

**CONSUMER PROTECTION IN THE TELECOMMUNICATION SECTOR IN
NIGERIA**

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**BEING A LONG ESSAY IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR
THE AWARD OF A BACHELOR OF LAWS (LL.B HONS) SUBMITTED TO THE
FACULTY OF LAW OF THE UNIVERSITY OF BENIN, BENIN CITY, NIGERIA.**

JULY, 2021

DECLARATION

I hereby declare that this project '**CONSUMER PROTECTION IN THE TELECOMMUNICATION SECTOR IN NIGERIA**' is the product of my own research effort undertaken under the supervision of **Elizabeth Iyamu-Ojo (Mrs.)** and has not been presented elsewhere for the award of any degree or certificate. All sources have been clearly stated and acknowledged.

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CERTIFICATION

I, **Blessed Moses IHINMHINJE** with **Mat No. LAW1504333** hereby certify that apart from references to other people's work which has been duly acknowledged, the entire study is a product of my personal research and that this project has neither in whole or in part been submitted for another degree elsewhere.

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APPROVAL

This Project has been read and approved as meeting the requirement for the award of a Bachelor of Laws (LL.B Hons) in the Faculty of Law of the University of Benin, Benin City, Nigeria.

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DEDICATION

This research work is dedicated to the almighty God, the source of true knowledge and the giver of good gifts and perfect presents.

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| | |
|----------|---|
| AC | Appeal Cases |
| ADR | Alternative Dispute Resolution |
| ALL ER | All England Report |
| All FWLR | All Federation Weekly Law Report |
| CCHCJ | Selected Judgments of the High Court of Lagos State |
| CMTS | Cellular Mobile Telephone Services |
| GCC | General Consumer Code |
| GSM | Global System for Mobile Communication |
| ICASA | Independent Communications Authority of South Africa |
| KPI | Key Performance Indicator |
| LFN | Laws of Federal of Nigeria |
| LPELR | Law Pavilion Electronic Law Report |
| NCC | Nigeria Communications Commission |
| NITEL | Nigeria Telecommunications Limited |
| NWLR | Nigerian Weekly Law Report |
| PTN | Private Telecommunications Network |
| QoS | Quality of Service |
| QSR | Quality of Services Regulations |
| SATRA | South African Telecommunications Regulatory Authority |
| SMS | Short Message Service |
| TCCR | Telecom Consumers Protection Regulations |
| TCCCPR | Telecom Commercial Communications Customer Preference Regulations |

| | |
|-------|---|
| TCPA | Telephone Consumer Protection Act |
| TDSAT | Telecom Dispute Settlement and Appellate Tribunal |
| TRAI | Telecom Regulatory Authority of India |
| UAS | Unified Access Services |
| USA | Universal Service Agency |
| USF | Universal Service Fund |

ABSTRACT

Communication right from creation is a very essential aspect of human existence. Just as it is obtainable in other parts of the universe, the concept of consumer protection is same in Nigeria. It is designed to protect consumers from unscrupulous producers and service providers. The telecommunication sector in Nigeria is an active participant in this development as seen in the accelerated growth of the industry with one innovation replacing another in quick succession.

Following the opening up of the telecommunication sector of the Nigerian economy in 2002, telecommunication services became widely available in the country with the number of active telephone lines presently trying to equal the population of the country.

However, with the rapid growth of the telecommunication industry and the consequent expansion of its consumer base, consumer dissatisfaction has become rife in Nigeria. Consumer complaints against telecommunication services provider include call interference and loss of audio, high rates of call attempts, recurrent downtimes, long delay and non-delivery of SMS, multiple deliveries of a single SMS and unsolicited commercial text messages.

While the government has responded through the enactment of legislations, with the aim regulating the telecommunication sector, the issue of consumer dissatisfaction still continues amidst these legislations.

Utilizing the doctrinal research methodology, this research work seeks to the efficiency of the regulatory frame work on the regulation of the telecommunication sector and consumer protection in Nigeria. The research work concluded by making salient recommendation which implemented will ensure more protection of the telecommunication consumers in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

All through the history of the human race, man's ability to engage in multifarious and intelligent communication with his fellowmen has remained a key distinguishing factor between man and other animals. Thus, the role that communication plays in human societies cannot be exaggerated. From the most primeval to the most advanced, every human society has had to rely on some system of communication including distant communication (telecommunication). Conceivably, this is why it has been said that communication networks make society a reality.¹

Communications is a vital aspect of human existence and effective communications services enhance living standards and improve productivity and efficiency in other sectors. Therefore, communication and technologies that support it, occupy a strategic position now more than ever in every aspect of human existence, and nations and businesses would become less competitive and lag behind others if they fail to avail themselves of this vital infrastructure of the information age.²

Telecommunication makes it possible for people to co-operate, produce and exchange commodities, to share ideas and information and to assist one another in time of need. Every facet of basic rights is dependent on communications. Such basic rights of the individual as the right to life, the right to personal liberty and dignity, the right to freedom of expression and information and the right to free movement, all of which enhance the quality of life of the individual are facilitated by telecommunication. It is therefore, widely acknowledged that no

¹ G. A. Alabi, *Telecommunications in Nigeria* (University of Pennsylvania – African Studies Center 2012).

² J. O. Enyi and T. A. Abang, 'Telemarketing and Consumer protection in Nigeria: A Case for the Domestication of the U.S. Telephone Consumer Protection Act, (TCPA, 1991)' (2018) 10 (9) *European Journal of Business and Management* 113.

modern economy can be sustained today without a vital telecommunication infrastructure. A robust telecommunication infrastructure network is important for the economic growth of nations and supports the world economy. Nigerian government realizing this proceeded to deregulate the telecommunication industry to allow more investor into the sector.

The Nigerian telecommunication industry since the deregulation has enjoyed financial gains and fortunes judging by the growth in the number telephone companies, customers and performance indicators.³ The success of the exercise revolutionized and liberalized the industry, took away Nigeria Telecommunications Limited's (NITEL) monopoly and threw up fresh opportunities, enhancing a healthy rivalry amongst the new operators.

However, the growth in the industry since the de-regulation era has been followed by serious consumer complaints, which relate to high tariffs, brazen sharp practices, and a litany of poor unsatisfactory services such as false billing, arbitrary disconnection of service, poor service delivery, drop calls, nonchalant attitude towards genuine complaints, supply and installation of substandard equipment and devices, and unsolicited and deceptive advertisements, credit depletion, inability to recharge, inability to check credit balance, network failure, sending/charging of multiple text messages in place of a single one among others.⁴ Of all the irksome practices, unsolicited advertisement has currently dominated the telecommunication space which has alternatively multiplied the spate of consumer's complaints.

While the government has intervene through the enactment of statutory regulations to regulate the activities of the telecommunication industry in order to ensure that the consumer is fairly

³ L. Raimi, A. Aljadani, A.O. Fadipe, and I.A. Adeleke., 'How Adequate and Efficient are regulations on Corporate Social Responsibility and Social Reporting? Evidence from the Nigeria Telecommunication Industry' (2014) 4(6) Asian Journal of Empirical Research, Asian Economic and Social Society 315-334.

⁴ J. O. Enyia, The Dynamics of Telecoms Industry Regulation in Nigeria: Perspectives on Consumer Protection In the Dynamics of Engineering in the 21st century (Calabar Unical Press, 2014) 168.

treated. The issue of consumer dissatisfaction has remained till date due to lack of enforcement of the laws.

It is on this premise that this research work seeks to examine the efficiency of the regulatory frame work on the regulation of the telecommunication sector and consumer protection in Nigeria.

1.2 Background of the Study

It will not be an overstatement therefore, to say that the world is fast becoming a global village of which Telecommunication is a key player. Telecommunication is the engine of the world economy with transactions in billions of dollars being done over the telephone and the Internet. Telecommunication is one of the most important infrastructures essential to the socio-economic wellbeing of any nation.

The relevance of telecommunication to the economy of any country cannot be over emphasized. This is what motivated the Federal Government of Nigeria to embark on a complete deregulation and liberalization of the telecommunication sector in the country in 1992. Prior to the bid for Digital Mobile Licences and Fixed Wireless Access, Nigeria had the lowest telephone penetration in the world after Mongolia and Afghanistan.⁵ The nation and its people were being starved of access to basic telephone services and eagerly awaited the commercial launch of the telephone licenses.

The poor state of the telecommunication industry in Nigeria began to be addressed in 1992 when the telecommunication sector was deregulated⁶ through the promulgation of Nigerian Communications Act (NCA) No.75 of 1992, introducing private participation in the provision of

⁵ C. Azubike and O. Obiefuna, 'Wireless Communication: The Impact of GSM on the economic lives of the Nigerian Rural dwellers', (2014) 4 (7) Mediterranean Journal of Educational and Social Research,

⁶ O. Iwuagwu, 'Telecommunications Reform in China and Nigeria: Same result, Different Strategies' (2014) 7(32) Journal of International Social Research 5.

telecommunication services in Nigeria, thus ending the state owned NITEL's monopoly of the sector and ushering in competition. The Act was repealed by the Nigerian Communications Act, 2003, which among others strengthened the regulatory authority by ensuring its independence.⁷

In 2001, the Federal Government announced that it would be granting new licenses for the operation of Global System for Mobile Communication (GSM) services in the country. Notwithstanding the skepticisms, the Federal government proceeded with the policy, and in January of that year the NCC held an open auction for G.S.M licenses which were issued to MTEL (operating as M-TEL), MTN (a South African Telecoms Company) and a consortium led by Zimbabweans called ECONET Wireless, and the deregulation exercise turned out to be a success.⁸ A year later an indigenous operator was equally licensed to operate in the sector.⁹

With the successful auctioning and licensing of the first four GSM operators in the country in 2001 telecommunication services became widely available in the country with the number of active telephone lines presently almost equal to the population of the country.

While the liberalization and privatization of telecommunication sector brought some reliefs to the consumer it however had its own negative effect. Due to the liberalization and privatization of telecommunication sector the focus of telecommunication service providers shifted towards profit making thereby exposing the subscribers to exploitation by way of credit depletions, unsolicited text messages, poor internet connection and a partial denial of the right to good quality of service.

⁷ O. K.Obayemi, 'Competition in the Nigerian Telecommunications Industry' (2014) 5 Beijing Law Review 283-297.

⁸ O. G. Ademola J. O. Olusegun and O. Kehinde, 'The Introduction of GSM Services in Anyigba Community and its Impact on Students Expenditure Pattern' (2013) 13 (8) Global Journal of Management and Business Research Finance 1.

⁹ J. O. Odion, 'An appraisal of the regulatory framework for the protection of consumers in the communications sector in Nigeria' (2016) 8(2) Journal of Law and Conflict Resolution 15.

In response to the dissatisfactions and difficulties consumers experienced in accessing and connecting to telecommunication services, the Nigerian Communications Commission (NCC) came up with consumer protection regulations such as the Quality of Service Regulations 2012 to address the challenge. The regulations contain provisions which mandate the operators of telecommunication industry to achieve certain demanding indices called Key Performance Indicators (KPIs) for Quality of Service. There are three major factors adopted in evaluating quality of service of an operator in the telecommunication industry. These are accessibility, retainability and connection quality. These three factors must be upheld towards ensuring an effective and efficient quality of service.

Notwithstanding these regulations, the issues of poor quality service have remained an unpleasant facet of the rapid expansion of access to telecommunication services in Nigeria. The glaring reality is that service quality across the industry is generally less than expected. It cannot be said that there are no laws governing consumer protection in Nigeria. The problem is not the non-availability of laws that protect the consumer but ignorance of the laws by consumers and the unwillingness of those in authority to implement the laws. Furthermore, while the Nigerian consumer bears the heavy burden of poor services and high tariff from his telecommunication service provider, the Nigerian Communications Commission does little or nothing to protect the consumer's interest. In some rare cases where the regulatory authority imposes fines on the telecommunication companies, the fine would be collected by the Nigerian Communications Commission, which suffered no loss from the poor services of these companies.

It is therefore necessary, to examine the impact of the existing legal framework on consumer protection in the telecommunication industry in Nigeria and as well as the laws and policy

frameworks for telecommunication industry in Nigeria for better consumer protection and enhance/guarantee effective performance of the operators.

This research work appraises the regulation of the telecommunication industry in Nigeria to ascertain the level of protection enjoyed by consumers. In the course of this work, criticisms and commendations would be made where necessary, and suggestions will be proffered to help maintain or improve on the quality of services in the sector, in the overall best interest of the consumer.

1.3 Statement of the Research Problem

Following the liberalization and privatization of telecommunication sector in Nigerian, telecommunication services became widely available in the country with the number of active telephone lines presently almost equal to the population of the country. However, due to the liberalization and privatization of telecommunication sector, the focus of telecommunication service providers have shifted towards profit making thereby exposing the subscribers to exploitation by way of credit depletions, unsolicited text messages, poor internet connection and a partial denial of the right to good quality of service. Examples of the poor quality of services observed in Nigeria have included call interference and loss of audio, high rates of call attempts, recurrent downtimes, long delay and non-delivery of SMS, and multiple deliveries of a single SMS. Furthermore, subscribers frequently have charges deducted from their account balance for unsubscribed services such as internet browsing plans and caller tunes or ring tones. Other problems include unsuccessful call attempts and difficulties with or inability to recharge phones. Government has put in place a regulatory framework for the telecommunication industry. One of the purposes of the regulation in this area is to ensure quality services in the interest of consumers. But still the level of consumer dissatisfaction is alarming. There have been instances

were the telecommunication service provider has been fined by the Nigeria Communication Commission for violating the provisions of the Nigerian Communications Act 2003 and other ancillary regulations. This notwithstanding, quality of service issues have remained an ugly facet of the rapid expansion of access to telecommunication services in Nigeria. The stark reality is that service quality across the industry is generally below expectation.

It must be noted that the Nigerian Communications Act 2003 did not make an elaborate provision on the compensation of the victims whose rights to good quality of service have been infringed and there is no provision on prioritization of consumer education and awareness creation for consumers at the grassroots. There is the need for a more stringent provision on penalization of service providers who violate the provisions of the Act.

