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Compendium of
CONSUMER
PROTECTION LAW
in Nigeria

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CHAPTER**3****CONSUMER PROTECTION IN THE NIGERIAN
TELECOMMUNICATIONS INDUSTRY****Dauda A Ariyoosu *****Abstract**

In recent years, and with the roll-out of Global System for Mobile Communications (GSM) in commercial quantity, the Nigerian telecommunications industry has recorded an unprecedented and monumental growth. This has engendered an exponential development in both the socio-economic and industrial activities of the country. However, despite the exponential growth in the industry, the telecommunications service providers are still battling with the need to meet up with the basic requirements of provision of minimum international standards in terms of quality telecommunications services. This has immensely affected consumers of telecommunications services who are the end-users of the various services being rendered by these service providers. Unfortunately, notwithstanding the relevant laws on both telecommunications and consumer protection with various statutory instruments put in place, there appears to be serious challenges militating against adequate protection of consumers in the telecommunications industry. Thus, the main objective of this work is to examine the

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consumer protection in the telecommunications industry in Nigeria. The specific objectives are: to examine the legal and regulatory frameworks for telecommunications in general and consumer protection in particular; examine the functions and powers of the various regulatory bodies on consumer protection in the telecommunications industry; identify the challenges facing consumers in the telecommunications industry with a view to proffering practical approach to addressing those challenges and identify ways of adequately protecting consumers of telecommunications services. In this work, analytical research methodology will be employed through a careful examination and evaluation of relevant legislation in both the telecommunications industry and consumer protection such as the Nigerian Communications Act 2003 and the Federal Competition and Consumer Protection Act 2018. Statutory instruments such as Nigerian Communications Commission Consumer Code of Practice Regulations 2007 shall also be examined. Consequently, it shall be shown that the government and telecommunications regulators have adopted different approaches in response to the current global trends in protecting the consumers in this ever-evolving telecommunications sector but which have not really engendered adequate protection to consumers in the telecommunications industry.

Keywords: Telecommunications, Consumer, Protection, Competition, Regulation.

1. Introduction

All over the world, telecommunications can be said to be the engine that engenders not only economic productivity but also its growth and development with the huge financial transactions being carried out daily over all available telecommunications services like fax, telephone, electronic

media and the Internet.¹ In order to ensure that existing multiple telecommunications operators play fair and square and act responsibly among themselves while satisfying the subscribers within the stipulated national interest, a national regulatory authority exists with the primary responsibility of regulating the telecommunications sector in a given economy.² In other words, the telecommunications industry is a key part that plays a crucial role in the world's economy and which is of strategic importance for a fair competition in the economy. This, in effect, makes clear the intent of liberalisation of telecommunications industry which is geared towards ensuring improved service delivery in terms of price, choice, quality of service and widened product range for a robust and overall economic prosperity.³

Regulatory reform is of necessity, not only for the developmental potential and indispensable role in economic advancement, but in ensuring the protection of the rights of consumers who may be aggrieved, in one way or the other, as a result of the services rendered to them by telecommunications operators. The efficiency of such a regulatory measure will enable sporadic and monumental boost in the telecommunications industry which will ultimately culminate in economic productivity. For these regulations to be beneficial and serve as an aid to transforming the telecoms industry and economic aid, they must be transparent, coherent and comprehensive spanning from the establishment of appropriate institutional framework to liberalising networks, industries, and advocating and enforcing competition policy and law as well as opening external and internal markets to trade and

¹ Telecommunications & Information Technology Practice Group <www.itlaw.strath.ac.uk/distlearn/downloads> accessed 5 May 2021.

² The regulatory authority or body is the Nigerian Communications Commission established vide the provisions of Section 3(1) of the Nigerian Communications Act 2003 while the international regulatory authority is the International Telecommunications Union (ITU). The ITU is an agency of the United Nations (UN).

³ See Organisation for Economic Co-Operation and Development (OECD) Reviews of Regulatory Reforms In Telecommunication <<http://www.ictregulationtoolkit.org/en/publication.2382.html>> accessed 9 March 2021.

investment;⁴ ultimately protecting the consumers of telecommunications services. In this paper, the history of telecommunications and consumer protection, the regulatory framework for telecommunications as well as the powers and functions of the relevant agencies saddled with the responsibility of steering the wheel of telecommunications advancement are considered within the Nigerian legislative framework. This, in effect, will X-ray the existing governing laws, effectiveness of the relevant agencies towards protecting consumers as well as suggesting workable practical implementation of consumer-related mandate, channels of seeking redress, identifying gaps and needed reforms.

2. Historical Background to Consumer Protection in Nigerian Telecommunications Industry

Telecommunications facilities before independence in Nigeria were first established in 1886 by the Colonial Administration when the first telegraphic submarine cable was laid through West Africa to Britain.⁵ A primate British firm known as Cable & Wireless Limited operated the system until the Nigerian Government joined it as a Senior Partner in 1962 under the name Nigeria External Telecommunications Limited (NET).⁶

At independence in 1960, with a population of roughly 40 million people in the country, the country had about 18,724 phone lines for use.⁷ Between 1960 and 1985, the telecommunications sector consisted of the Department of Post and Telecommunications (P&T) in charge of the Internal Network and a Limited Liability Company, the Nigerian External Telecommunication (NET) Limited, responsible for the External Communications Services.⁸ At

⁴ Ibid.

