibid p.146

[343] Section 146 (2) of the Competition Act

[344] Akinlolu, F.A. (2011) "A Critical Examination of Legal Remedies for the Tort of Passing off and Unfair competition under Nigeria Law". *University of Ibadan Journal of Private and Business Law. pp.* 69

becomes a cause of action upon which a plaintiff that feels negatively affected by the conduct can approach a court of law for an appropriate civil remedy. It is called "follow-on action" because the action of the plaintiff follows on the determination of either the competition authority or the court of law against the defendant.[345]

This kind of enforcement is also provided for under Sections 146 (1), (a-c) and 152 (a and b) of the Competition and Consumer Protection Act. The cumulative effect of these provisions is that, an aggrieved consumer has the right to in addition to the penalty the Competition and Consumer Protection Commission or any other sector specific regulator may imposed, commence an action in court against the erring undertaking for compensation or restitution as a follow-on action.

1.3.1.3 Persons that can Sue

Presumably, a person that can sue for any civil relief should be he that suffers loss of profit or any other interest or harm. Some regimes like the United States antitrust legislations have however blocked out some categories of persons who though may suffer some harm from being qualified to sue. This category of persons includes indirect purchases or consumers of goods and services.[346] Indirect purchasers are ... In South Africa some conditions are stipulated that a person seeking to sue must satisfy. Under that regime, before a person applies for any civil claim, such person must satisfy the provision of Section 65(6) and the sole requirement is being a victim of a prohibited act. The section provides: "A person who has suffered loss or damage as a result of a prohibited practice …"

The action can be brought by an individual or group of individuals by way of class action. Some jurisdictions specially made provision for class-actions. For example, in the United Kingdom, collective proceeding by a group of persons affected by the conduct of an undertaking is provided for in its Specialist Competition Appeal Tribunal Act. It allows for collective proceeding or class action only on the condition that, the collective arrangement allows for both "opt

[345] Turtle, W. and Sanger, C. (2018). EU Overview. In: Gotts, I.K. (ed.). *The Private Competition Enforcement Review*. 11th ed. The Law Business Research Ltd. p10

[346] Kai, H. and Peyer, S. Op. Cit p.5

in and opt-out" options (right to join the class action or exit from it) from the proceeding.[347]

1.4 Remedies in Private Enforcement of Competition Law

The reliefs for private enforcement are most times common law civil and equitable remedies. The reliefs that are commonly asked for by litigants are damages and injunctive relieves.[348] Each of them is briefly discussed below.

1.4.1 *Damages*

Damages is defined as the pecuniary compensation obtainable by a successful party for a wrong which is either a tort or a breach of contract. The purpose of an award of damages is to compensate the plaintiff for damage, injury or loss suffered. The rule is that the plaintiff is entitled to be placed in same position he would have been had the injury not been breached.[349]

In relation to competition law, the Indian Supreme Court has had a chance to interpret the meaning of damages in the following words:

The expression damages is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of varians stemming out of a core concept is seen in such works as actual damages, civil damages, compensatory damages, consequential damages, pecuniary damages, prospective damages, special damages, general damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (a) detriment to one by the wrong-doing of another (b) reparation awarded to the injured through legal remedies and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent – cum-denunciation by the law…[350]

Compensation must place claimants in the position in which they would have been had the infringement of competition law not been committed. Compensation must therefore cover actual loss, loss of profit and interest, and

[347] Jones, A.I. O*p. Cit.* p.20
[348] Ibid
[349] Ibidp.21
[350] Moodaliyar, J. *Op. Cit.* p.147

should not result in over compensation, whether by means of punitive, multiple or other damages.[351] It must also be such that is capable of creating deterrence effect on the defendant as well as any other player in the industry. Damages claim will be an effective deterrent to anti-competitive behaviour, and will contribute positively to the next stage of the evolution of enforcement in competition matters.[352]

1.4.2 *Injunctive Relief*

Another remedy that is available to private enforcer of an antitrust behaviour in addition to damages is injunctive relief.[353] However, whereas damages is mostly used as an *ex post* tool (post violation remedy), injunctive relief is *ex ante*, tool that is use before (to prevent) an alleged infringement of competition law.[354] A beneficiary of an injunction needs not wait until a breach has been committed, for if he has reason to believe that a person is about to do an unauthorised act, he may apply to the court for an injunction to restrain him.[355]An injunction is usually awarded where monetary compensation is an inadequate remedy. It may be awarded unconditionally or on such terms and conditions as the court may deem fit to make in the circumstances.[356]

Because of its nature, injunctive relief or application should be treated by both the court and competition authorities with all due expediency in order to cause the cessation of or prohibiting further harm causing damage as a result from another violation.[357] Injunctive relief is suitable to achieving both the behavioural and structural remedies. For example, any anti-competition behaviour of an undertaking or undertakings that is likely to negatively affect the applicant could be well arrested with an application for injunctive relief. Again, application can be made for an injunction against any agreement or an attempted

[351] Ibid p.149
[352] *First Inland Bank vs. Jeks (Nig.) Ltd.* (2014) 16 NWLR (pt 1434) 567 C.A. at 587 pp D-F
[353] Organa Chemical Industries vs. Union of India (1979) 4 SCC 573
[354] Turtle, W. and Sanger, C. *Op. Cit*. p.9
[355] Moodaliyar, J. et al p.150
[356] Kai, H. and Peryer, S. Op. cit p.2
[357] Kodilinye, G. (2005). *An Introduction to Equity in Nigeria*. Spectrum Books Limited, Ibadan p.137

business combination which may have the effect of creating dominance by an undertaking resulting to the above of same.