1.4 Research Questions

This research will address three main questions;

1. Are the extant regulatory frameworks in the Nigerian Telecommunication industry capable of enhancing consumer protection and good quality of telecommunication services?
2. To what extent have the enforcement measures towards implementing quality of service standards been adhered to?
3. Are the Nigerian laws adequate for addressing the challenges facing the quality of service aspect of telecommunication sector?

1.5 Aim and Objective of the Research

The aim of the study is to assess the level of consumer protection in relation to quality of service in the telecommunication sector in Nigeria. The specific objectives are:

1. To determine the protection open to consumers of telecommunication services in Nigeria.

2. To determine if the extant regulatory frameworks in the Nigerian telecommunication industry are capable of enhancing consumer protection and good quality of telecommunication services.
3. To determine the extent to which the enforcement measures towards implementing quality of service standards have been adhered to.
4. To determine whether the Nigerian laws are sufficient for addressing the challenges facing the quality of service aspect of telecommunication sector vis-à-vis international best practices.

1.6 Scope of the Research

This work is central to protection of telecommunication consumers but it is limited in scope in the sense that it only examines protection in relation to quality of service in the telecommunication sector in Nigeria. However, a leaf would be taken from international best practices in a bid to proffer a more appropriate mechanism to consumer protection in Nigeria. The right of consumers as encapsulated in the various legislations that would be examined herein and other international treaties has undergone radical changes in recent years, expanding the impact of telecommunication on societies around the world.

1.13 Research Methodology

The research methodology employed in the conduct of this work is doctrinal using the legal and socio-legal approach. The doctrinal research methodology is a library oriented research by which primary research materials such as statutes, and law reports will be resorted to in the course of this research. Also, secondary materials such as textbooks and law journals containing articles related to the field of research, seminar papers, manuscripts, and newspapers will be resorted to.

This type of analysis will particularly be beneficial to understand the implications of information that can be disseminated very quickly by telecommunication service providers without national border restrictions and by anyone, to further understand theoretical challenges imposed by consumer protection.

1.14 Structure of Research

The research consists of five chapters. Chapter one which is the introduction to the research reveals the background and foundation of this study. Chapter two examines different municipal and international legislative frameworks adopted in relation to the protection of consumers of telecommunication services. This chapter aims to analyze how different legislations help to approach the subject matter.

Chapter three examines the various rights available to consumers of such services in Nigeria.

Chapter four provides a rather descriptive analysis of the problem. By highlighting international best practices among selected countries and concluding with a survey analysis wherein data was derived from respondents on their perspective about the protection gotten from the telecommunication sector.

The last part, Chapter five, summarizes and concludes the main findings of the research and provides final remarks for future consideration.

CHAPTER TWO

LITERATURE REVIEW

2.1 Literature Review

There are a lot of materials in terms of books and articles written by learned scholars in the area of this work. These materials are somewhat related to subject matter of this research. While some are on the legal frame work on telecommunication in Nigeria, the first arm of this research others are on the second arm of the research i.e on the right of consumers and the consumer protection. This chapter seeks to review these materials pointing out the gap which it seeks to fill.

2.2 Consumer Protection and the Need for Government Intervention

Consumer protection according to Monye is “a legislation which protects the interests of the consumers”.¹⁰ This definition is clearly restrictive. It excludes other forms of protection which are not statutory such as, protection from Judiciary, Trade Associations and Services and from fraudulent and other unfair selling practices especially in the telecommunication industry which is the focal point of this academic voyage. Consumer protection could better be described as the act of safeguarding the interests of the Consumer in matters relating to the supply of goods and services, fraudulent and hazardous practices as well as environmental degradation. This broader view was also held by Amanim Iwok and Bassey Kooffreh,¹¹ according to them, the central theme of consumer protection is the adjustment of the relationship in terms of power between the consumers and producers of goods and services. This presupposes a re-conceptualization of the legal rights and obligations of the parties given the gross power disparity between the individual consumer and the institutional producer.

¹⁰ F. N. Monye, ‘Enforcement of Consumer Protection Laws in Nigeria’ (2007) 3(1) DELSU Law Review 89.

¹¹ A. Iwok and B. Kooffreh, ‘ An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria’ (2014) 29 *Journal of Law, Policy and Globalization* 1.

The view expressed above, was re-echoed by Eze *et al*, when they asserted that there is a global recognition of the fact that there exists real and perceived imbalance of power relations between the producers and consumers of goods and services. This imbalance of power, as noted by several scholars in the field of marketing and business in general appears always to the advantage of the producers, who are strengthened by the traditional legal maxim “caveat emptor” (buyer beware) and the ever growing free market philosophy, which seems to put the producers at liberty to do whatever they want.¹²

The learned authors, Brian and Deborah¹³ brought a new horizon in the development of consumer protection law. Their work focused on the development and enforcement of consumer protection in Europe. Contentious issues like the definition of a consumer and the nature and scope of consumer contracts were however not addressed by the authors. They however, dwelt extensively on the philosophical basis for the protection of the consumer. They accepted as a paradigm that the consumer is viewed as a weaker party vis-à-vis the manufacturer and/or supplier of goods and services. In their view, the arguments against state intervention on behalf of the consumer could be rationalized on the basis of this inequality of bargaining power between the consumer and the manufacture/supplier. They therefore agreed that the government should intervene given the weakness of the consumer bargaining powers. This view has also being held onto tenaciously by Sylvia Lane,¹⁴ who assert that consumer protection is a public good which will not be available in optimal quantities without government intervention.

¹² K. O. Eze, N. Eluwa, and B. Nwobodo, ‘The Nigerian Consumer @ 50’ (2010 < <http://mzweekly.com/cover-cover/the-nigerian-consumer-50/>> Accessed 15 July 2021.

¹³ W. H. Brian and L. P. Deborah, *The Law of Consumer Protection and Fair Trading* (6th ed Butterworth’s Publishers 2000).

¹⁴ L. Sylvia, ‘The Rationale for Government Intervention in Seller-Consumer Relationships’ (1983) 2(3) *Review of Policy Research* 419- 428.

William B. Saxbe¹⁵ very much agreed with the fact that there should be government intervention for a better protection of the consumer. If the consumer knows his or her rights and there is no enforcement mechanism put in place by the government the consumer right is therefore a waste. Saxbe argued that though there is no enabling authority for the government to intervene, the government intervention should be seen from the point of view that they want to protect the consumer and ensure there is a free and fair market. Thus, the role of the government upon intervention is to insure that there is a balance between the buyer's interest and seller's interest in the market place. Only if there is a fundamental equality of bargaining position between the buyer and the seller can there be efficient allocation of resource necessary for the operation of free enterprise of the economy.

Monye on her part, states that: "On the part of the government, this assertion is buttressed by the various measures (laws, agencies etc.) often put in place to take care of consumer issues. This shows a conviction about the need for consumer protection".¹⁶

This argument is further strengthened by Bolaji A. Agoro and Lateef A. Adeleke¹⁷, who elaborately gave reasons for government intervention. According to Bolaji A. Agoro and Lateef A. Adeleke, government intervention in the area of consumer protection is appropriate where consumers have less than the required amount of information to protect themselves, where transaction costs act to reduce consumer self-protection below acceptable levels, where consumer welfare is not sufficiently considered in oligopolistic markets, where private costs and social costs diverge due to externalities, where a certain level of quality assurance is necessary if

¹⁵ William B. Saxbe, 'The Role of the Government in Consumer Protection: The Consumer Fraud and Crimes Section of the Office of the Ohio Attorney General' (1968) 29 *Ohio State Law Journal* 897.

¹⁶ F. N. Monye, 'Enforcement of Consumer Protection Laws in Nigeria' (2007) 3(1) *DELSU Law Review* 89.

¹⁷ Bolaji A. Agoro and Lateef A. Adeleke, 'Alchemy of The Legal Regime of Consumers Protection in The Telecommunications Industry in Nigeria' (2018) 2(2) *Niger Delta University Law Journal* 1.

markets are to function, and where riskier and dangerous products removal from the market lowers firms' insurance premiums as well as serves the interest of public health and safety. Bolaji A. Agoro and Lateef A. Adeleke further asserted that it is essential for governments to protect consumers as a vehicle for the promotion of better economic growth and development in their respective jurisdictions.

Kirk R. Arner and Harold Furchgott Roth,¹⁸ agreed that the consumer has to be protected, on the issue of whether or not the government should intervene for the purpose of the consumer solely, they argued that the government should not just intervene for the consumer alone but also for the seller. The reason is that though the consumers are sovereign, they are not an absolute monarch. Which means at some point the government should also intervene to protect a weak seller in a transaction. Therefore, the government should be a defender of the consumer rights and also set limits to these consumers' right. In line with this, one of the stated primary objects of the Nigerian Communications Act 2003 is to "protect the rights and interest of service providers and consumers within Nigeria".¹⁹

From the above it can be reasonably submitted that the need for consumer protection arises in order to protect the health and wellbeing of consumers as a discipline mechanism for the purpose of correcting the conduct of greedy traders. Unless there is a law that takes the health of consumers in to account, business persons may not have regard for the health and wellbeing of consumers in their transactions with the latter. And for the consumer to be ultimately protected the government has to intervene to ensure the laws on consumer protection is enforced.

¹⁸ Kirk R. Arner and Harold Furchgott Roth, *Consumer Sovereignty and the role of Government Intervention* (Hudson Institute, 2020) 1.

¹⁹ Nigerian Communications Act 2003, Section 1(g).

In all of these literature reviewed the authors succinctly gave various reasons for the government intervention they however, fails to state the various way the government can intervene. It should be noted that the government can intervene with the enactment of laws and in the enforcement of laws. The government in Nigeria today has enacted plethora of laws in the area of consumer protection. With relation to the telecommunication industry, there are the Nigerian communications Act 2003, the Consumer Code of Practice 2007 and the Quality of Service Regulations of 2012.

2.3 Consumer Rights

Right has been defined as something that is due to a person by a just claim, legal guarantee, or moral principle. It also means a power, privilege, or immunity secured to a person by law, a legally enforceable claim that another will do or will not do a given act, a recognized and protected interest, the violation of which is a wrong.²⁰ Consumer rights emerged after the second generation rights as a reaction to a post-modern global world engulfed by scientific evolution.²¹

Ololade Jacob-Obi, in examining the efficacy of consumer protection laws in the Nigerian telecommunication industry highlighted the different rights available to the consumer of telecommunication services. According to Ololade Jacob-Obi, the rights are the right to information and consumer education, right to choice, right to minimum standards of quality of service and right to complain and be heard, right to safety, health and a suitable environment. She asserted that these rights are unfetter and must be protected.

²⁰ J. O. Odion, 'An appraisal of the regulatory framework for the protection of consumers in the communications sector in Nigeria' (2016) 8(2) *Journal of Law and Conflict Resolution* 15.

²¹ Bolaji A. Agoro and Lateef A. Adeleke, 'Alchemy of The Legal Regime of Consumers Protection in The Telecommunications Industry in Nigeria' (2018) 2(2) *Niger Delta University Law Journal* 1.

Bolaji A. Agoro and Lateef A. Adeleke,²² recognized eight consumer rights. Which are the right to safe products, the right to demand and receive information, the right to be heard, the right to choose, the right to consumer education, the right to redress, the right to the satisfaction of basic needs, and the right to a healthy environment. Similarly, Festus O. Ukwueze in his article,²³ highlighted eight rights. In telecommunication sector there is right to fair charges and accurate billing, these scholars however failed to identify this right.

The rights of consumers of telecommunication service in Nigeria as can be garnered from the relevant provisions of the Act as well as the regulations and guidelines made under it include (i) right to information (ii) right to quality services (iii) right to fair charges and accurate billing (iv) right to privacy and protection of personal information (v) right to redress (vi) right to consumer education.

These scholars unanimously agreed that these rights are violated recurrently by telecommunication service providers in Nigeria. According to Amanim Iwok and Bassey Kooffreh,²⁴ “the consumer because of his purchasing power is supposedly the king of the market place. However, the reality today is that the consumer has become the victim of many unfair and unethical tactics adopted in the market place, by the producers of goods and services”.²⁵ Festus O. Ukwueze attributed this to three main factor to wit: “non compliance by the service providers with existing regulations, loose enforcement of regulations and lack of knowledge by the

²² Bolaji A. Agoro and Lateef A. Adeleke, ‘Alchemy of The Legal Regime of Consumers Protection in The Telecommunications Industry in Nigeria’ (2018) 2(2) *Niger Delta University Law Journal* 1.

²³ F. O. Ukwueze, ‘Consumer Protection in the Regulation of Telecommunications Services in Nigeria: Not Yet “UHURU” for Consumers’ (2014) 12 *Nigerian Juridical Review* 125.

²⁴ A. Iwok and B. Kooffreh, ‘ An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria’(2014) 29 *Journal of Law, Policy and Globalization* 1.

²⁵ Ibid, 2.

consumers of their rights under the law coupled with high rate of poverty seriously inhibits consumers from asserting their rights and seeking redress in appropriate cases”.²⁶

2.4 The Efficacy of Consumer Protection Law in Telecommunication Industry in Nigeria

From the literature reviewed, there is consensus among various authors that consumer protection laws in Nigerian telecommunication industry are grossly inefficient to protect the consumer from unsatisfactory services offered by telecommunication industry in Nigeria.

Bolaji A. Agoro in this respect agreed with other authors, that the current level of consumer satisfaction within the industry is quite low as there are constant complaints of frustrations encountered by the consumers in making and answering calls.

In the same vein, J. O. Odion,²⁷ in his work examined the regulatory framework for the protection of consumers in the telecommunication sector in Nigeria. He examined the Nigerian communications Act 2003, the Consumer Code of Practice 2007 and the Quality of Service Regulations of 2009. The study assessment of the efficacy of these provisions revealed that in spite of this elaborate legal and institutional framework, GSM operators in Nigeria have not lived up to the expectations of consumers in the sector, the regulatory agencies and Government in terms of effective service delivery. It was also revealed that the existing legal framework is inadequate to protect the rights of consumers in the sector in the face of this poor service delivery of these GSM operators. The study treatise is that with the enactment of a competition law and an effective institution to enforce it in the country, all service providers especially operators in the GSM sector will be compelled to improve their services in order to retain the patronage of their subscribers.