⁵ Revising Nigeria's Telecommunications Industry <www.nigeriabusinessinfo.com> accessed 20 April 2021.

⁶ DA Ariyoosu, *Nigerian Telecommunications Law and Regulation* (Stirling-Horden Publishers Ltd 2019) 6-7.

⁷ Ibid.

⁸ Ibid.

that period, telephone penetration remained poor and the quality of service was largely unsatisfactory. The system was invaluable, congested, expensive and customer unfriendly. This period may be regarded as the period where the need for consumer protection was of earnest necessity to protect the rights of consumers from the dwindling and unsatisfactory services rendered by operators.

Arising from the foregoing, in January 1985, the P & T Department was split into Postal and Telecommunications Divisions, which were later merged with NET to form Nigerian Telecommunications Limited (NITEL). Until 1999, NITEL had a monopoly on the telecommunications sector, and on assumption of office in 1999, the President Olusegun Obasanjo Administration swung into action to make reality, the complete deregulation of the telecommunications sector, most especially the much touted granting of licences to Global Systems for Mobile Communications (GSM) Service Providers.⁹ Thus, in August 2001 the GSM services were launched commercially and several GSM operators were licensed.¹⁰

3. Governing Laws on Consumer Protection in Nigerian Telecommunications Industry

The regulation of telecommunications services in Nigeria is far from sufficient and this has shown the obvious lapses in the telecommunications sector. This is because there are no sufficient statutes that specifically and directly provide for protection of consumers of telecommunications services. Although there are general statutes that are generally referred to as a matter of inference in the discourse of consumer protection in telecommunications services in Nigeria. The legal frameworks for the regulation of general consumer protection in Nigeria consist of the common law rules on contractual and tortious liability, case law and a plethora of legislation that

⁹ Ibid.

¹⁰ Osondu C Nwokeri; Regulatory Challenges in the Nigerian GSM Market, a Paper Presented at NBA 2004 Annual Bar General Delegates Conference, Abuja.

regulate different sectors of the economy.¹¹ One of the attendant effects of applying the general statutes is that it results in overlap and cluster of duties between the sector specific statutes and the commissions established by those statutes and consequently affecting the quality of services in the telecommunications sector.¹² This has added more fuel to the burning predicament of telecommunications services in the areas of adequately catering for consumer protection in Nigeria. However, all these statutes would be X-rayed with the intention of revealing their strength and the obvious lapses while suggestions would be proffered with a view to ensuring that emerging consumer-related complaints are legislatively catered for. This would douse down the attendant pressure on the telecommunications industry, while fostering prosperous relationship between consumers and telecommunications operators in Nigeria and ultimately boosting the economy with the potential of telecommunications services in fostering genuine growth and development in the sector. The governing laws will now be considered ranging from the sector specific to the general.

3.1 Nigerian Communications Act 2003¹³

The Nigerian Communications Act (NCA) established the Nigerian Communications Commission (NCC) and for other matters connected therewith.¹⁴ The Commission is established as a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name. By section 1 of the Act, the objectives of the Commission are to:

¹¹ AU Okechukwu, Legal and Regulatory Framework for Consumer Protection in Nigeria (Materials of 30 and 31 Workshops, ALPHAJURIS Continuing Legal Education Series 2008) 12.

¹² DA Ariyoosu, 'Legal Framework for the Protection of Consumers' Rights and Quality of Services: Nigerian Telecommunications in Focus' [2010] (1) (1) *Journal of Private and Property Law* 254.

¹³ Cap N97 LFN 2004.

¹⁴ See s 3 of the Act.

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- (a) promote the implementation of the national communications or telecommunications policy as may, from time to time, be modified and amended;
 - (b) establish a regulatory framework for the Nigerian communications industry and for this purpose to create an effective, impartial and independent regulatory authority;
 - (c) promote the provision of modern, universal, efficient, reliable, affordable and easily accessible communications services and the widest range thereof throughout Nigeria;
 - (d) encourage local and foreign investments in the Nigeria communications industry and the introduction of innovative services and practices in the industry in accordance with international best practices and trends;
 - (e) ensure fair competition in all sectors of the Nigerian communications industry and also encourage participation of Nigerians in the ownership, control and management of communications companies and organisations;
 - (f) encourage the development of a communications manufacturing and supply sector within the Nigerian economy and also encourage effective research and development efforts by all communications industry practitioners;
 - (g) protect the rights and interests of service providers and consumers within Nigeria;
 - (h) ensure that the needs of the disabled and elderly persons are taken into consideration in the provision of communications services; and
 - (i) ensure an efficient management including planning, co-ordination, allocation, assignment, registration, monitoring and use of scarce national resources in the communications sub-sector, including but not limited to frequency spectrum, numbers and electronic addresses, and also promote and safeguard national interests, safety and security in the use of the said scarce national resources.

These objectives are robust and seek to protect not only the consumers but also the licensees and government as well.

