

The NMDPRA Draft Competition Regulations 2026: Balancing Deregulation and Regulatory Intervention in Nigeria's Energy Sector



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Executive Summary

The Nigerian petroleum downstream and midstream sectors stand at a critical regulatory crossroads. On September 22, 2026, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) convened a major stakeholder consultation meeting in Abuja to review industry feedback on its landmark draft instrument: the Draft Midstream and Downstream Petroleum Prevention of Anti-Competitive Practices and Behaviour Regulations, 2026.

Promulgated pursuant to the powers conferred by Section 216 and relevant provisions of the Petroleum Industry Act (PIA) 2021, the proposed regulation introduces 138 comprehensive rules aimed at curbing monopolistic tendencies, price manipulation, infrastructure foreclosure and market abuse across the value chain.

While the fundamental objective of the PIA 2021 was to transition Nigeria's energy sector toward full market deregulation and commercial viability, the introduction of a dense sector-specific antitrust framework raises a vital policy question: How can Nigeria effectively curb market abuse without creating administrative bottlenecks that stifle much-needed private capital investments in midstream infrastructure?

The Policy Dilemma: Market Deregulation vs. Regulatory Intervention

Under classical economic principles, market deregulation relies on supply-and-demand dynamics to establish competitive equilibrium, drive efficiency and determine fair pricing. However,

post-deregulation energy markets, particularly those characterized by legacy infrastructure constraints and high barriers to entry, are highly susceptible to market concentration, cartelization and natural monopolies.

The NMDPRA's proposed regulations attempt to bridge this gap by defining the operational parameters of fair competition:

- **Horizontal & Vertical Restraints:** Prohibiting anti-competitive agreements, price-fixing, bid-rigging, market-sharing, supply quotas and resale price maintenance.
- **Essential Facilities & Access:** Enforcing open access mandates, non-discriminatory tariffs and prohibitions on capacity hoarding.
- **Abuse of Dominant Position:** Preventing exclusionary practices, predatory and differential pricing and unlawful cross-subsidization.

While these prohibitions align with global antitrust standards, market operators at the September consultation expressed concerns regarding potential regulatory overreach. Over-regulation in a newly deregulated environment risks substituting free-market price discovery with heavy-handed administrative oversight, potentially delaying capital deployment in processing plants, storage terminals and transport networks.

Three Core Pillars Under Scrutiny

1. "Essential Facilities" and the Open Access Mandate

A cornerstone of the proposed rules is the classification of strategic pipelines, jetties, storage terminals and processing hubs as essential facilities.

- **The Rule:** Facility owners are mandated to grant third-party access (TPA) on objective, transparent and non-discriminatory technical and commercial terms. Unreasonably withholding access, charging discriminatory tariffs, or “hoarding” unutilized capacity to exclude competitors is strictly prohibited (Regulation 10)
- **The Strategic Conflict:** While TPA prevents bottleneck monopolies and ensures smaller independent marketers can move products, it creates tension regarding investment returns. Private investors who assume substantial capital risk to build infrastructure argue that compulsory access rules must safeguard their operational priorities and preserve reasonable cost-recovery margins.

2. Abuse of Dominance vs. Legitimate Market Scale

Regulation 36 explicitly addresses dominant market players. The draft framework affirms that holding a dominant market position is not inherently illegal; rather, the abuse of that position to foreclose competition triggers enforcement action.

Prohibited abuses include:

- **Predatory Pricing:** Selling below cost to drive smaller competitors out of the market.
- **Tying and Bundling:** Forcing buyers to purchase unwanted secondary services as a condition for receiving core petroleum products.
- **Discriminatory Cross-Subsidization:** Utilizing profits from a monopoly segment (e.g., refining or pipeline transport) to unfairly subsidize retail distribution operations.

For vertically integrated players operating across refining, storage and retail, this necessitates strict arm’s-length transaction standards and transparent inter-company transfer pricing protocols.

3. Institutional Coordination: NMDPRA vs. FCCPC

A major topic of discussion during the Abuja stakeholder sessions was the potential for overlapping jurisdiction between the NMDPRA (under the PIA 2021) and the Federal Competition and Consumer Protection Commission (FCCPC, under the FCCPA 2018).

To address concerns regarding double jeopardy, conflicting reporting obligations and duplicative Merger & Acquisition (M&A) clearance processes, the NMDPRA and FCCPC entered

into a joint Memorandum of Understanding (MoU). This framework outlines concurrent jurisdiction procedures, establishing that sector-specific technical assessments remain with the NMDPRA, while broad antitrust principles are aligned with the FCCPC to ensure unified enforcement.

The Digital Frontier: Regulating Algorithmic Collusion

Uniquely tailored to modern commerce, the draft regulations extend antitrust oversight to digital trading platforms, centralized market-data clearinghouses and automated pricing algorithms. As downstream trading shifts toward digital exchanges and real-time market data platforms, competitors run the risk of algorithmic price-fixing, where automated pricing engines coordinate pump or ex-depot prices without explicit human collusion. The NMDPRA’s framework places strict limits on real-time price signaling and sensitive data exchanges among horizontal competitors, establishing clear boundaries between legitimate market transparency and illegal tacit collusion.

Strategic Recommendations for Energy Market Operators

To navigate this emerging regulatory landscape, energy companies operating in Nigeria’s midstream and downstream sectors should consider the following legal and operational steps:

- **Conduct a Competition Risk Audit:** Review existing long-term supply agreements, off-take contracts, third-party facility access terms and joint venture arrangements to identify clauses that may trigger anti-competitive scrutiny (e.g., exclusive dealing, resale price restrictions, or restrictive territorial allocation).
- **Formulate Standard Third-Party Access (TPA) Protocols:** Infrastructure owners should develop transparent, objective and published criteria for capacity allocation, tariff setting and technical access to withstand regulatory review.
- **Establish Clear Inter-Company Transfer Pricing Guidelines:** Vertically integrated operators must ensure that transactions between parent entities, refining units, logistics arms and retail operations are conducted at verifiable arm’s-length terms.
- **Implement Antitrust Compliance Training:** Trade association participation, joint bidding arrangements and informal information-sharing channels should be closely monitored by legal and compliance teams to prevent accidental price-signaling or cartel liability.

Conclusion & Outlook

The NMDPRA's Draft Competition Regulations 2026 represent a pivotal evolution in Nigeria's energy sector governance. By establishing concrete guidelines against market distortion, the regulator aims to build an open, efficient and transparent midstream and downstream ecosystem. However, achieving this

vision requires a careful balance, enforcing competition rules firmly enough to protect market participants and consumers, while maintaining a predictable, investor-friendly environment that encourages long-term capital deployment.

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