²⁶ F. O. Ukwueze, ‘Consumer Protection in the Regulation of Telecommunications Services in Nigeria: Not Yet “UHURU” for Consumers’ (2014) *12 Nigerian Juridical Review* 125.

²⁷ J. O. Odion, ‘An appraisal of the regulatory framework for the protection of consumers in the communications sector in Nigeria’ (2016) 8(2) *Journal of Law and Conflict Resolution* 15.

Similarly, Festus O. Ukwueze in his article,²⁸ examined the regulatory framework for the protection of consumers in the communications sector in Nigeria. He asserted that the legal and regulatory framework for the protection of consumers in the telecommunication sector in Nigeria appears fairly adequate. According to him the Nigerian Communications Act and its subsidiary legislation have made fairly adequate provisions for the protection of consumers of telecommunication services. Regardless of impressive of regulatory framework, it is not yet *uhuru*²⁹ (using the Swahili word for freedom or independence) for consumers of telecommunication services in Nigeria as the level of actual protection they enjoy has remained low. According to him the inadequacy can be attributed to three reasons: non-compliance by the service providers with existing regulations, loose enforcement of regulations and lack of knowledge by the consumers of their rights under the law. Ignorance on the part of consumers coupled with high rate of poverty seriously inhibits consumers from asserting their rights and seeking redress in appropriate cases. He therefore suggested that measures to raise consumer awareness are urgently required to empower consumers to insist on their rights; compel the service providers to comply with the rules.

Tunde Otubu in his work,³⁰ examined and explored the legal and regulatory framework surrounding the business of telecom industry in Nigeria, particularly the Company and Allied Matters Act, Nigeria communication Act, Criminal law, law of tort, planning Laws, Land Use Act and other regulations related to the provision of telecommunication sector in the country. The paper identified the lacunas, drawbacks and limitations existing in these regulations and

²⁸ F. O. Ukwueze, 'Consumer Protection in the Regulation of Telecommunications Services in Nigeria: Not Yet "UHURU" for Consumers' (2014) 12 *Nigerian Juridical Review* 125.

²⁹ *Uhuru* is a Swahili word for freedom or independence.

³⁰ T. Otubu, 'The Regulator and the Regulated: An Examination of the Legal Framework for Telecommunication in Nigeria' (2013) 7 (2) *AUDC* 152.

proceeded to advance reform and recommendations towards the efficient administration and implementation of telecom laws in Nigeria in the overall benefit of the telecom business in Nigeria.

Olusola Babatunde Adegbite³¹ also asserted that the available legal and institutional measures for mobile telecom regulation in Nigeria as presently constituted is grossly inadequate. According to Adegbite “more than twenty (20) years after the liberalization of the sector, and more than ten (10) years after the introduction of the GSM, not much has been achieved in this area. This situation mandatorily calls for reforms. It would be a huge shortcoming for the Managers of the current system, to carry on as if all is well”³².

2.5 Gap in Literature

The gaps in these literatures are that they all failed to comparatively study the Nigeria law with other jurisdiction as it is done in this present research work to see if truly the practice in Nigeria is below standard.

These works mentioned above, certainly serve as source of reference for the purposes of elaboration, expansion and assistance in analyzing the rules and statutory provisions of the laws that relates to this works. The materials also go a long way to enrich the work with decided cases relevant to the work.

This study fills the gap by focusing on consumer knowledge about consumer rights. Since most regulators act on the basis of light hand post ante regulation, unless consumers are aware of their biases, know when they are exploited, and aware of their rights and institutions that work at their

³¹ O. Babatunde Adegbite, ‘Legal and Institutional Regulation of Mobile Telecommunication in Nigeria: A Comparative Analysis between Nigeria and South Africa’ (2015) 16 (1) *University of Benin Law Journal* 1.

³² Ibid.

remedy, it is unlikely that they will report their complaints. This research also fills this literature gap by focusing on developing countries in which telecommunication has boomed quite recently. The research canvasses the need for an immediate harmonization of the laws and regulations that makes provision for regulation of the Nigerian mobile telecoms industry. There is also a need for an immediate amendment of the Nigerians Communications Act 2003, which is the principal legislation under the current framework and other extant laws in the industry, to the extent that it can effectively address some of the current challenges holding the industry captive.

CHAPTER THREE
LEGISLATIONS ON PROTECTION OF CONSUMERS OF
TELECOMMUNICATION SERVICES

3.0 Introduction

In Nigeria, there are few legislations that protect specifically the interests of consumers of the telecommunications services. These include the Nigerian Communications Commission Act³³, Consumer Code of Practice Regulation 2007³⁴, the Quality of Services Regulations 2012³⁵ and Federal Competition and Consumer Protection Act 2018³⁶. These legislations will be discussed seriatim.

3.1 Nigerian Communication Commission Act

The Nigerian Communications Act, 2003 was signed into law by President Olusegun Obasanjo on the 8th of July 2003 after being passed by both the upper and lower Houses of the National Assembly. The primary object of this Act is to create and provide a regulatory framework for the

³³ Cap. N 97 of the Laws of the Federation of Nigeria, 2004

³⁴ Nigerian Communications Commission Consumer Code of Practice Regulations 2007. There is however a draft consumer code of practice regulation of 2018, to provide a further definition of the procedures and substantive requirements for developing consumer codes to govern the provision of services by licensed telecoms operators in Nigeria. <<https://www.ncc.gov.ng/>> Accessed 10 July 2021.

³⁵ Nigerian Communications Commission Quality of Services Regulations 2012.

³⁶ Federal Competition and Consumer Protection Act 2018.

Nigerian communications industry and all matters related thereto. Specifically, the act is to 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 organizations.³⁷ It encourages the development of a communications manufacturing and supply sector within the Nigerian economy and also encourages effective research and development efforts by all communications industry practitioners.³⁸ It is also aimed at protecting the rights and interest of service providers and consumers within Nigeria³⁹ and to ensure that the needs of the disabled and elderly persons are taken into consideration in the provision of communications services.⁴⁰

The Nigeria Communications Commission Act established the Nigerian Communications Commission.⁴¹ Pursuant to section 3 of the Act,⁴² the Commission is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name. It has the capacity to enter into contracts and incur obligations, acquire, hold, mortgage, purchase and deal however in property be in it movable or immovable, real or personal. It may also do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Acts Act.⁴³ The capacity given the Commission by the Act is very apt because it is an established principle of law that a only person natural or artificial, csan acquire rights and incur

³⁷ Ibid, Section 2(e).

³⁸ Ibid, Section 2(f).

³⁹ Ibid, Section 2(d).

⁴⁰ Ibid, Section 2(h).

⁴¹ Ibid, Section 3.

⁴² Ibid, Section 3(2).

⁴³ Section 3(2) (c).

tangential obligation and be recognized by the law as capable of asserting those right or discharging those obligation.⁴⁴

The Nigerian Communications Commission (“NCC” or “the Commission”), as the regulator of the telecommunications industry is empowered to ensure the protection and promotion of the interest of consumers against unfair practices including, but not limited to matters relating to tariffs and charges for and the availability and quality of communication services, equipment and facilities.⁴⁵ It also has the duty to promote fair competition in the industry and protect communication services and facilities providers from misuse of market power or anti-competitive and unfair practices by other service or facilities provider or equipment suppliers.⁴⁶

The commission is to monitor the performance of standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria. This is with regard to the best international performance indicators⁴⁷and proposing, adopting, publishing and enforcing technical specifications. The commission is to also monitor the standards for the importation and use of communications equipment in Nigeria and for connecting or interconnecting communications equipment and systems.⁴⁸ It is also the function of the commission to examine and resolve complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry. This will be done by using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration.

⁴⁴ F. Adaramola, *Jurisprudence* (lexis Nexis, Durban 2008).

⁴⁵ Ibid, Section 4(f) and (m).

⁴⁶ Ibid, Section 4(d).

⁴⁷ Ibid, Section 4(h).

⁴⁸ Ibid, Section 4(l)

Section 105 allows the NCC to use its powers to resolve consumer complaints, especially in relation to customer service, protection and Quality of Service (QoS) through its approved procedures or guidelines for the making, receipt and handling.

The Act further mandates the Commission to publish guidelines setting out the principles and procedures that parties must follow and take into account in resolving disputes or a class of disputes.⁴⁹ And subject to the objectives of the Act in this regard, the Nigerian Communications Commission shall publish in its website and distribute flyers and leaflets on specific subjects such as: Procedure for Lodging a Consumer Complaint; The Role of NCC in Consumer Protection; Consumer Facts; Obligations of Service Providers to Nigeria and Consumers of Telecoms Services; Awareness on Cybercrime; Understanding Broadband; Consumer Bill of Rights; and host of others.⁵⁰

The Commission is empowered to resolve the dispute by employing Alternative Dispute Resolution (ADR) processes and upon such terms and conditions as it may deem fit.⁵¹ In carrying out its dispute resolution functions, the Commission is to be guided by the objective of establishing a sustained dispute resolution process that is fair, just, economical and effective and shall not be bound by technicalities, legal forms or rules of evidence and shall at all times act according to the ethics of justice and the merits of each case.⁵²

The Act provides for some basic rights of the consumer, according to section 104 of the Act, every telecom consumer is entitled to a satisfactory level of minimum standards of quality of

⁴⁹ Section 75 Nigerian Communications Act 2003.

⁵⁰ See consumer portal <www.ncc.gov.ng/consumer> Accessed 10 July 2021.

⁵¹ Nigerian Communication Act 2003, Section 76.

⁵² Nigerian Communication Act 2003, Section 76 (2).

service.⁵³ Calls must be clear and easy to connect. The consumer should be able to enjoy required application services such as active emergency services, directory assistance services, operator assistance services as well as services for disabled customers.⁵⁴

Furthermore, the consumer is entitled to information on the quality of service being offered as well as specific information regarding any compensation, refund, or other arrangements which may apply if contracted service quality levels are not met. With regards to pricing, the consumer is entitled to be informed of the applicable rates of calls, charges and the method of calculation, and frequency of the charge, etc.⁵⁵

3.2 Quality of Services Regulations 2012

The Nigerian Communications Act, 2003 provides for consumer protection and quality of services.⁵⁶ All service providers are required to meet such minimum standards of quality of service as the Commission may from time to time specify and publish.⁵⁷ By section 4(1)(b) of the NCC Act,⁵⁸ the NCC is also enabled to make regulations on the tariffs, fees, charge rates, fines and general quality of service provided by the telecoms operators. The NCC exercising its powers under section 70 of the NC Act published the Quality of Service Regulations 2012 which identified minimum QoS standards and associated measurements, reporting and record keeping

⁵³ Nigerian Communications Act, Section 104(a). In *Nkwocha & 2 Ors v MTN Nigeria & 4 Ors* (2008) LPELR – 8494 (CA) and *Njikonye Esq v MTN Nigeria Communications Ltd* (2008) All FWLR 413 at 1343, the plaintiffs approached the court as a result of poor quality of service.

⁵⁴ Nigerian Communications Act, Section 107(2).

⁵⁵ Nigerian Communications Act; Section 4(1)(c).

⁵⁶ Nigerian Communications Act 2003, Sections 104-106.

⁵⁷ Nigerian Communications Act 2003, Section 104(a).

⁵⁸ *Ibid*, Section 4(1)(b).

tasks, pursuant to section 104(a) of the Act.⁵⁹ The aim of this regulation is to identify the service deficiencies, improve on the QoS and to encourage or direct appropriate actions. The objectives of which include to 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; improve and maintain high level service quality, and provide details about the service that will help customers make an informed choice of services and service provider.⁶⁰

The Quality of Service Regulations 2012 stipulates the minimum quality standards for different telecommunications services and the associated measurements, reporting and record keeping tasks of service providers.⁶¹ The Key Performance Indicators (KPIs) are clearly stated and the Commission is conferred with powers to sanction a service provider where the rate of occurrence of a particular complaint exceeds the maximum number stated in the Regulations.⁶² Regrettably, notwithstanding the QSR, poor quality telecommunications services have persisted in the country. Under the regulation, the Commission is also empowered to direct service providers to compensate subscribers for poor quality of service and to impose fines on offending service providers.⁶³

3.3 Consumer Code of Practice Regulation 2007

The Consumer Codes of Practice are guidelines formulated by the Commission and directed at the GSM service providers as the benchmark for rendering qualitative services and at affordable

⁵⁹ Ibid.

⁶⁰ Quality of Services Regulations 2012, Regulation 2.

⁶¹ Quality of Services Regulations 2012, Regulation 3.

⁶² Quality of Services Regulations 2012, Regulation 4.

⁶³ Quality of Services Regulations 2012, Regulation 14.

rates to the subscribers (consumers). This regulation was made specially to clarify the procedures to be followed by licensees in preparing approved consumer codes of practice; and to determine the required contents and features of any consumer code prepared by, or otherwise applicable to Licensees.⁶⁴ A General Consumer Code (GCC) is annexed to this regulation which applies to all licensees in Nigeria. Nonetheless, the General Consumer Code remains a minimum set of requirements and standards for the provision of services and related consumer practices applicable to licensees.⁶⁵

The NCC by the regulation established a forum of industry and consumer representatives (the “Consumer Forum”) to assist in ongoing monitoring and review of the General Consumer Code to ensure that the code adequately addresses consumer issues.⁶⁶ This Consumer Forum has however been ‘replaced’ by the Consumer Outreach Programme organized by the NCC regionally, and specially designed to educate telecoms end-users as well as hear their complaints.

The General Consumer Code further sets out the duties of the licensees and consumers. The licensees are obliged to provide consumers with adequate complete and up-to-date information on their services.⁶⁷ Licensees must also respond to consumer queries/request for information in a timely manner at no cost to the consumer.