Specifically, Chapter VII of the Act provides for Consumer Affairs (Consumer Protection and Quality of Service).¹⁵ The Act provides the minimum standards of quality of service as the Commission may from time to time specify and publish;¹⁶ dealing reasonably with consumers;¹⁷ and adequately addressing consumer complaints.¹⁸ Chapter VII of the Act makes provision for the procedure the Commission should adopt in handling consumer disputes resolution.¹⁹ Provisions relating to Consumer Code, which sum up the intent of providing quality service to consumers, easy access to dispute resolution, protection of consumer information and other matters that pertain to reasonably meeting consumers' requirements are adequately provided for.²⁰

3.2 Telecommunications and Postal Offences Act 1995²¹

This is an Act that creates various offences and punishments for acts against telecommunications and postal services and provides for other matters connected therewith. Some of these offences are directly or indirectly related to protection of consumers of telecommunications services and are discussed below.

a. Tampering with wireless cables

By section 1 of the Act, it is unlawful for any person, without lawful authority, to disconnect, remove, damage, destroy, tamper or meddle with or in any other way interfere with any cable, cabling material, wireless system, wire or assembly of wires, used for the conveyance of telephone, telegraph, visual messages, images or information. An individual who damages cables or a wireless system of a consumer of telephone can be sued under this Act.

¹⁵ S 104, NCA.

¹⁶ S 104(a), NCA.

¹⁷ S 104(b), NCA.

¹⁸ S 104(c), NCA.

¹⁹ S 105, NCA.

²⁰ S 106 NCA.

²¹ Cap T4 LFN 2004 as amended by the Telecommunications and Postal Offences Act 2016.

b. Diversion of telephone lines

Any person who, without lawful authority, diverts, in any way whatsoever or to another place or address, a telephone line which-

- i. has or has not been allocated to a subscriber by an operator; or
 - ii. has been allocated to or installed at a specified address;
- is guilty of an offence under section 4 of this Act.

This provision clearly prohibits unlawful diversion of consumer telephone lines to another person. The provision in respect of this offence has similarity with the provision of section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides for the right to privacy of citizens in their homes and telephones.

c. Fraud-related offences

Section 5 of the Telecommunications and Postal Offences Act prohibits various fraudulent actions against consumers of telecommunications services such as:

- i. crediting the account of a subscriber with an amount that was not paid into the account;
- ii. cloning, programming or activating the programme data of a mobile telephone that has been allocated by an operator for use in connection with the mobile telephone of some other person; and
- iii. communicating to an unauthorised person, the programme data or electronic serial number of a mobile set that has been allocated to another person, etc.

Other provisions abound in this Act which protect consumers of telecommunications against infringement on their right to an unfettered telecommunications services at all times. Among other notable offences provided for by this Act are call-back operations, personation and touting.

3.3. Wireless Telegraphy Act 1998²²

This is an Act that makes provisions for the regulation of wireless telegraphy. The bulk of the provisions deal with licence matters but there exist a number of provisions which provide for matters relating to consumer protection in telecommunications services in Nigeria. Section 9 of the Act bestows on the Commission²³ the power to make regulations as to wireless telegraphy for things to be done and not to be done. In section 10, the Act, in that spirit, provides for prohibition of misleading messages and interception and disclosure of messages. The section provides thus:

- 10 (1) No person shall-
- a. by means of wireless telegraphy, send or attempt to send, any message which, to his knowledge, is false or misleading and which to his knowledge, is likely to prejudice the efficiency of any safety of life service or endanger the safety of any person or of any vessel, aircraft or vehicle, and in particular, any message which, to his knowledge, falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or not in need of assistance; or
 - b. otherwise than under the authority of the Commission, or in the course of his duty as a servant of the state, either-
 - i. use any wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addressee of any message (whether sent by means of wireless telegraphy or not) which neither the person using the apparatus nor any person on whose behalf it is acting is authorised by the Commission to receive; or
 - ii. except in the course of legal proceedings or for the purpose of any report thereof, disclose any information as to the contents, sender or addressee of any such message being information

²² Cap W5 LFN 2004.

²³ By the effect of s 3 of the Wireless Telegraphy Act.

which would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or by another person.

By section 10(2), any person who contravenes the provisions of subsection (1) of this section, shall be guilty of an offence.

In addition, the Wireless Telegraphy Regulations made pursuant to the Wireless Telegraphy Act also provide in Rule 40 that:

The licensee of the wireless telegraphy services shall preserve all used message forms written and printed, and transcripts of messages and all other papers for such period prescribed by the International Telecommunications Convention and the registers and message papers shall be open to inspection by the Director-General or any authorised officer.

3.4 Federal Competition and Consumer Protection Act 2018

The Federal Competition and Consumer Protection Act (FCCPA) 2018 established the Federal Competition and Consumer Protection Commission with the responsibility of initiating broad-based policies and reviewing economic activities in Nigeria with a view to identifying anti-competitive and anti-consumer protection and restrictive practices.²⁴ The Act also established the Competition and Consumer Protection Tribunal to hear and determine matters arising from the application of the Act, including trial of violators of its provisions to ensure fair competition in the marketplace in Nigeria.²⁵ The Tribunal is also empowered to hear and determine appeals and review decisions of the Commission. The Act is designed to promote and maintain competitive markets and economic efficiency.²⁶ It is also aimed at protecting the interests and welfare of consumers²⁷ and preventing restrictive and unfair business practices.²⁸

²⁴ S 3 FCCPA.