1.5 Taxonomy of Private and Public Enforcement of Competition Law

Scholars have strenuously debated on whether public enforcement of competition law alone could be efficient and capable of creating deterrence against violation of competition law and whether private enforcement is an appropriate tool or mechanism for enforcing compliance with competition legal framework. How, if possible can the two systems of enforcement, (private and public enforcement) exist under one regime? This sub-head, demonstrates how the two systems of enforcement relate and complement each other in the competition law enforcement process for optimal results. It also highlights the strength and weakness of each of them in the various aspects of the enforcement as follows.

1.5.1 Information Gathering and Possession

To successfully enforce violation of competition law, information gathering and possession is very crucial to both public and private enforcers. This entails, detecting an alleged conduct of an undertaking believed to be anti-competition conduct, in order to ascertain which type of violation it is. It involves the gathering of evidence that may be cogent to establish the guilt of the undertaking and to be able to qualify the damage it causes[358].

Gathering information for the purpose of enforcing antitrust violation is most times cost extensive that requires huge investment. It is thus argued, this capital intensive nature of information gathering imposes a deadweight loss on public enforcers on one hand being financed from the public purse. Private enforcers on the other hand being business undertakings may not suffer from the paucity of funds when gathering information.[359] This argument is however half-truth because there are kinds of information which cannot be detected using money but down-raid. Down raid can only be carried out by the state agencies.

[358] Kai, H. and Peryer, S. *Op. Cit* p.13
[359] Ibid

1.5.2 Capacity and quality of enforcement

Capacity for qualitative enforcement of competition law entails being fully endowed with both finances and expertise to enforce non-compliance. Under the heading immediately preceding this one, the point has been made that as far as finance in concerned, the competition authorities suffer budget constrained in most cases more than a private enforcer. This financial constrain may lead to having fewer manpower to work for the state authorities in the enforcement process. It may also affect the expertise of the competition authority's staff on the necessary steps for effective enforcement.[360]

Private enforcer may equally suffer from lack of expertise necessary for enforcement because, enforcement of compliance with state laws is not mostly their pre-occupation but profit making through production of goods and services. The existence of private enforcement in a jurisdiction will however give rise to the emergence of specialised private prosecuting and defence firms that a private enforcer can employ to do the job just like in the United States. In this instance, the existence of both private and public enforcement is very important in order to complement the capacity of each of the enforcement system. This complementary role will make the enforcement more robust and effective[361].

1.5.3 Sanctions and remedies

Deterrence is one of the major intent or objectives of anti-trust enforcement. Under public enforcement, deterrence is achieved through imposition of fine against the erring person for non-compliance. The basic objective of private enforcement however is compensation for the victim of antitrust violation. While this might be true, it is argued that, private enforcement complements public enforcement in creating deterrence. This is because, the damages to be awarded to the plaintiffs in form of compensation under private enforcement also create deterrence effect because, it places financial burden on the defendant. Thus, a sensitive defendant will always avoid this kind of punishment of competition laws.

[360] Ibid p.12
[361] Ibid

Some scholars[362] criticise severely employing private enforcement mechanism to enforce compliance with antitrust legislations. In their view enforcement of public laws should be left to public institutions specially established for that purpose. Thus, the public enforcer has the advantage of choosing the level of sanctions to be mated on each violator in public interest. Private enforcement to this people only creates free-ridding problems, strategic litigation and contains the risk of anticompetitive rival suits, private antitrust enforcement is costly mechanism to transfer wealth and may incentivise the use of antitrust laws to subvert competition.

1.6 Conclusion

The paper so far reveals it is generally unusual for undertakings to voluntarily comply with the regulatory framework for fair competition. In fact, it is the absence of this voluntary compliance that led to the passage of the legal regime, thus, deliberate effort has to be made to ensure compliance. The global practice is to use integrated enforcement approach which is recently supported by private investment that sometimes serves as alternative. The paper finds that, despites the importance of private enforcement approach, it is not however provided for in the legal framework for the regulation of fair competition in Nigerian telecommunication sector. The paper recommends that the Act and the Regulations should be amended to provide for private enforcement mechanism.

[362] Creamer, K. (1999) "Challenges of the New Competition Law". *South African Mercantile L.J. 342 1999*. p.12