By the provisions of sections 7 and 8 of the General Consumer Code, the licensees shall supply, on request, a copy of the contract for the provision of services in clear and plain language, providing information on the QoS levels offered and the billing charges. Licensees are further

⁶⁴ Consumer Code of Practice Regulations 2007, Section 2.

⁶⁵ Ibid, Section 5.

⁶⁶ Ibid, Section 4(1).

⁶⁷ Nigerian Communications Commission General Consumer Code of Practice Regulations, Section 6(1).

required by section 13(3) to give advance warning of anticipated service disruptions or planned outages as well as any applicable compensation/remedies.

The consumers however have limited duties under the GCC. Majorly, consumers are prohibited from re-selling any services provided by the operator⁶⁸ and from misusing public telecoms facilities in furtherance of fraudulent activities.⁶⁹ Consumers are however required to grant the licensee or its authorized representatives without charge, access to their premises as reasonably required for the provision of maintenance services.⁷⁰

3.4 Federal Competition and Consumer Protection Act 2018

In August 2015, the Federal Competition and Consumer Protection Bill, 2015 was introduced by the National Assembly. This was assented to on the 5th of February 2019 by President Muhammadu Buhari. The Federal Competition and Consumer Protection Act 2018 (FCCP Act) repealed the Consumer Protection Council Act (CPCA) (Cap. 25, Laws of The Federation 2004) as well as Sections 118-128 of the Investment & Securities Act 2007.⁷¹

The FCCP Act seeks to develop and promote fair, efficient and competitive markets in the Nigerian economy, facilitate access by all citizens to safe products and secure the protection of rights for all consumers in Nigeria.

Section 3 of the FCCP Act establishes the Federal Competition and Consumer Protection Commission (the Commission) which is charged with, amongst other things, the responsibility of initiating broad based policies and reviewing economic activities in Nigeria to identify,

⁶⁸ Ibid, Section 31.

⁶⁹ Ibid, Section 32.

⁷⁰ Ibid, Section 29-30.

⁷¹ Federal Competition and Consumer Protection Act 2018, Section 165.

anticompetitive, anti-consumer protection and restrictive practices which may adversely affect the economic interest of consumers.⁷² The Commission is also empowered to eliminate anti-competition agreements, misleading, unfair, deceptive or unconscionable marketing, trading and business practices under the FCCP Act⁷³

Section 39 of the FCCP Act also introduces and establishes the Competition and Consumer Protection Tribunal to handle any issues that may arise from the application of the Act and try violations. The Tribunal is also empowered to hear appeals and review decisions of the Commission taken in the course of implementing any of the provisions of the FCCP Act. An order of the Tribunal shall be binding on the parties involved and be registered with the Federal High Court for enforcement purposes. A party that is dissatisfied with a ruling, award or judgment of the Tribunal may appeal to the Court of appeal for judicial review upon giving notice to the secretary to Tribunal within thirty (30) days after the ruling, award or judgment is given.⁷⁴

Section 104 of the FCCP Act gives supremacy to the provisions of the Act by stating “notwithstanding the provisions of any other law but subject provisions of the Constitution of the Federal Republic of Nigeria 1999, in all matters relating to competition and consumer protection, the provisions of this Act, shall override the provisions of any other law.” Thereby making it subject only to the Constitution on all matters relating to consumer and competition protection. The section further declares that all industries/sector regulated by any agency established by an Act of the National Assembly or State legislature shall be deemed to be regulated sectors under

⁷² Ibid, Section 17(b).

⁷³ Ibid, Section 17(g).

⁷⁴ Ibid, Section 55(1).

the FCCPA. These provisions effectively make the provisions of all other existing legislation (such as the Nigerian Communication Act) subordinate to the FCCPA as regards competition regulation and consumer protection.

The FCCP Act prohibits agreements in restraint of competition such as agreements for price fixing, price rigging, collusive tendering etc. Section 59 of the FCCP Act specifically prohibits agreements in restraint of competition. This provision states that “Any agreement among undertakings or a decision of an association of undertakings that has the purpose of actual or likely effect of preventing, restricting or distorting competition in any market is unlawful and, subject to Section 61 of this Act, void and of no legal effect.”⁷⁵

Some of the prohibited acts include direct or indirect fixing of purchase and selling price of goods and services, dividing markets, limiting and controlling production or distribution of any goods or services. Section 60 outlines the exceptions to restrictive agreements in form of authorized agreements which are allowed by the Commission such as agreements that improve the production or distribution of goods and services while allowing consumers a fair share of the resulting benefits. Section 68 also lists out the exceptions to restrictive agreements (with few specific exemptions for collective bargaining agreements, employment, and so on).⁷⁶

The abuse of a dominant position is prohibited under Section 72 of the FCCP Act such abuse occurs when an undertaking in a dominant position charges an excessive price to the detriment of consumers; refuses to give a competitor access to an essential facility when it is economically feasible to do so and engages in an exclusionary act if the anticompetitive effect of that act outweighs its technological efficiency and other precompetitive gains.

⁷⁵ Ibid, Section 59.

⁷⁶ Ibid, Section 68.

Part XV of the FCCP Act makes provisions for the rights of consumers, some of which are: (a) Right to information in plain and understandable language;⁷⁷ (b) Right to disclosure of price of goods or services;⁷⁸ (c) Right to fair dealing;⁷⁹ (d) Right to reasonable and fair contract terms of the supply of goods and services;⁸⁰ (e) Right pertaining to quality and safety of goods and services;⁸¹ (f) Implied warranty of quality (Fit for purpose, free of defect and durability).⁸²

It is noteworthy that the former Consumer Protection Council Act does not enlist these consumer rights as specified under the FCCP Act. The FCCP Act is therefore a regulatory response to a market failure whereby individuals and corporations are required to deal fairly in a free market where consumer is king and competition is allowed to thrive.

3.5 Protection of Consumers of Telecommunication Services under Case Law

Under the common law, the consumers are entitled to civil rights, some of which will be treated in this section. There are also very rare decided cases involving consumer of telecommunication service in Nigeria, however, we shall be relying on cases involving consumers of good generally to buttress out points in this section.

3.5.1 Defect in Contract

In contract, defect is predicated on the bargain between the parties as well as terms implied under the statute. The test for defectiveness in contract is whether or not the product or service was “of

⁷⁷ Ibid, Section 114.

⁷⁸ Ibid, Section 115.

⁷⁹ Ibid, Section 124.

⁸⁰ Ibid, Section 127.

⁸¹ Ibid, Section 130.

⁸² Ibid, Section 132.

merchantable quality” or “fit for its purpose”, both of which are interpreted in terms of consumer expectations which can be ascertained from terms of the bargain.⁸³ In contract, the terms defect cannot easily be distinguished from ‘merchantable quality’. In *Grant v. Australian Knitting Mills Ltd*⁸⁴, it was stated that a thing “is not merchantable if it has defects unfitting it for its only proper use but not apparent on ordinary examination”.

In *Plastic Manufacturing Co. Ltd. v. Toki of Nig. Ltd*⁸⁵ the plaintiffs manufactured and sold some plastic containers to the defendants. The containers were based on sample which was made of polyethylene. When the defendants products (lotion and shampoo) were put in the container, they changed colour after about one month. In a suit for the balance of purchase price, the defendants counter- claimed for damages claiming that the containers were defective. The court decided the case on the implied condition of merchantable quality.

In *Nkwocha & 2 Ors v MTN Nigeria & 4 Ors*⁸⁶ and *Njikonye Esq v MTN Nigeria Communications Ltd*,⁸⁷ the plaintiffs approached the court as a result of poor quality of service.

In the last case, *Jeph C Njikonye Esq v MTN Nigeria Communications Limited*,⁸⁸ Njikonye a legal practitioner had acquired a cell line from MTN, which he used for communication through his mobile phone. On a day in 2003, MTN denied Njikonye access to its network from 7am to 5pm, making it impossible for him to place or receive calls even though he had a call credit balance. As a result of this lack of access, Njikonye lost a number of briefs including 206 bank

⁸³ C. B. A. Opat, ‘Rethinking Remedies for Dissatisfied Nigerian Consumers of Telecommunications Services’ <<http://ssrn.com/abstract=2346820>> Accessed 10 July 2021.

⁸⁴ (1936) AC. 85, per Lord Wright at p. 100.

⁸⁵ (1976) 12 CCHCJ 2701.

⁸⁶ (2008) LPELR – 8494 (CA)

⁸⁷ (2008) All FWLR 413 at 1343.

⁸⁸ (2008) All FWLR 413.

searches that would have earned him N515, 000.00 (five hundred and fifteen thousand naira). He commenced action at the High Court of the Federal Capital Territory claiming inter alia the lost sum of money and two million naira for inconveniences and distress. The respondent however filed a preliminary objection on the ground that the High Court of the Federal Capital Territory lacks jurisdiction to hear the suit arguing that the Federal High Court has exclusive jurisdiction to hear matters under the Nigerian Communications Commission Act 1992. The trial court upheld MTN's objection and declined jurisdiction.

Njikonye's appeal was allowed by the Court of Appeal, which set aside the ruling of the trial court on the basis that a court's jurisdiction is determined by the reliefs sought by the plaintiff. If those reliefs are within the subject matter jurisdiction of a court, that court could assume jurisdiction. In this case the dispute is premised on contract and contracts of whatever shape or colour are not included in the exclusive jurisdiction conferred on the Federal High Court.

In *GKF Investments Nigeria Ltd v Nigerian Telecommunications Plc*,⁸⁹ the plaintiff sued claiming damages for a breach of contract and claimed for negligence on the part of the defendant in the alternative. An award of damages for breach of contract was made. The plaintiffs appeal that the alternative claim in negligence was not decided was dismissed because the court is entitled to decide on one of two alternative claims as to award reliefs on both grounds would amount to double compensation.

The facts of the case are stated as follows; GKF was allocated a telephone line by the respondent services provider early in 1996. In September 1996, the respondent withdrew the line in effect making it impossible for GKF to communicate using it. This withdrawal was attributed by the

⁸⁹ [2009] 15 N W L R (Pt 1164) 344.

respondent to GKF's non payment of an amount charged for use of the line. However GKF had already paid the sum in question through a bank which remitted the money to the respondent on 23 September 1996. Although GKF had paid the sum in issue, the respondent refused to restore the line notwithstanding several demands by GKF. The refusal to restore the line created hardship for GKF which sued the respondent in Lagos State High Court claiming three reliefs. These are: the sum of thirty million Naira as special, exemplary and general damages from the respondent for breach of contract; loss of income/profit at the rate of five hundred thousand naira per week; and interest on both the damages and loss of income/profit at the rate of 21 percent per annum from 5 December 1996 till final payment and six percent thereafter until liquidation.

The respondent denied most of the allegation. At the conclusion of trial, the High Court awarded GKF two hundred thousand Naira and in addition ordered the respondent to provide GKF a fault free line within seven days from the date that judgment was given. GKF was however dissatisfied with the amount of money awarded as damages and it appealed to the Court of Appeal. The Court of Appeal affirmed the award of N200, 000.00 (two hundred thousand Naira) and also awarded interest at the rate of seven percent on the judgment sum. A further appeal by GKF to the Supreme Court was unanimously dismissed.

3.5.2 Defect in Tort

A tort is a wrongful act, not including a breach of contract or trust, that results in injury to another's person, property, reputation, etc and for which the injured party is entitled to compensation.⁹⁰ It is a branch of the law which covers civil wrongs, such as defamation and trespassing, among many other transgressions. The main purpose of tort law is to compensate the

⁹⁰ G. Kodilinye and O. Aluko, *Nigerian Law of Torts* (Ibadan: Spectrum Books Limited, 2010).

victims of wrongdoing for the injuries they suffer as a result of the wrongful act.⁹¹ It is not generally concerned with punishing, or casting moral judgment on, the wrongdoer - it simply compels the person who caused the harm to compensate the person who suffered the harm. A tort does not have to cause physical injury or distress. It might cause economic damage, by forcing someone to replace something, interfering with someone's business, or causing someone to miss work.⁹² Or it may cause damage to someone's reputation or quality of life. In order for a tort case to succeed in court, the lawyers must generally be able to prove that the accused party had committed the wrong in question, and that the client suffered as a result. Damages may be awarded by a jury or a judge, depending on the case.⁹³

Defect in tort concerns service/product safety. This is akin to the meaning attributed to the term in a strict liability regime. Thus, while a safe but inferior/poor product/service may be regarded as defective in contract, it may not be so regarded in tort. For a product/service to be considered defective in tort it must be in such a condition as is capable of causing injury to person or property.⁹⁴ The duty owed to a consumer in tort is to guard against possible injuries. The scope of duty was summarized by Lewis, J. in *Daniel v White and Sons*.⁹⁵ He said:

I have to remember that the only duty owed to the consumer, or the ultimate purchaser, by the manufacturer, is not to ensure that his goods are perfect. All he has to do is to take reasonable care to see that no injury is done to the consumer or ultimate purchaser. In other words, his duty is to take reasonable care to see that there exists no defect that is likely to cause such "injury".

⁹¹ B. A. Susu, *Law of Torts* (Lagos, CJC Press, 1996).

⁹² D. U. Odigie, *Law of Torts* (Benin City, Ambik Press Ltd, 2008).

⁹³ G. Williams, 'The Aims of the Law of Tort' (1951) *Current Legal Problems* 137.

⁹⁴ Tunde Otubu, 'The Regulator and the Regulated: An Examination of the Legal Framework for Telecommunication in Nigeria' (2013) 7 (2) *AUDC* 152.

⁹⁵ (1938) 1 All ER 258.

The above principle was reiterated in *Boardman v Guinness (Nig.) Ltd*⁹⁶ where it was held that the manufacturer's duty is to take reasonable care to see that there exists no defect that is likely to cause such injury. The possibility of risk to health or property is thus the crux of the requirement. But subject to this restriction, the conditions that may render a product/defective in tort are almost infinite. A review of decided cases shows that anything that could adversely affect the health of the consumer would bring product/service within the group. This includes the substances⁹⁷ nauseating foreign bodies⁹⁸, explosive substances⁹⁹ any other condition that is likely to cause injury to the consumer or his property.