²⁵ S 39 FCCPA.

²⁶ S 1 (a) FCCPA.

²⁷ S 1 (c) FCCPA.

²⁸ S 1 (d) FCCPA.

Consumer protection covers a wide range of areas, such as competition and protection of consumers, restrictive practices, national policies pertaining to all goods and services, removal or elimination of hazardous goods and services from the market, unfair business practices, fraud, misrepresentation and other consumer interactions linked to the idea of consumer rights.²⁹

Aside the Federal Competition and Consumer Protection Act, there are many other laws that regulate consumer protection in Nigeria.³⁰ Some of these laws are sector specific and are applicable to the sector to which they cover. The Federal Competition and Consumer Protection Act, on the other hand, has a wider coverage and general application and thus its relevance to the protection of consumers of telecommunications services.

3.5 Standards Organisation of Nigeria Act 2015

The Standards Organisation of Nigeria Act 2015³¹ established the Standards Organisation of Nigeria as a statutory body to implement the provisions of the Act. It is saddled with the responsibility of standardising and regulating the quality of all products in Nigeria. Since telecommunications services involve telecommunications products, it brings it under the ambit and purview of products regulated by the Standards Organisation of Nigeria.

4. Subsidiary Legislation (Regulations and Guidelines) on Telecommunications Industry in Nigeria

Some regulations have been issued overtime in the telecommunications industry to serve as appendages and to complement the implementation and enforcement of the principal Act. These regulations stem out of the need to fill some perceived vacuums arising from the implementation of the Act. In

²⁹ See generally s 17, FCCPA.

³⁰ Some of these laws include: The Standards Organisation of Nigeria Act 2015, Weights and Measures Act, Cap W3 LFN 2004, National Agency for Food and Drug Administration and Control Act, Cap N1 LFN 2004 and Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act Cap C3 LFN 2004.

³¹ No 14, 2015.

other words, these regulations are essential as a needed embellishment to ensure a wider coverage and smooth operation of the Act.

The Nigerian Communications Commission, being a commission established vide the Nigerian Communications Act has multifarious regulations more than any other law which tend to pitch its effect in ensuring protection of consumers in the telecommunications industry. It is necessary to give a brief highlight of these regulations by considering relevant provisions embedded therein which are relevant to the protection of consumers of telecommunications services and whether or not they are viable enough to meet emerging trends in the industry.

4.1 Universal Access and Universal Service Regulations 2007

These Regulations were made vide the Nigerian Communications Act and operate to complement the provisions of the Act and the operation of the Commission. This is clear from the objectives of the Regulations which provide thus:

- 1(1). These regulations are made to provide a framework for the design and implementation of a system of universal access and universal service provision pursuant to Chapter VII of the Act and all matters related thereto.
- 1(2) The ultimate objectives of the system of universal access and universal service provision described in sub-regulation 1 of this regulation are to-
 - a. promote greater social equity and inclusion for the people of Nigeria; and
 - b. contribute to national economic social and cultural development of Nigeria.

Specifically, the provision of regulation 1(2)(a) shows clearly that the Regulations have in contemplation, the protection of consumers of telecommunications services.

4.2 Consumer Code of Practice Regulations 2007

This is another instrument made pursuant to the Nigerian Communication Act aimed at meeting consumers' need. The foundation for these Regulations is laid down in section 106 of the Act which aims at reasonably meeting consumers' requirements, handling of customer complaints and the protection of consumers' information, among others.

The provision of regulation 2 encapsulates the objectives of these regulations as it provides thus:

The specific objectives of these regulations are to confirm and clarify the procedures to be followed by licensees in preparing approved consumer codes of practice in accordance with section 106 of the Act, and to determine and describe the required contents and features of any consumer code prepared by, or otherwise applicable to licensees.

While the Consumer Code of Practice Regulations provide extensively for regulations regarding licensed telecommunications operators, the General Consumer Code of Practice is a broader version of the former which is also published under the Nigerian Communications Act 2003 which contemplates the development of a consumer code that would govern the provision of services by licensed telecommunications operators in Nigeria.

4.3 Telecommunications Networks Interconnection Regulations 2007

These Regulations also emanate from the Nigerian Communications Act 2003 and seek to protect not only the consumers but also the licensed telecommunications operators. These Regulations contain elaborate provisions governing agreements on interconnection. They provide that interconnection agreements shall not intentionally mislead the other party, and shall be devoid of coercion and obstruction of negotiation. Interconnection agreements shall be made in writing and must be in compliance with the provisions of the Act. The Regulations also provide that

interconnection agreements must be premised on the principles of neutrality, transparency, non-discrimination, fair competition, cost orientation, universal coverage, access to information, equality of access and equal terms and conditions.³²

4.4 Competition Practices Regulations 2007

The impact of competition on the quality of services rendered to consumers cannot be overemphasised in the telecommunications industry. Competition Practices Regulations have been made to see to the attendant effects of competition and to provide guidance regarding the standards and procedures, which the Commission will apply in determining whether a particular conduct constitutes substantial lessening of competition in the telecommunications industry.³³

These Regulations intend to provide a framework for the promotion of fair completion in the communications sector and protection against misuse of market power or other anti-competitive practices.³⁴

4.5 Type Approval Regulations 2008

These Regulations seek to promote and ensure that communications equipment used in communications network are safe while identifying applicable standards including those promulgated by international bodies.³⁵ These objectives are channelled towards ensuring that quality services are rendered to consumers of telecommunications services.

4.6 Numbering Regulations 2008

These Regulations are also customer-based and seek to protect the interests of consumers of telecommunications industry. The objectives of the Regulations are stated thus:

³² Regulation 3, Telecommunications Networks Interconnection Regulations 2007.

³³ Regulations 2, 3, 4 and 5, Competition Practice Regulations 2007.

³⁴ Regulation 1, Competition Practice Regulations 2007.

³⁵ Regulation 2, Type Approval Regulations 2008.

These regulations are intended to promote investment, facilitate competition and protect customers by ensuring that-

- a. numbers are understood to be national resources that are not owned by customers or licensees;
- b. numbers can be assigned efficiently, quickly, transparently and fairly, without undue discrimination against particular customer classes, licensee types and communications technologies;
- c. shortages of numbers can be predicted and prevented in timely ways; and
- d. uses of numbers can be monitored and controlled to avoid detriment to the interest of customers.³⁶

4.7 Quality of Service Regulations 2013

These regulations are intended to adequately cater for the quality of services rendered to the consumers. The objectives of the Regulations are to:

- a. ensure the protection and promotion of the interests of consumers against unfair practices including matters relating to tariffs and charges, the availability and quality of communications services, equipment and facilities;
- b. improve service quality by identifying service deficiencies and by encouraging, enforcing, effecting or requiring appropriate changes solutions;
- c. maintain service quality, while recognising environmental and operating conditions;
- d. make available information that will help customers make an informed choice of services and service provider;
- e. improve the operations and performance of interconnected networks; and

³⁶ Reg 2, Numbering Regulations 2008.

- f. assist the development of related telecommunications markets.³⁷

4.8 Wireless Telegraphy Regulations 1969

The protection of information and communications of consumer from unlawful authority is a fundamental right of consumers in the telecommunications industry. These Regulations in regulations 5 and 18 provide for secrecy of communications from unlawful authority.

5. Consumer-Related Functions and Powers of Relevant Regulatory Agencies

The various regulatory agencies in the telecommunications industry have enormous functions which are stipulated under the law that established them and emphasised in the subsidiary legislation made thereto. However, there are duties and responsibilities to be discharged by consumers to ensure that the damage they incur is not self-induced and to protect the dignity of the telecommunications agencies and operators. These shared responsibilities and roles ensure fair play in the relationship between consumers and operators. Therefore, consumers are, as a matter of law, bound by the licensee's terms of service. Some of the duties of consumers in the telecommunications industry include access to equipment for maintenance of services and non-interference with service equipment.³⁸

It is apt to highlight the functions and powers of the regulatory agencies in the telecommunications industry as they relate to protection of consumers.

5.1 Powers and Functions of the Nigerian Communications Commission

The powers and functions of the Commission under the Nigerian Communications Act 2003 include:

³⁷ Reg 2, Quality of Service Regulations 2013.

³⁸ See codes 28-33, General Consumer Code of Practice.

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- a. the facilitation of investments in and entry into the Nigerian market for provision and supply of communications services, equipment and facilities;
 - b. the protection and promotion of the interests of consumers against unfair practices including but not limited to matters relating to tariffs and charges for and the availability and quality of communications services, equipment and facilities;
 - c. the promotion of fair competition in the communications industry and protection of communications services and facilities providers from misuse of market power or anti-competitive and fair practices by other service or facilities providers or equipment suppliers;
 - d. the development and monitoring of performance standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria having regard to best international performance indicators;
 - e. proposing, adopting, publishing and enforcing technical specifications and standards for the importation and use of communication equipment in Nigeria and for connecting or interconnecting communications equipment and systems;
 - f. carrying out type approval tests on communications equipment and issuing certificate there from on the basis of technical specifications and standards prescribed from time to time by the commission;
 - g. examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such dispute-resolution methods as the commission may determine from time to time including mediation and arbitration; and
 - h. preparation and implementation of programmes and plans that promote and ensure the development of the communications industry and the provision of communications services in Nigeria.³⁹

³⁹ Section 4(1) of the NCA, Cap N97 LFN 2004.

There are no specific functions contained in the Telecommunication and Postal Offences Act and the Wireless Telegraphy Act. This is because the Nigerian Communications Commission is the regulatory agency saddled with the administration of the objectives of these laws. It could therefore be reasonably deduced that the functions and powers of the Nigerian Communications Commission are applicable to the operation of these Acts.