3.5.3 Negligence

The term negligence was defined by the Supreme Court of Nigeria in the case of *U.T.B v Ozoemena*¹⁰⁰ as:

Lack of proper care and attention; careless behavior or conduct, a state of mind, which is opposed to intention, the breach of a duty of care imposed by common law or statute resulting in damages to the complainant.

⁹⁶ (1980) NCLR 109.

⁹⁷ *Ebelamu v. Guinness (Nig) Ltd FCA/1/01/82; Monday 24 Jan., 1993.*

⁹⁸ *Donoghue v. Stevenson* (1932) AC 562.

⁹⁹ *Vacwell Engineer Co. Ltd v. B.D.H. Chemicals Ltd* (1971) IQB 88

¹⁰⁰ (2007) 3 NWLR (Pt. 1022) 448.

In order to accommodate the essential ingredients of negligence, there must have been existence of duty of care;¹⁰¹ breach of the duty of care by the defendant;¹⁰² there must have been damage suffered as a natural consequence of the wrongful act of the defendant.¹⁰³

3.6 Rights of Consumers of Telecommunications Services in Nigeria

The rights of consumers of telecommunications service in Nigeria as can be garnered from the relevant provisions of the Act as well as the regulations and guidelines made under it include:

- i. right to information
- ii. right to quality services
- iii. right to fair charges and accurate billing
- iv. right to privacy and protection of personal information
- v. right to redress
- vi. right to consumer education.

3.6.1 Right to Information

One of the basic rights of consumers is the right to information. They have a right to protection against fraudulent, misleading and deceitful information, advertisement and labeling.¹⁰⁴ Thus, consumers must be provided with clear, accessible and complete information including changes in services performance and any duly approved fees or charges. The justification for this is that it is only when a consumer is in possession of the relevant information relating to a product or a

¹⁰¹ *Le Liovre v. Gould* (1909) AC S 62, *Kemp & Dougal v. Darngaui Cool Co.* (1909) A.C. 1314.

¹⁰² *Adeosun v. Adisa* (1986) 5 NWLR (pt. 40) 227 C.A; *Fisher v. Arrode, Ltd* (1966) Lloyds, L.R 500.

¹⁰³ *Chaproniere v. Mason* (1905) 21 TLR 633; *Daniels v. White & Sons* (1938) 4 All ER 258. *Nigerian Bottling Co. Ltd v. Okwejaminor* (1998) 5 NWLR.

¹⁰⁴ M. P. Okom, and J. O. Enyia, 'The Impact of the Telecommunications Regulatory Agency on Consumer Protection in Nigeria' (2018) 6 (7) *International Journal of Scientific Research and Management* 59.

service that he or she can make an informed choice to purchase or use the product or service. The Code makes elaborate provisions for information disclosure to consumers.¹⁰⁵

The Consumer Code of practice made copious provisions for information disclosure to consumers. Paragraph 6(1) of the Code¹⁰⁶ provides that licensees shall provide consumers with information on their services that is complete, accurate, and up-to-date and in simple, clear language. Licensees are urged to endeavor to respond in a timely manner to consumers' requests for information on their services. Information on prices and conditions for all services offered by a particular licensee shall be provided free of charge in print or electronic format at all retail outlets where the licensee's services are sold (including on each licensee's web site) and on the front section of any subscriber directories published by the licensee. Any change in tariff rates shall be approved by the Commission and prior notice of such a change shall be given to subscribers to be affected by the change in a manner that will enable them comment on the charge to the Commission.¹⁰⁷

Licensees are mandated to make available to the consumer, on request, a copy of the contract or agreement for the provision of services and such contracts shall be written in plain and clear language.¹⁰⁸ The contract for provision of service itself is required to contain among others, information on the commencement date and period of the contract, charges, as well as terms and conditions for disconnection, reconnection, interruption, withdrawal or discontinuation of the service.¹⁰⁹

¹⁰⁵ J. O. Odion, 'An appraisal of the regulatory framework for the protection of consumers in the communications sector in Nigeria' (2016) 8(2) *Journal of Law and Conflict Resolution* 15.

¹⁰⁶ Nigerian Consumer Codes of Practice Regulation 2007.

¹⁰⁷ Ibid, Paragraph 6(2).

¹⁰⁸ Ibid, Paragraph 7.

¹⁰⁹ Ibid, Paragraph 10.

The Code also mandates service providers, prior to the contract, to provide the subscriber with information relating to pricing, billing and charges as well as contractual warranties and maintenance services relating to products (if any) supplied for use in connection with the service. They are also required to provide the consumer with information regarding any compensation, refund or other arrangements, which may apply if contracted quality service levels are not met, along with the procedures and methods for resolving disputes in respect of the service contract; free access to operator assistance at all times, and on request, free directory of all subscribers on the same network within the consumer's local area.¹¹⁰

In relation to the description of the services, the Code provides that before entering into a contract for any service, consumers shall be provided with a complete description of the service in clear and plain language, avoiding unnecessary technical terms. Where other services are required in order to effectively utilize the service, the consumer shall be sufficiently informed of such requirements or service dependencies. The licensee is also required to provide information on the service quality levels offered, the waiting time for initial connection and any service areas and coverage maps, if applicable. Where services are packaged with one or more other services or products, the licensee shall provide to the consumer the description and cost of each component and be fully responsible for the effective performance of the entire package including service support, maintenance, complaints handling, dispute resolution and other administrative requirements. Where services are subject to upgrade or migration options, consumers shall be provided with clear and complete information regarding the upgrade or migration terms,

¹¹⁰ Ibid, Paragraphs 9 - 14.

including any changes in service performance and any duly approved fees or charges resulting from the upgrade or migration.¹¹¹

These provisions are laudable; however, the use of the term endeavor to in paragraph 6(2) of the Code is not strong enough to impose a mandatory obligation on service providers to take the required action. Furthermore, limiting the obligation of the service provider to make available to the consumer a copy of the contract for the provision of service under paragraph 7 of the Code to where a consumer has made a request is not fitting in a statute intended to protect the consumer in a country such as Nigeria with very high rate of illiteracy. In practice, the statutory requirement for information is observed more in breach, especially in relation to prepaid mobile phone and Internet subscription. The process for subscribing to these services begins with prospective subscriber obtaining a service provider's Subscriber Identification Module (SIM) pack alone, in the case of mobile phone, or Internet modem and a SIM pack in the case of computer-based mobile Internet services. Next, the subscriber registers the SIM which presently cannot be used until it is registered.¹¹² To register the line, the subscriber does not necessarily have to open the SIM pack which usually comes sealed, so long as he or she has information as to the Personal Identification Number (PIN) of the line which may be contained in the receipt issued to him or her on purchase and sometimes on the cover of the pack. It is only after the line has been registered that the consumer can use the SIM card to access the particular subscriber's network for telephone or Internet service.

Generally, the SIM pack contains the SIM card and a leaflet which does not provide basic information with regard to the terms and conditions.

3.6.2 Right to Quality Service

¹¹¹ Ibid, Paragraph 8(1) – (5).

¹¹² The Nigerian Communications Commission (Registration of Telephone Subscribers) Regulations 2011

Every telecoms consumer is entitled to a satisfactory level of minimum standards of quality of service.¹¹³ Calls must be clear and easy to connect. The consumer should be able to enjoy required application services such as active emergency services, directory assistance services, operator assistance services as well as services for disabled customers.¹¹⁴ The QSR stipulates the minimum quality standards for different telecommunications services and the associated measurements, reporting and record keeping tasks of service providers.¹¹⁵ The Key Performance Indicators (KPIs) are clearly stated and the Commission is conferred with powers to sanction a service provider where the rate of occurrence of a particular complaint exceeds the maximum number stated in the Regulations.¹¹⁶

The provisions of the QSR and the high level of the KPIs therein are quite commendable. The KPIs are attainable and will ensure that Nigerian consumers enjoy good quality telecommunications services. The imposition of fines alone leaves much to be desired. Fines are paid into the coffers of the government (via the Commission) thus leaving the consumers who bore the brunt of the poor quality services without any form of compensation. It has been suggested that the proceeds from fines collected by the Commission from defaulting operators should be distributed to consumers on the defaulting networks who are the ones that actually suffered losses from the poor services provided by the operators.¹¹⁷

3.6.3 Right to Fair Charges and Accurate Billing

¹¹³ Nigerian Communications Act 2003, Section 104(a).

¹¹⁴ Nigerian Communications Act, Section 107(2).

¹¹⁵ Quality of Services Regulations 2012, Regulation 3.

¹¹⁶ Quality of Services Regulations 2012, Regulation 4.

¹¹⁷ A. Iwok and B. Koofreh, 'An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecoms Services in Nigeria' (2014) 29 *Journal of Law, Policy and Globalization* 7.

By virtue of paragraph 9 of the Consumer Code of Practice 2007, before a contract for services is entered into, the licensee has the obligation to inform the consumer of the applicable rates or charges and the composition of the charges. Paragraphs 21 – 27 of the Code succinctly made provisions relating to billing, charging, credit and collection practice. Among other things, a licensee is mandated at all times to ensure that billing is accurate, timely and verifiable, and that sufficient information shall be on the bill or otherwise readily available to the consumer for verification of the bill without any charge; that upon a bona fide request from a consumer, the licensee shall inform or provide the consumer with timely, accurate and current information about its billing terms and conditions and options relevant to that consumer.

3.6.4 Right to Privacy and Protection of Personal Information

The Nigerian Consumer Codes of Practice makes copious provisions for privacy, fair use of consumer information and confidentiality. Any licensee that collects information on individual consumers shall adopt and implement a policy regarding the proper collection, use and protection of that information. Service providers are required to meet generally accepted fair information principles. These rules apply to individual consumer information whether initially provided verbally or in written form, so long as that information is retained by the service provider in any recorded form.¹¹⁸ A licensee is required to ensure that any other licensees or other persons with whom they exchange or otherwise disclose such information have adopted and implemented an appropriate protection of consumer information policy.¹¹⁹ To ensure accuracy of individual consumer information collected and stored by service providers, paragraph 38 of the Code provides that licensees collecting, maintaining, using or disclosing individually identifiable consumer information shall take reasonable steps to ensure that the information is accurate,

¹¹⁸ Paragraphs 35

¹¹⁹ Paragraph 36.

relevant and current for the purposes for which it is to be used. A consumer is entitled to exercise the right to have his or her directory information suppressed or removed.¹²⁰

Closely related to privacy and protection of personal information is the issue of telemarketing by service providers and other persons and organizations. Paragraphs 17 – 20 of the Code covers advertising and unsolicited telemarketing. The Code adopts and mandates licensees to comply with the Nigerian Code of Advertising Practice of the Advertising Practitioners Council of Nigeria (APCON)¹²¹ as well as any other applicable laws, standards and rules regarding advertising or promotion of telecommunications services set out in the Code. Licensees are prohibited from engaging in unsolicited telemarketing unless certain stipulated conditions are met.

Licensees are required to conduct telemarketing in accordance with any “call” or “do not call” preferences recorded by the consumer, at the time of entering into a contract for services or after, and in accordance with any other rules or guidelines issued by the Commission or any other competent authority.¹²²

These provisions ensure that consumers privacy is respected, their personal information protected and that they are not inundated with telemarketing advertisements and scam messages. Regrettably, in practice, the opposite is the case. Nigerian consumers are daily inundated with telemarketing in the form of unsolicited text messages and voice calls. There is no platform provided by any of the service providers for subscribers to exercise the option whether or not to receive advertisements in the form of text messages and calls.

¹²⁰ Paragraph 14 (1) (b).

¹²¹ APCON is the regulatory agency for advertising practice in Nigeria

¹²² Paragraph 20(2).

This is contrary to the provisions of the Code highlighted above. No guidelines have been issued on the matter and the Guidelines on Advertisements and Promotions make no provision in this regard; thus, leaving consumers exposed to the inconvenience of daily barrages of unsolicited advertisements in the form of text messages and calls. In other jurisdictions such as the United State of America, Australia and the EU there are spam specific regulations which cover text message and voice calls. For example, in the US the Telephone Consumer Protection Act (TCPA) 1991 prohibits telemarketing either by voice call or text message without prior express consent of the recipient.¹²³ Negligent violations of the restriction carry a statutory penalty of \$500 per call, while damages for willful violations are \$1,500 per call or message.¹²⁴

It is hereby recommended that the Commission should act expeditiously to formulate and put in place guidelines to specifically regulate the practice of telemarketing in the country. The suggested guidelines should regulate all aspects of telemarketing by operators and subscribers and stipulate stiff penalty for non-compliance.

3.6.5 Right to Redress

Compensation of consumers who have suffered damage or loss is no doubt the hallmark of consumer protection. The NCC Act 2003 makes far-reaching provisions for consumer access to redress. As stated earlier the Commission is conferred with powers to resolve disputes between persons who are subject to the Act regarding any matter under the Act or its subsidiary legislation.¹²⁵ However, an attempt shall first be made by the parties to resolve any dispute

¹²³ *Satterfield v. Simon & Schuster*, 569 F.3d 946. Text messages sent to voluntarily provided numbers do not come within the prohibition of the TCPA: *Chestboro v. Best Buy Stores*, 697 F.3d 1230, 1234 (9th Cir. 2012).

¹²⁴ R. Cole. And A. Purcell 'Here's my Number, so text me maybe' Daily Journal, 21 April 2014 <www.fenwick.com/FenwickDocuments/Here_is_my_number.pdf> Accessed on 12 July 2021.

¹²⁵ Nigerian Communications Act 2003, Section 73.

between them through negotiation before the involvement of the Commission.¹²⁶ The Commission may publish guidelines setting out the principles and procedures that it may take into account in resolving disputes or a class of disputes. Subject to the objects of the Act and any guidelines issued by the Commission, it may resolve the dispute in such manner including but not limited to ADR processes and upon such terms and conditions as it may deem fit. In carrying out its dispute resolution functions, the Commission is to be guided by the objective of establishing a sustained dispute resolution process that is fair, just, economical and effective and shall not be bound by technicalities, legal forms or rules of evidence and shall at all times act according to the ethics of justice and the merits of each case.¹²⁷

The Commission is also empowered to use its powers under the Act in the resolution of complaints received from consumers in relation to matters of customer service and consumer protection including but not limited to quality of service or the failure by a licensee to comply with a consumer code. It is required to 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 before presentation of the complaint to the Commission.¹²⁸ To this end the Commission has made and published the Dispute Resolution Guidelines (DRG) 2004.