5.2 Federal Competition and Consumer Protection Commission

The Commission is established by the Federal Competition and Consumer Protection Act 2018. This Act specifically provides for some functions and powers of the Commission in discharging its responsibilities. These functions include:

- (a) the administration and enforcement of the provisions of the Act and any other enactment with respect to competition and protection of consumers;
- (b) initiating broad based policies and review economic activities in Nigeria to identify anti- competitive, anti-consumer protection and restrictive practices which may adversely affect the economic interest of consumers and making rules and regulations under the Act and any other enactment with regards to competition and protection of consumers;
- (c) advising the Federal Government generally on national policies and matters pertaining to all goods and services and on the determination of national norms and standards relating to competition and consumer protection;
- (d) reporting annually on market practices and the implications for consumer choice and competition in the consumer market;
- (e) advising the Federal Government on any matter relating to the operation of the Act including making recommendations to the Federal Government for the review of policies, legislation and subsidiary

legislation as considered appropriate or as may be requested by the Federal Government or any of its ministries, departments or agencies for the eradication of anti-consumer protection and anti-competitive behaviour;

- (f) giving and receiving advice from other regulatory authorities or agencies within the relevant industry or sector on consumer protection and competition matters;
- (g) protecting and promoting consumer interests;
- (h) organising or undertaking campaigns and other forms of activities capable of promoting increased private and public consumer awareness;
- (i) encouraging trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers;
- (j) causing all imported goods to be registered for traceability whenever the need arises;
- (k) collaborating with consumer protection groups and associations for consumer protection purposes;
- (l) ensuring that consumers' interest receive due consideration at appropriate fora and provide redresses to obnoxious practices or the unscrupulous explanation of consumers by companies, firms trade associations or individual;
- (m) ensuring the adoption of appropriate measures to guarantee that goods and services are safe for intended or normally safe use.
- (n) collaborating with international organisations and agencies, firms, organisations, groups or people for the purpose of exchange of information to locate the source of substandard goods;

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- (o) undertaking regular research, study and analysis of consumer product standard and service rendered to the consumer and publish relevant observations, findings and recommendations in journals or other forms of publications for the benefit and general information of consumers;
 - (p) collaborating with government agencies or professional bodies in establishing and using laboratories, testing facilities, common procedures in ensuring or enforcing standards of consumer goods or in assessing the quantum loss or damage;
 - (q) acting generally to reduce the risk and injury which may occur from consumption of certain consumer items and other services rendered to consumers which actions may include restriction or prohibition; and
 - (r) causing an offending company, firm, trade, association or individual to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous.⁴⁰

In addition to the above stated functions and to ensure due and effective discharge of the functions, the Commission is bestowed with the powers to-

- (a) establish specialised departments and units as are considered necessary for the effective and efficient discharge of its functions under the Act;
- (b) prevent the circulation of goods or services which constitute a public hazard or an imminent public hazard;
- (c) compel manufacturers, suppliers, dealers, importers, wholesalers, retailers, providers of services and other undertakings to comply with the provisions of this Act;
- (d) cause quality tests to be conducted on consumer goods as it deems necessary;

⁴⁰ Section 17, FCCPA

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- (e) compel manufacturers, suppliers, dealers, importers, wholesalers, retailers, or other undertakings where appropriate to-
 - (i) certify that all standards are met in their goods and services; and
 - (ii) give public notice of any health hazards associated with their goods or services;
 - (f) seal up any premises on reasonable suspicion that such premises contain, harbour or are being used to produce or disseminate goods or services that are fake, substandard, hazardous or inimical to consumers' welfare in collaboration with relevant sector regulators;
 - (g) undertake studies and publish reports to provide information on matters that affect the interest of consumers and co-operate with or assist any association or body of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of the Act; and
 - (h) make regulations relating to the charging and collection of fees, levies, fines and the imposition of administrative penalties.⁴¹

6. Channels of Redress

These are the channels through which aggrieved consumers can seek redress. The institution of remedies stems from the fact that consumers should have the right to express their grievances and seek redress where products or services are not satisfactory. This, in essence, would guarantee and increase consumers' confidence in telecommunications system and its social and economic benefits.⁴²

In an effort to ensure adequate protection of consumers' rights in the telecommunications industry, the NCC is conferred with the power to set up necessary machinery to address consumer disputes. Section 105 of the Nigerian Communications Act provides:

⁴¹ Section 18, FCCPA.

⁴² DA Ariyoosu, *Nigerian Telecommunications Law and Regulation* (n 6) 84.

105(1) The Commission may use any of its powers under this Act in the resolution of complaints received from consumers in relation to matters of customer services and consumer protection including but not limited to quality of service or the failure by a licensee to comply with consumer code prepared under this chapter.

(2) the Commission shall establish procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees and may, at its discretion, institute alternative dispute resolution processes for the resolution of the complaints or disputes provided that the licensee's dispute resolution procedures shall first have been exhausted by the consumer without resolution of the complaint before presentation of the complaint to the Commission.⁴³

In the exercise of the powers conferred upon it by section 70 of the Nigerian Communications Act and all other enabling powers, the Commission made the NCC (Enforcement Processes Etc.) Regulations 2019⁴⁴ to carry out its monitoring and enforcement duties and all other functions ancillary thereto. It also made the Dispute Resolution Guidelines 2004,⁴⁵ pursuant to the provisions of sections 4(1) and 75(2) of the Nigerian Communications Act. The Dispute Resolution Guidelines provide for consumer resolution by arbitration rules, mediation procedure rules and rules for the arbitration of interconnection issues and disputes.