¹²⁶ Nigerian Communications Act 2003, Section 74(1).

¹²⁷ Nigerian Communications Act 2003, Section 76(1) and (2).

¹²⁸ Nigerian Communications Act 2003, Section 105(1) and (2).

The DRG 2004 is principally intended for small claims involving amounts not exceeding One Million Naira. The procedure is designed to provide a forum for inexpensive, fair, impartial and effective arbitration as a means of resolving consumer related disputes in the telecommunications sector. Each party may present a written statement of its arguments in the dispute together with supporting documents and have the opportunity to comment on the argument and evidence of the other party. The arbitrator shall make the decision on documents only without an oral hearing and it is important to include all evidence upon which a party wishes to rely. By applying for arbitration the parties agree to the nondisclosure of the proceedings, award and reasons for the award to any stranger to the proceedings unless it is necessary to do so in order to enforce the award. The procedure is not designed to deal with complicated disputes, which should be dealt with by more formal oral hearing and evidence to ensure their proper resolution. A decision on the applicability of this procedure shall be at the discretion of the Commission. The Commission appoints the arbitrator, and the decision of the arbitrator shall be final and binding on the parties.¹²⁹

The Code also provides for consumer complaints handling. Under the Code it is mandatory for licensees to provide, and from time to time review and update, their consumer complaints handling procedures. Easily understood information about their complaints processes in various media and formats should be made available to consumers, including any other vital information as may from time to time be specifically directed by the Commission. They are to ensure that consumers can easily identify how a complaint may be lodged, either at a licensee's premises or using identified forms of telecommunications. The information on the complaints handling processes shall contain information to consumers about their rights to complain; how to

¹²⁹ See Dispute Resolution Guidelines 2004, Explanatory Note.

contact the service provider in order to lodge a complaint and the types of supporting information and documents a complainant needs to furnish when making a complaint. Licensees are required to record all complaints and their outcomes and to categorize and analyze complaints to allow for the identification of recurring problems.¹³⁰

Licensees are enjoined to make adequate provision to ensure that people with physical disabilities or other special needs are able to access their complaint handling processes, and to provide reasonable assistance where a consumer specifically requests assistance in lodging a complaint.¹³¹ Written complaints are to be acknowledged by the licensees and non-written complaints shall be taken as acknowledged at the time the complaint was communicated to the licensee. No consumer complaint shall remain unresolved for more than three months and consumers shall be advised of the outcome of their complaint and any resulting decision by the licensee. Where a consumer is not satisfied with a decision on his or her complaint, the licensee shall give the consumer the option of pursuing a suitable escalation process within the licensee's organization. Where a complaint and any resulting escalation process is not resolved to the consumer's satisfaction within 60 days of its initial communication to the licensee, the licensee shall inform the consumer of his right to refer the complaint to the Commission.¹³²

Complaint handling processes shall be provided free of charge except in certain specified circumstances where a licensee is authorized to impose a reasonable charge which shall be identified and agreed to by the consumer before being incurred.¹³³ Licensees are prohibited from imposing any disconnection or credit management action regarding any service to which a

¹³⁰ Ibid, Paragraphs 39, 45 – 47.

¹³¹ Ibid, Paragraph 40.

¹³² Ibid, Paragraph 41

¹³³ Ibid, Paragraph 42

complaint or billing dispute relates while the complaint or dispute is being handled.¹³⁴ These provisions are quite laudable and their implementation will ensure that consumers who have suffered loss of damage from the service providers obtain redress. In practice, however, these provisions are not being fully implemented. While the service providers have complaint handling procedures and consumer complaints desks, these are not known to most consumers.¹³⁵ Adequate steps are not taken by the service providers to bring these procedures to the knowledge of consumers as required under the Code.

3.6.6 Right to Consumer Education

Consumer education refers to the process of exposing people to the knowledge about their rights and duties as consumers. Education creates awareness in consumers of their rights and obligations under the law which is very vital in consumer protection. The need for the Nigerian consumers of telecommunications services to be acquainted with their rights under law cannot be over-emphasized. This will empower consumers to insist on their rights and to take action when these rights are violated by service providers. All the provisions of the relevant statutes requiring that consumers be provided with information relating to their rights or entitlements are in effect expressions of the consumers' right to education. Thus, in any case where such a provision is not implemented, the consumer's right to education is being violated.

On the level of practical protection of consumers of telecommunication services in Nigeria, a recent study¹³⁶ reveals that despite the existence of an apparently impressive framework, the level of practical protection of consumers appears rather low. Consumers lack requisite

¹³⁴ Ibid, Paragraph 44

¹³⁵ F. Monye 'Consumer Awareness Organisation Press Briefing on Consumers and Telecommunications Services in Nigeria' Fact Sheet Presented at Consumer Awareness Organisation Press Briefing held on 20 February 2014 at Sunshine Hotels and Guest House, Enugu <<http://www.consumerawareness-ng.org/events/press-briefing-on-consumersand-telecommunications-services-in-nigeria.html>> Accessed on 13 July 2021.

¹³⁶ Ibid.

knowledge to assert their rights. Factors such as lack of awareness, poverty, lack of funds and fear of litigation inhibit consumers' enthusiasm to seek redress. As regards the service providers, the study reveals that some obvious gaps are noticeable. Service providers do not observe many laid down procedures for consumer protection, especially in areas relating to resolution of consumer complaints, provision of information and detailed service contract.

What we see is the telecommunications operators in Nigeria attributing the negative consumer protection profile to the high cost and hazards of doing business in Nigeria, which hinders appropriate and adequate quality of telecom services. In particular, they blame poor quality of services on a number of challenges including infrastructure, power and security.¹³⁷

¹³⁷ Recently, MTN Nigeria Communications Limited, the leading telecom operator in Nigeria, complained that it has been investing approximately \$1.5 billion annually in the last 13 years in order to increase capacity.

CHAPTER FOUR
COMPARATIVE ANALYSIS OF TELECOMMUNICATION CONSUMER
PROTECTION REGULATIONS IN OTHER JURISDICTIONS

4.0 Introduction

This chapter will now look at best practices in select countries like, India, United States of America and South Africa. The salient features of the best practices in consumer protection in these countries shall be analyzed.

4.1 India

Telecom Regulatory Authority of India (TRAI) Act, 1997 is the main regulatory frame work for telecommunication industry in India.¹³⁸ TRAI Act gives highest importance for consumer protection as it is embodied in the preamble to the Act:

An Act to provide for the establishment of the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of telecom sector and for matters connected therewith or incidental thereto.¹³⁹

The Telecom Regulatory Authority of India Act, 1997 has been passed to bring the quality of telecom services to world standards, and make available a wide range of services to customers at reasonable prices.¹⁴⁰ The Act has made possible fair competitive participation of various companies in the telecom sector and the protection and promotion of consumer interest. Under

¹³⁸ Dharmendra Chatur, 'Regulation of Consumer Protection in Indian Telecommunications Sector: Two Steps Forward?' (2012) 18(8) *Computer and Telecommunications Law Review* 240; Telecom Regulatory Authority of India (TRAI) Act, 1997, Section 1.

¹³⁹ Ibid, Preamble.

¹⁴⁰ Ibid.

the Act, the regulatory functions have been separated from the service providing functions, which is now the general trend in the world.

The Act was amended in 2000 by the Telecom Regulatory Authority of India (Amendment) Act which, inter alia, substituted Chapter IV of the principal Act providing for the establishment of Telecom Dispute Settlement and Appellate Tribunal.

The Telecom Regulatory Authority of India Act, 1997 established the Telecom Regulatory Authority of India (TRAI).¹⁴¹ Telecom Regulatory Authority of India's mission is to ensure that the interests of consumers are protected and at the same time to nurture conditions for growth of telecommunications, broadcasting and cable services in a manner and at a pace which will enable India to play a leading role in the emerging global information society.¹⁴² It is expected that this may ensure healthy growth of the telecommunications infrastructure and protection of consumers interest in a better way.

For achieving these objectives, the Authority issues from time to time regulations, directions, orders or guidelines.¹⁴³

The 1997 Act empowered the TRAI with quasi-judicial authority to adjudicate upon and settle telecom dispute. Later this Act was amended by the Telecom Regulatory Authority of India (Amendment) Act, 2000 to bring in better clarity and distinction between the regulatory and recommendatory functions of TRAI. Further, the 2000 amendment served a very important purpose in completely differentiating the judicial functions of TRAI by setting up of the Telecom Dispute Settlement and Appellate Tribunal.

¹⁴¹ Ibid, Section 3.

¹⁴² Ibid, Section 9.

¹⁴³ For example the Telecom Consumers Protection Regulations, 2012.

The jurisdiction of civil courts has been expressly barred in cases where the Telecom Dispute Settlement and Appellate Tribunal (TDSAT) has jurisdiction. The role of the Authority is mainly related to introduction of new service providers and the specification of the terms and conditions of the licence granted to them. This is a matter of very vital concern for general consumers.

The Appellate Tribunal is empowered to hear and dispose of appeals against any direction, decision or order of the Authority. Any failure to comply with the orders of Appellate Tribunal has been made punishable under the Act. Against any direction or order made by the Appellate Tribunal, appeal can be filed in the Supreme Court. The consumer associations should, therefore, create common awareness about the authorities established under the Act and their role. Guidance and opportunities to approach these authorities should also be provided to common people.

Consumer protection is one of the functions of TRAI under the TRAI Act and this is provided for in Section 11 of the Telecom Regulatory Authority of India (TRAI) Act 1997 (as amended) thus:

Lay-down the standards of quality of service to be provided by the service provider and to ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service.¹⁴⁴

In carrying out its mandate, the Telecom Regulatory Authority of India has issued plethora of regulations with the aim of regulating the telecommunication industry and for the protection of the consumer. The Telecom Regulatory Authority of India issued “The Telecom Commercial Communications Customer Preference Regulations (TCCCPR) 2010” on 1st December 2010.

¹⁴⁴ Telecom Regulatory Authority of India (TRAI) Act 1997 (as amended), Section 11.

The regulations have been designed with the motive of promoting customer satisfaction by way of giving the customer choice to opt for no promotions or selective promotions of his/her choice.¹⁴⁵

Also, in order to control the possibility of SMS packages (those allow a very large number of SMS per day) to be used by the telemarketers for sending large number of SMSs from a normal telephone number, a limit of 100 SMS per day per SIM has been laid down under these regulations except on blackout days. Further, all commercial calls or SMS except the transactional SMSs will be sent to the customers only between 9 AM and 9 PM.

In India, there is also the Telecom Consumers Protection (TCP) Regulations 2012. The TCP Regulations are applicable to all service providers providing unified access services (UAS)¹⁴⁶ and cellular mobile telephone services (CMTS).¹⁴⁷ They also apply to Bharat Sanchar Nigam Ltd

¹⁴⁵ Telecom Commercial Communications Customer Preference Regulations (TCCCPR) 2010

¹⁴⁶ TCP Regulations 2012 Regulation, 2(t) says that “unified access service”:

- “(i) means telecommunication service provided by means of a telecommunication system for the conveyance of messages through the agency of wired or wireless telegraphy;
- (ii) refers to transmission of voice or non-voice messages over Licensee’s Network in real time only but service does not cover broadcasting of any messages, voice or non-voice, except Cell Broadcast which is permitted only to the subscribers of the service;
- (iii) in respect of which the subscriber (all types, prepaid as well as postpaid) has to be registered and authenticated at the network point of registration and approved numbering plan shall be applicable.”

¹⁴⁷ TCP Regulations 2012, Regulation 2(c). says that “cellular mobile telephone service”:

- (i) means telecommunication service provided by means of a telecommunication system for the conveyance of messages through the agency of wireless telegraphy where every message that is conveyed thereby has been, or is to be, conveyed by means of a telecommunication system which is designed or adapted to be capable of being used while in motion;
- (ii) refers to transmission of voice or non-voice messages over Licensee’s Network in real time only but service does not cover broadcasting of any messages, voice or non-voice, however, Cell Broadcast is permitted only to the subscribers of the service;
- (iii) in respect of which the subscriber (all types, prepaid as well as postpaid) has to be registered and authenticated at the network point of registration and approved numbering plan shall be applicable.”

and Mahanagar Telephone Nigam Ltd, which are state-owned service providers.¹⁴⁸ Consumers of service providers and its customers or subscribers as well as service providers who are licensees under the Indian Telegraph Act 1885 or the provisions of the Indian Wireless Telegraphy Act 1933 are covered by these regulations.¹⁴⁹ It is evident that they are narrower in applicability than the TCCR Regulations.

According to the Telecom Consumers Protection Regulations 2012 every service provider has to provide a start-up kit to consumers when they enroll into the network.¹⁵⁰ The start-up kit must not contain any plan voucher¹⁵¹ or top-up voucher,¹⁵² which they must be sold separately. Another type of voucher, namely the special tariff voucher,¹⁵³ can be marketed by the service provider. The three vouchers must only be sold with certain restrictions such as the name under which they can be marketed, the monetary value they provide, their validity period, and so on.¹⁵⁴ For convenience and ease of identification of the vouchers by consumers, they must be colour banded (this applies only to printed paper vouchers)—red for plan voucher, green for top-up voucher and yellow for special tariff voucher.¹⁵⁵ On activation of any of the three vouchers, prepaid consumers must be provided with specific information such as title of the plan, deducted taxes, etc. through SMS.¹⁵⁶ Relating to usage within the service area and on making any

¹⁴⁸ TCP Regulations 2012 Regulation 1(3), Dharmendra Chatur, ‘Regulation of Consumer Protection in Indian Telecommunications Sector: Two Steps Forward?’ (2012) 18(8) *Computer and Telecommunications Law Review* 240.