The Federal Competition and Consumer Protection Act, on the other hand, provides for redress of violations of the rights of consumers. It provides for civil action for compensation in addition to other applicable forms of redress.

⁴³ See also code 53 of the General Consumer Code of Practice.

⁴⁴ Nigerian Communications (Enforcement Processes, Etc.) Regulations, S. I. No. 13, 2019.

⁴⁵ See Nigerian Communications Commission Dispute Resolution Guidelines 2004.

Thus, by section 27 (3) of FCCPA, the Federal Competition and Consumer Protection Commission is empowered to take any interim measures if there are grounds for believing that any civil or criminal violation of the provision of the Act was, is being or will be committed. Such interim measures include entering and searching any premises and inspecting and removing any article, document or extract in the possession of any person.

Section 39 of the Act also establishes the Competition and Consumer Protection Tribunal to adjudicate over conducts prohibited under the Act and exercise the jurisdiction, power and authority conferred on it under the Act or any other enactment.

The Wireless Telegraphy Act also provides for redress which enables any consumer not satisfied with the decision of the Council to appeal to the High Court. The High Court may, upon such an application, direct that the NCC's notice shall not operate until a particular date, not later than the termination of the appeal.⁴⁶

Since the legal frameworks for the regulation of general consumer protection in Nigeria consist of the common law rules on contractual and tortious liability, redress could be from these areas against erring operators.

7. Gaps and Areas Needing Reform

Despite the remarkable impact and input of the Nigerian Communications Act and other relevant statutes, there are still some floating complaints which remain unattended to due to the state of the regulatory regime in the telecommunications industry.

Some authors have subjected the Nigerian Communications Commission to intense criticisms as a result of poor handling of consumer complaints by telecommunications operators. Since the deregulation of the sector with the

⁴⁶ See sections 14 and 15 of the Wireless Telegraphy Act, Cap W5 LFN 2004.

introduction of the Global System for Mobile Communications (GSM), Code Division Multiple Access and Internet Service Providers have been a major concern to telecoms consumers both for telephony and internet services. This has revealed that subscribers across the telecoms spectrum are not adequately treated.⁴⁷

First, viable customer complaints resolution is highly required to ensure that the multitudes of complaints brought by customers in the telecoms industry are speedily attended to. The existing resolution mechanism cannot match with the several complaints that are emerging as a result of poor services in the telecoms industry. The resolution mechanisms must be fair, fast and transparent. However, there is a need for customers to register their complaints without being deterred by the present lock jam in order to ensure a barometer on consumer losses and unfair practices.⁴⁸ The laws can never be effective except the aggrieved puts it to test.

Secondly, non-substantial employment of power of sanctions to ensure compliance by operators has remained a source of weakness under the Nigerian Communications Act. The Act empowers the Commission to employ sanctions to enforce compliance with the provision on good quality of service to consumers. Despite the key performance indicators drawn up by NCC such as call set up, success rate, call completion rate, stand-alone dedicated control channel and handover success rate, among others, there are still complaints of poor voice quality, poor customer service accessibility, poor network availability, dropped calls, poor network range and exorbitant deductions. The power of sanction should be fully employed to ensure compliance.⁴⁹

⁴⁷ MP Okom and JO Enyia, 'The Impact of the Telecommunications Regulatory Agency on Consumer Protection in Nigeria' (6) *International Journal of Scientific Research and Management* 3.

⁴⁸ Ibid.

⁴⁹ Ibid.

Thirdly, low number of consumer interface centres by operators is another criticism against the enforcement powers of NCC in ensuring easy access and speedy response to consumer's complaints. This issue has been found to be a major discouragement on the part of consumers in registering their complaints to operators of telecommunications industry. This also amounts to an infringement of the right of access which the operators owe consumers. It therefore goes without saying that operators should be mandated by NCC to establish sufficient customer interface centres, depending on their coverage and geographical size in each state where they operate. This will ensure timely handling of consumer complaints and reduce the friction between operators and consumers in the discharge and enforcement of their duties.

Fourthly, exploitation in advertisement and promotional services are other issues of concern to consumers of telecommunications services in Nigeria. It is evidently clear that the right of choice is an indispensable right which consumers have against the monopolistic tendencies and practices in the telecommunications marketplace. Many reports abound in both administrative reports and judicial decisions which show how telecommunications operators foist some services on unwilling consumers in the guise of advertisement and promotional services. Such acts amount to fundamental breaches as they introduce new terms into the contract between the operators and the consumers. One of such judicial decisions that illustrate the foisting of services on consumers under the guise of advertisement and promotional services is the case of *MTN Communications Ltd v Amadi*.⁵⁰ The NCC is expected to institute effective enforcement mechanisms to prevent the prevalent violations of consumers' right by operators.