¹⁴⁹ TCP Regulations 2012, Regulation 2(d), (g) and (m).

¹⁵⁰ TCP Regulations 2012, Regulation 3.

¹⁵¹ TCP Regulations 2012, Regulation 2(j): “plan voucher” means a paper voucher or electronic voucher that enrolls a consumer into a tariff plan

¹⁵² TCP Regulations 2012, Regulation 2(s).

¹⁵³ TCP Regulations 2012, Regulation 2(o):

¹⁵⁴ TCP Regulations 2012, Regulation 4.

¹⁵⁵ TCP Regulations 2012, Regulation 5.

¹⁵⁶ TCP Regulations 2012, Regulation 6.

deduction from the prepaid consumer's account, certain information (after every call, after every session of data usage and after activation of value added service) such as duration of the call, amount deducted, quantum of data usage, etc. This information should be provided through SMS.¹⁵⁷ On request and at reasonable cost, a service provider must within 30 days provide information relating to the number of SMS sent and received, itemised call charges, value added service availed etc.¹⁵⁸ There is also a requirement to establish or allot a toll free short code, accessible through SMS, to provide information about tariff plan, balance available in prepaid account, activated VAS.¹⁵⁹ The obligation to provide adequate specified information applies to premium rate service and VAS.¹⁶⁰

The TCP Regulations have been issued with a view to overcome issues of transparency in tariff plans, inadequate information about vouchers and their validity, bringing an end to misleading information during marketing of vouchers, streamlining and standardization of the vouchers, and tackling unintended activation of certain plans by the introduction of colour banding.

Lastly, there is the Telecom Consumers Complaint Redressal Regulations 2012. The TCCR Regulations, 2012, replaced the 2007 TCPRG Regulations. The new regulation has a wider scope and is more comprehensive in its approach than its predecessor. The TCCR Regulations are applicable to all service providers providing basic telephone services,¹⁶¹ unified access services (UAS),¹⁶² cellular mobile telephone services (CMTS)¹⁶³ and internet services.¹⁶⁴ They also apply

¹⁵⁷ TCP Regulations 2012, Regulation 7.

¹⁵⁸ TCP Regulations 2012, Regulation 8.

¹⁵⁹ TCP Regulations 2012, Regulation 9.

¹⁶⁰ TCP Regulations 2012, Regulation 10.

¹⁶¹ TCCR Regulations 2012, Regulation 2(e).

¹⁶² TCCR Regulations 2012, Regulation 2(s).

¹⁶³ TCCR Regulations 2012, Regulation 2(l).

¹⁶⁴ TCCR Regulations 2012, Regulation 2(g).

to Bharat Sanchar Nigam Ltd and Mahanagar Telephone Nigam Ltd, which are state-owned service providers.¹⁶⁵

The Regulations provide for a two-tier mechanism for redressal of consumer complaints. This is achieved by various institutions such as the Complaint Centre, Appellate Authority and its Secretariat, and Advisory Committee:

(i) Complaint Centre: the Complaint Centre is to be established by every service provider for redressal of complaints and addressing service requests. The service in the centre is required to be provided in the local language of the service area, Hindi and English.¹⁶⁶ The regulations lay down criteria for the time period of mandatory service availability in these centres and for its accessibility through a customer care number, which must be toll free. The customer care number must have an installed interactive voice response system operating on three levels with an option to speak to a customer care agent.¹⁶⁷ Apart from the customer care number, the service provider must also establish a general information number for providing any information to consumers on their query or request.¹⁶⁸ Both the general information number and customer care number should be periodically publicised by the service providers.¹⁶⁹ The centre must, on receipt of a complaint, register it and allot a unique docket number to it and the same should be communicated to the complainant. If any action is taken on resolving the complaint, details of

¹⁶⁵ Dharmendra Chatur, 'Regulation of Consumer Protection in Indian Telecommunications Sector: Two Steps Forward?' (2012) 18(8) *Computer and Telecommunications Law Review* 240.

¹⁶⁶ TCCR Regulations 2012, Regulation 3.

¹⁶⁷ TCCR Regulations 2012, Regulation 3(9).

¹⁶⁸ TCCR Regulations 2012, Regulation 4.

¹⁶⁹ TCCR Regulations 2012, Regulation 5.

the same must be communicated to the consumer.¹⁷⁰ Redressal of complaints and service requests must be completed within the specified time-limit.¹⁷¹

(ii) Web-based complaint monitoring system: the service providers must establish a web-based complaint monitoring system to enable consumers to monitor their complaints. The same must be periodically publicised by the service provider.¹⁷²

(iii) Appeal: a consumer can prefer an appeal to an Appellate Authority established by the service provider on the grounds that the redressal of the complaint was not satisfactory, or that the complaint remains unaddressed, or that there was no intimation of the redressal of the complaint within the specified time-limit.¹⁷³ To examine and render advice to the Appellate Authority, a new body called the Advisory Committee has been envisaged in the regulations. It should consist of two members—one each from consumer organisations registered with TRAI and the service provider.¹⁷⁴ In dealing with the appeals, the Appellate Authority must maintain uniformity in its procedure and give due consideration to the advice of the Advisory Committee.¹⁷⁵ The Secretariat of the Appellate Authority is responsible for registration and scrutiny of appeals filed by consumers. It has to comply with the quarterly reporting obligations to Telecom Regulatory Authority of India.¹⁷⁶

(iv) Complaints referred by Telecom Regulatory Authority of India: Telecom Regulatory Authority of India can also refer complaints of violation of Telecom Regulatory Authority of India Act, rules and regulations thereunder; generic complaints; practices adversely affecting

¹⁷⁰ TCCR Regulations 2012, Regulation 7.

¹⁷¹ TCCR Regulations 2012, Regulation 8.

¹⁷² TCCR Regulations 2012, Regulation 6.

¹⁷³ TCCR Regulations 2012, Regulations 9 and 10.

¹⁷⁴ TCCR Regulations 2012, Regulation 11.

¹⁷⁵ TCCR Regulations 2012, Regulation 14.

¹⁷⁶ TCCR Regulations 2012, Regulation 13 and 15.

consumer interest and complaints that need to be resolved expeditiously by the service provider in Telecom Regulatory Authority of India's opinion.¹⁷⁷

Furthermore, every service provider must publish a "Telecom Consumers Charter" containing information relating to the general information number, consumer care number, rights of consumers under the different regulations, orders and directions issued by the Telecom Regulatory Authority of India, the complaint redressal mechanism, specified and promised quality of service parameters, procedure for termination and disconnection of service, and so on.¹⁷⁸

The TCCR Regulations do not affect any other legal remedy that consumers may have for redressal of their grievances.¹⁷⁹

On April 30, 2012, TRAI launched a telecom consumers complaint monitoring system which facilitates location of the customer care number and general information number, and contact details of the Consumer Complaint Centre and Appellate Authority of the various service providers. It also aids consumer access to service providers' complaint monitoring portal to track the current status of their complaints or appeals.¹⁸⁰

The TCCR Regulations were issued to enhance and simplify the erstwhile procedures under the 2007 Regulations. Many problems were brought forth in the consultations by the consumer groups such as difficulty in navigating the IVRS menu, low awareness regarding the existing grievance redressal mechanisms, improper or lack of communication of the resolution or action taken on a complaint, need for a complaint monitoring system, ineffectiveness of the old three-

¹⁷⁷ TCCR Regulations 2012, Regulation 16.

¹⁷⁸ TCCR Regulations 2012, Regulation 17.

¹⁷⁹ TCCR Regulations 2012, Regulation 21.

¹⁸⁰ <<http://www.tccms.gov.in>> Accessed 19 July 2021.

tier complaint redressal system, and a need for involvement of the consumer representative in the grievance redressal system.

From the above analysis it is submitted that Nigeria should emulate the India on how their legal system provides for the prohibition of unsolicited commercial calls and text messages. Nigeria should enact a law or amend the NCC Act 2003 to include a provision on the prohibition of unsolicited commercial calls and text messages.

Furthermore, just as India has provided multiple methods of laying complaints and resolving disputes, Nigeria should also create multiple methods of laying complaints and resolving disputes as this will aid the quick dispensation of consumer-related disputes. This will therefore aid consumer satisfaction and trust in the Nigeria Communications Commission.

4.2 United States of America

In the United States of America, the principal legislation is the Telephone Consumer Protection Act of 1991 (TCPA). The Telephone Consumer Protection Act of 1991 was passed by the United States Congress in 1991 and signed into law by President George H. W. Bush.¹⁸¹ It amended the Communications Act of 1934. The TCPA is codified as 47 U.S.C. 227. The TCPA restricts telephone solicitations (i.e., telemarketing) and the use of automated telephone equipment. It limits the use of automatic dialing systems, artificial or pre-recorded voice messages, SMS text messages, and fax machines. It also specified several technical requirements for fax machines, auto dialers, and voice messaging systems—principally with provisions requiring identification and contact information of the entity using the device to be contained in the message.

¹⁸¹ Michael D. McConathy, 'Destination Ventures, Ltd. v. F.C.C. and Moser v. F.C.C.: How Much Should the Telephone Consumer Protection Act Restrict Your Phone, Fax and Computer?' (1996) 26 (1) *Golden Gate University Law Review* 153.

Prior to the enactment of the TCPA, many travel agents, stockbrokers, and other small businesses promoted their enterprises through fax advertising.¹⁸² The TCPA was born out of abusive telemarketing practices, made more intrusive by advances in technology. Originally, the TCPA imposed restrictions on the use of telephones for unsolicited advertising by telephone and fax.¹⁸³ The TCPA has since been expanded and adapted by administrative rules, judicial interpretation, and Congressional amendments. Since 1991, Congress has enacted other statutes relevant to the discussion of the TCPA.

The TCPA 1991 prohibits telemarketers from unsolicited commercial calls and/or text messages if the recipient asked not to be called or sent a text message. In the event of violation of the TCPA, a subscriber may sue for damages for violation and may also seek an injunction against the telemarketer(s). The constitutionality of the TCPA was upheld in the case of *Moser v. FCC*¹⁸⁴ and also in the case of *Destination Ventures Ltd. v. FCC*.¹⁸⁵

In the USA, unsolicited commercial calls and text messages are unlawful and a breach of the law. In this regard, anybody whose right to privacy has been violated by unsolicited commercial calls or text messages is entitled to sue under Section 227 (3) (a), (b), (c).

The TCPA also limits the use of automatic dialing systems, artificial or pre-recorded voice messages, SMS text messages, and fax machines. The TCPA further makes it imperative that the prior express consent of the recipient (customer) should be sought before sending any of such messages.¹⁸⁶

¹⁸² Ibid.

¹⁸³ Telephone Consumer Protection Act, 47 U.S.C. Section 227.

¹⁸⁴ 826 F. Supp. 360(D. Or. 1993) .

¹⁸⁵ 46 F.3d 54 (9th Cir.1995).

¹⁸⁶ Telephone Consumer Protection Act, 47 U.S.C. Section 227.

However, in Nigeria, there are no specific regulatory guidelines in respect of unsolicited commercial calls and texts messages and Tele-Marketers and Telecom Providers bombard subscribers with unsolicited commercial and nuisance calls and text messages even at odd hours. These calls and text messages, as stated earlier are annoying and frustrating due to their frequency and timing. It is submitted that Nigeria should emulate the United State of America and enact a law or amend the NCC Act 2003 to include a provision on the prohibition of unsolicited commercial calls and text messages.

4.3 South Africa

The primary legislation regulating telecommunications in South Africa is the Telecommunications Act 1996.¹⁸⁷ Section 2 of the Telecommunications Act 1996 provides that the primary object of the Act 'is to provide for the regulation and control of telecommunications matters in the public interest'. The Telecommunications Act basically does three things.¹⁸⁸ First, it sets out fundamental rules for the telecommunications industry. For example, section 32 states that no one may provide a telecommunications service without a licence. By the same token, section 30 states that no one may transmit a signal by radio or use radio apparatus to receive a signal without a licence. Sections 43 and 44 of the Telecommunications Act 1996 require licensees to interconnect with and provide telecommunication facilities to any other licensee who makes a request.

Secondly, the Telecommunications Act 1996 initially established the telecommunications regulator, known as South African Telecommunications Regulatory Authority (SATRA). SATRA was later merged into Independent Communications Authority of South Africa (ICASA)

¹⁸⁷ L. Thornton, Y. Carrim, P. Mtshaulana and P. Reyburn, *Telecommunications Law in South Africa* (STE Publishers 2006) 101.

¹⁸⁸ The major issues covered in the Telecommunications Act 1996 are licensing, interconnection, pricing and universal service.

in terms of the Independent Communications Authority of South Africa Act (ICASA Act) 2000.¹⁸⁹ At the same time the establishment provisions in the Telecommunications Act were repealed and replaced by provisions in the ICASA Act. In addition, the Telecommunications Act established the Universal Service Agency (USA)¹⁹⁰ to, among other things; manage the Universal Service Fund (USF).¹⁹¹

Thirdly, the Telecommunications Act 1996 also sets out that ICASA must establish other rules for the telecommunications industry by, inter alia, making regulations. Regulations are made by ICASA, and approved and published by the Minister of Communications.¹⁹²

The Independent Communications Authority of South Africa Act was promulgated in 2000 to create ICASA,¹⁹³ an independent regulator, to replace both the Independent Broadcasting Authority (IBA) and SATRA. In terms of section 2 of the ICASA Act, ICASA is, inter alia, to ‘regulate telecommunications in the public interest’. ICASA acts through its Council.¹⁹⁴ It may, however, establish committees to which it may delegate or assign functions.¹⁹⁵ It may also delegate any power or duty (excluding the power to make regulations) to any councilor or to the chief executive officer, who is appointed by ICASA in terms of section 14(1)(a) of the ICASA Act.¹⁹⁶ In terms of the ICASA Act, ICASA exercises powers and performs functions in terms of the underlying telecommunications and broadcasting legislation, namely, the Telecommunications Act, the Independent Broadcasting Authority Act, No. 153 of 1993 (IBA

¹⁸⁹ Independent Communications Authority of South Africa Act 2000, Section 2.

¹⁹⁰ Telecommunications Act 1996, Chapter VII.

¹⁹¹ Ibid.

¹⁹² Ibid, Section 59(4).

¹⁹³ Independent Communications Authority of South Africa Act 2000, Section 2.

¹⁹⁴ Ibid, Section 3(2).

¹⁹⁵ Ibid, Section 17.

¹⁹⁶ Telecommunications Act, Section 91(1)–(5).

Act) and the Broadcasting Act, No.4 of 1999.¹⁹⁷ This was an acknowledgement of the realities of convergence between broadcasting and telecommunications and the need for coherent regulation.¹⁹⁸ It was also perceived as an attempt by the government to reduce its regulatory budget by avoiding duplication of effort and consolidating the limited skills available.¹⁹⁹

The ICASA Act is primarily administrative or procedural legislation, whereas the underlying statutes are primarily substantive legislation. ICASA must perform its functions in accordance with the ICASA Act as well as the underlying legislation, in order to ‘achieve the objects’ of the underlying statutes.²⁰⁰

In the performance of its functions, ICASA is also bound by the Promotion of Administrative Justice Act (PAJA),²⁰¹ which regulates the requirements of procedurally fair administrative action, and identifies the possible grounds of review of administrative decisions. ICASA should ensure that its actions are lawful, reasonable and procedurally fair as required by PAJA.

ICASA deals with the day-to-day regulation of the telecommunications industry. Its functions are not so much at the policy-making level but at the operational level, where policy is implemented. In order to ensure effective implementation of government policy, ICASA has been given the power to make regulations.²⁰² And is also a licensing authority, in that it participates actively in the licensing process and in issuing of licences. In telecommunications, there are two types of licence. The first type is smaller, more competitive licences, such as value

¹⁹⁷ Independent Communications Authority of South Africa Act 2000, Section 4(1)(a) and (b).

¹⁹⁸ T James, ‘An overview of Information Policy Initiatives in Southern Africa, problems and issues emerging from the South African experience – what lessons can we learn?’ in T James (ed) *Information Policy Handbook* (APC, 2001)

¹⁹⁹ Ibid.

²⁰⁰ Independent Communications Authority of South Africa Act 2000, Section 2(c).

²⁰¹ Promotion of Administrative Justice Act, 3 of 2000.

²⁰² Telecommunications Act 1996, Sections 95 and 96 grant ICASA powers to make radio regulations and any other regulation that the Act permits.

added network service (Vans) and private telecommunications network (PTN) licences, which are issued and granted by ICASA. The second type is licences issued in terms of section 34(2) of the Telecommunications Act, which are subject to an invitation to apply issued by the Minister. ICASA assists the Minister in developing the criteria to be used in evaluation of applications for the second type of licence.²⁰³ In such circumstances, ICASA evaluates all applications for licences and makes recommendations to the Minister as to who should be awarded the licence and also proposes the conditions of the licence.²⁰⁴ If the Minister approves the recommendation of ICASA, ICASA then issues the licence.²⁰⁵ ICASA also has the power to adjudicate disputes arising in the telecommunications industry. In the event that there is a dispute between service providers, or between service providers and consumers, this dispute must be submitted to ICASA for determination.²⁰⁶ It is for this reason that ICASA must be independent from all industry participants and from the government. ICASA owes its primary obligation to consumers, to protect them from unfair business practices, poor quality service, and harmful or inferior products. With regard to the radio frequency spectrum, ICASA has the duty to plan, control and manage it.²⁰⁷

4.4 Challenges in Exercising Available Rights under the NCC Act 2003

Despite the structure set up by the Federal Government and the civil society in Nigeria to ensure that the consumers are protected, the consumer is still faced with a lot of challenges. This challenges has impeded the effectiveness of some of the regulation in Nigeria.

²⁰³ Ibid, Section 34(2)(c).

²⁰⁴ Ibid, Section 35(1)(a) and (b)

²⁰⁵ Ibid, Section 35(6).

²⁰⁶ Ibid, Section 100.

²⁰⁷ Ibid, Section 28(1).

1. **Low level of Literacy:** The high level of illiteracy in Nigeria is a major factor for the failure of consumerism. According to statistics, “Nigeria is among the nine most illiterate countries in the world”. What does one expect from a consumer that cannot read, write or understand the components of a product to do when given an adulterated version of the same product?²⁰⁸ How does he/she know that although two products share similar packaging, they are not the same in composition? How does he know about his/her rights as a consumer if he/she is not told?²⁰⁹
2. **Ignorance:** Ignorance, they say, is a disease. Major fallout of illiteracy is ignorance. Majority of the consumers in Nigeria are ignorant of their rights as consumers, hence they seem helpless in the face of exploitation by producers and marketers who are fellow Nigerians in a bid to get-rich-quick. Who then will save Nigerians from themselves (Exploiters)? Enlightenment is apparently the best answer.
3. **Corruption:** Corruption is the bane of Nigeria’s development. High level corruption among the same people that should be in the forefront of consumerism militates against the success of consumerism in Nigeria. Many of consumer activists easily succumb to material and financial inducement to abandon the fight against the exploitation of the consumer.
4. **Poverty:** Nigeria is rated among the poorest countries in the world, with a majority of Nigerian consumers in the poverty brackets. Who will help the poor consumer in a typical Nigerian village to prosecute a multinational food company which has sold to him/her a sub-standard milk powder or any other goods?

²⁰⁸ M. Abubakar, ‘Nigeria Among Nine Most Illiterate Countries in the World’ <www.nairaland.com/nigeria/topic/illiteratecountries> accessed 19 July 2021.

²⁰⁹ Ibid.

5. **Unresponsive Government:** The success of consumerism in any country depends greatly on the support and infrastructure provided by the government. The Nigerian government has not shown enough enthusiasm in practice for the success of consumerism in the country. Though there have been series of deliberations on telecoms Consumer Parliament/Forum of which some have become part of useful feedback in far reaching regulatory interventions by the NCC.
6. **Weak Consumers' Association:** There is no gain saying the fact that majority of the Consumers' Association in Nigeria are not strong enough to fight the powerful and wealthy business owners whose products or services have been found to be of very low quality.
7. **High Cost of Seeking Redress:** The high cost and technicalities of seeking legal redress have prevented a lot of poor consumers from taking up legal action against erring but richer manufacturers or marketers. Consumerism in Nigeria can be made to deliver the desired dividends to the society by addressing all the factors militating against its growth and effectiveness as outlined above. Consumers' organizations in Nigeria can step up their activities by imitating USA and Britain where consumer organizations conduct independent product tests, carry out independent consumer surveys; issue out product alerts inform and educate consumers and draw the attention of the government to the need for the full implementation of consumer protection laws and prompt prosecution of offenders to serve as deterrent to others. To achieve this milestone, the government, the marketers and the civil society must become better disposed to the objectives of consumerism by providing the necessary education, infrastructure, funding, enlightenment and legislation to make consumerism in Nigeria what it is in the developed countries of USA and Britain.

Consumer rights are rights entitled by law to anyone who buy service or good. Liberalized telecommunication market is characterized with competition which led to new advanced and sophisticated services, dropping of price dramatically and increase penetration as aforementioned. On one side are positive effect on the other hand it becomes more complex for consumers especially in developing countries to make rational choices. In such environment higher consumer knowledge is crucial for them to have confidence and high bargain power hence participate actively in the market. National regulatory authority for communication of it has been established in many countries, one of its core responsibilities being protecting consumer. Further, consumer rights were published with regulatory authorities as part of empowering consumers. Are consumers knowledgeable about their rights? This remains a question to ponder.

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary

The aim of this study was to examine the legal and institutional frame work on the protection of telecommunication service consumers in Nigeria. To effectively achieve the aim of this research, this work was structured into five chapters.

Chapter one which is the introduction to the research reveals the background and foundation of this study.

Chapter two was a literature review of the existing literature on telecommunication consumers protection in Nigeria. From the literature reviewed, it was observed that there are plethora of legislation on the protection of telecommunication service consumers in Nigeria however, due to various factors identified in the literature, consumer are still not treated satisfactorily.

Chapter three examined different legal frameworks adopted in relation to the protection of consumers of telecommunication services. This chapter aims to analyze how the different legislations help to approach the subject matter. Furthermore, the chapter examined the various rights available to consumers of such services in Nigeria.

Chapter four provided a comparative analysis of the legal frame work on the protection of telecommunication service consumers in other jurisdictions. Three countries were examined, India, United States of America and South Africa.

Chapter five is the last chapter of this work. In this chapter the writer summarized the points discussed from chapter one to four and made some recommendations and concluded the study.

5.2 Recommendations

1. Nigerians should be sensitized or educated about their Consumer Protection Rights and on how to enforce these rights. Though the current weekly programme, “Consumers Speaks” on the National Radio Network is a step in a right direction, efforts should be extended to local radios and the programme aired in local languages, to aid the understanding of the local populace. Telecommunication consumer parliament held once in a year in the six geopolitical zones of the country should be decentralized to the 774 Local Government Areas and the Federal Capital Abuja for easy accessibility of the local consumers (Masses). Anti-trust laws should be enacted to encourage competition in the market place and invariably, guarantee the rights of choice to consumers especially the telecom consumers.
2. The media should assume the role of whistle-blowers with a view of checkmating unwholesome business practices by unscrupulous entrepreneurs and organizations. Section 105(2) of the NCC Act should be amended to make it mandatory for the Commission to establish functional Alternative Dispute Resolution Centres Nationwide. To make these more effective, service providers should compulsorily give consumers who complained a duplicate of the complaint forms so as to prevent or manage disputes properly.
3. There is need for amendment of the Registration of Telecommunication Subscribers’ (RTS) Regulation 2011 as well as the NCC Act, so as to provide for the rights of subscribers to sue for the breach of the right to privacy in a competent court. Based on that, it is also recommended that prior consent of subscribers be sought and obtained before certain information that will infringe their right to privacy is disclosed.
3. There are a number of issues that need to be resolved for the realisation of good quality of telecommunication services in Nigeria. Consumer protection of telecommunication industry in

Nigeria would require reforms in the laws and policies. Consequently, this research recommends the following as modest steps towards ensuring the efficiency and effectiveness of legal protection of consumers of telecommunication industry in Nigeria. In order to have appropriate institutional framework that will meet minimum international standards, there is a need to always have constant and periodic regulatory reforms in the telecommunication sector without necessarily losing focus on the importance and essence of telecommunication policy anchored on effective and efficient telecommunication service provisions.

4. An upgrade should be undertaken on the Ministry of Information as a tool for regulatory reforms in the telecommunication sector, and then the sector would be adequately monitored. Effective mechanisms for the enforcement of the law and regulations of telecommunication must be put in place. Although Enforcement Regulations were made by the NCC in 2004, there is a need to co-opt law enforcement agencies in the fight against violations of telecommunications laws and regulations. The overlapping functions of government agencies and regulatory bodies such as the Nigerian Communications Commission (NCC) and the National Environmental Standards and Regulations Enforcement Agency (NESREA) must be resolved. Incessant power failures have been identified as one of the banes for the development of the telecommunication industry in Nigeria. It has also been touted as the major reason for high tariff and system failures by the operators. Government must address this critical infrastructure as power plays significant role in any economy including the telecommunication sector. Operators should upgrade and optimize all existing base stations. If this is done, it will stem call set up failures due to increase in traffic volumes. Upgrading and optimizing existing base stations across the country would create room for the network to handle more traffic. If a particular base station is to be taken 'off-line' (either for schedule maintenance, repairs, upgrades, etc.), all neighbouring base stations

should have their communication power levels increased. Hopefully, the Federal Competition and Consumer Protection Act recently enacted would be the needed liberation to the telecommunication sector. The liberalisation of the sector is not enough, there must be a set of rules and policies that restrict the abuse of market powers and create efficiency in the market.

5. The Nigeria Communication Commission (NCC) should be more proactive in the enforcement of the provision of the Act, ensuring strict compliance by the telecom operator especially as regards consumer protection and in the light of this, sanctions like revocation of licences or suspending mobile operators should be preferred to the use of monetary sanctions because this will make the operators to do better by way of improving their service delivery.

6. There should be constant training and retraining of the NCC personnel so as to meet up with the emerging technological development experienced in the telecommunication industry and by so doing, meet the needs of the consumer. Nigeria and indeed Africa, as a country and continent should learn from some of the more developed International Telecommunication Union (ITU) members like the United States and India, especially with regards to the protection of the privacy of information of consumer. This is one area the Act should seriously look into.

5.3 Conclusion

Communication and of course telecommunication has been identified as an important part of human existence which is why the users/ consumers of such goods and services must be protected under various laws and codes of conducts. In the light of this, Nigerian's Communications Regulator is the Nigerian Communication Commission. The limitations to the realization of consumer protection under the NCC Act, 2003 could be summed up as vagueness of some clauses/ phrases, ambiguity in the Act, poor governance, illiteracy and weak consumers association. Corruption could be pointed at as the major setback in the pursuit of consumer's

right in a general term as far as Nigeria is concern. The Nigerian Communication Commission has gone a long way in trying to ensure that consumers are protected but then, there are a number of lessons we can learn when we formulate or reform laws with regards to information technology. One of such countries that have done this is the United States of America especially with regards to the protection of the privacy of the information of consumers.

The purpose of this research was to analyze the legal architecture for the regulation of the telecommunication industry where consumers or subscribers enjoy value and satisfaction for their monies within the context of the services being rendered by the service providers. The exponential growth in the sector has attracted the global perception and Nigerian telecommunication has been adjudged one of the fastest growing telecommunication market in the world. Despite the huge achievements of telecommunication in the country, however, the sector has been faced with a lot of challenges such as multiple regulation, government interference in telecommunication matters, multiple, high and illegal taxation, security of infrastructure, poor quality of service, inadequate and erratic power supply and state of access roads, among others. The current level of consumer satisfaction with the industry is quite low as there are constant complaints of frustrations encountered by the consumers in making and answering calls. Nonetheless, it can be safely concluded that save for a few observable lapses the law has made adequate provisions for redress for the consumer of telecommunication services in Nigeria.

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