Generally, there is the need for robust reforms through regulatory framework and other measures including administrative directives, policies as well as

⁵⁰ (2013) All FWLR (Pt 670) 1335. See also the cases of *Ladipo v Lajide* (1973) 5 SC 207, *Koiki v Magnusson* [1999] 8 NWLR (Pt 615) 492, *International Textile Ind. (Nig.) Ltd v Aderemi* [1999] 8 NWLR (Pt 614) 268.

guidelines to ensure that consumers of telecommunications services are adequately protected against exploitative activities of operators in the telecoms industry.

The following suggestions will ensure a robust development of consumer protection in the telecommunications industry:

- a. **Public Awareness and Sensitisation of Consumers of Telecommunications Services:** The NCC, FCCPC, Government and non-governmental organisations should organise public awareness programmes to educate consumers of telecommunications services on their rights and intimate them of channels of redress when those rights are breached.
- b. **Legal and Regulatory Reforms:** The regulatory regime should be amended to ensure that there is harmonisation of the various laws on consumer protection to adequately cater for new emerging areas of consumer protection in the telecommunications industry. Relevant agencies should merge to ensure more administrative effectiveness and efficiency towards enforcing dictates contained in various laws on consumer protection in Nigeria. This singular step will prevent overlaps in the discharge of functions by regulatory agencies and ensure specific legislation that directly focuses on issues of consumer protection in the telecommunications industry in Nigeria.
- c. **Enforcement Mechanisms and Redress:** The regulatory agencies should be more rigidly empowered through more proactive enforcement mechanisms that serve as watchdogs on the activities of telecommunications operators with the customers. Some of the mechanisms may include: adoption of strict service/product liability, establishment of legal units in all enforcement agencies, inspection or oversight functions by regulatory agencies, review of penalty provisions and removal of exemption of liability clause, among others. Simple, less technical and less financial demanding legal mechanisms for resolving disputes should evolve to ensure that

consumers with genuine complaints are legally advised on steps to seek redress. The extant Nigerian Communications Commission Arbitration Guidelines should be adjusted to reflect the aims and objectives of a stricter regulatory regime in the telecommunications industry. This will ensure a speedy resolution of consumer complaints devoid of any bottleneck.

- d. **Governmental Aid and Support:** This is necessary in ensuring adequate implementation and enforcement of policies. Internal best practices should be adopted to ensure that consumer protection regulations in Nigeria adhere to global best practices and emerging trends in developed countries of the world.

8. Conclusion

This paper has examined the regulatory framework for consumer protection in the telecommunications industry in Nigeria. There is an obvious multiplicity of existing legislation resulting in multiplicity of challenges bedeviling the protection of consumers in the industry.

Various issues, prominent among which are regulatory overlaps; institutional conflicts; and inadequate consumer dispute resolution schemes by telecoms service providers are militating against effective protection of consumers in the telecommunications industry in Nigeria.

It is important that the issues identified in this regard are addressed to ensure improvement of quality of service in the telecommunications industry. The regulatory agencies should synergise and collaborate in the discharge of their functions as they affect consumer protection in the industry.

ABOUT THE BOOK

The Compendium gives an overview of consumer protection and competition law in Nigeria. In addition, the following sectors are discussed: Electric Power, Food and Drugs, Aviation, Petroleum, Financial Services, Transport and Tourism, Insurance, Intellectual Property, and Telecommunications. Other areas elaborated on are Electronic Commerce, Data Protection, Sale of Goods; Pre-Action Notice and Access to Justice; Standardisation of Products; Economic Analysis of Consumer Law and Policy; COVID-19; and Baseline Survey of the Level of Consumer Awareness in Three Tertiary Institutions in Nigeria.

The Compendium is based on a format produced by the coordinators to achieve a uniform standard and ensure that vital aspects of the subject are covered.

Essentially, the Compendium is based on laws governing selected sectors that are considered particularly relevant to consumers. Civil liability for defective products and services is highlighted in the chapter on Synopsis. An aspect of consumer protection vital to ultimate consumers is availability of effective dispute resolution schemes. The various channels of redress that may be utilised by consumers to enforce their rights in different sectors are articulated in each chapter.

The Federal Competition and Consumer Protection Act 2018 (FCCPA) is added in the appendix as it is the most comprehensive consumer protection law in Nigeria. Unlike other laws on the subject which are sector-specific, the FCCPA extends to all undertakings and all commercial activities transacted or having effect within Nigeria. The wide scope of this Act, coupled with some novel provisions contained therein, informed the inclusion of the Act as an appendix. This will also provide accessibility of the Act to readers

ABOUT THE EDITORS

This book was edited by the following five professors from five universities in Nigeria: Professor Felicia Monye, Editor-in-Chief (Faculty of Law, University of Nigeria, Enugu Campus), Professor Adedeji Adekunle, SAN (Nigerian Institute of Advanced Legal Studies, Abuja), Professor Festus Emiri, SAN (Delta State University, Abraka), Professor Hudu Ayuba (Ahmadu Bello University, Zaria) and Professor Nyitor Shenge (University of Ibadan).

The authors, from diverse universities in Nigeria, who contributed the various chapters of the book are experts in different aspects of consumer law as well as the social sciences and other related fields.