

**THE LEGAL FRAMEWORK OF ELECTRONIC COMMERCE IN NIGERIA AND
CONSUMER PROTECTION: A CRITICAL ANALYSIS.**

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW AND
SUBMITTED TO THE FACULTY OF LAW, UNIVERSITY OF BENIN, IN PARTIAL
FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF
BACHELOR OF LAW (LL.B) OF THE UNIVERSITY OF BENIN, BENIN CITY.**

**FACULTY OF LAW
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JUNE 2021

CERTIFICATION

I, Euphemia Nkechi OBI, with the Matriculation number **LAW1504364**, hereby certify that, apart from the reference made to other person's works which have been duly acknowledged, the entire work is the product of my personal research and that this project has neither in whole nor in part been presented for another degree somewhere.

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APPROVAL

We certify that this project was written and completed by **Euphemia Nkechi OBI** with Matriculation number **LAW1504364** in partial fulfillment of the requirements for the award of a bachelor of laws (LL.B) degree.

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DEAN, FACULTY OF LAW

SIGNATURE AND DATE

DEDICATION

This project is dedicated to God Almighty and my family, for being my source of strength, hope and comfort.

ACKNOWLEDGEMENT

My utmost gratitude goes to God almighty for his providence in my life, seeing myself today, there is a lot to be grateful for. I am forever grateful to my family, most especially my late dad, Mr. Samuel Obiora Obi, I love you so much, the desire to make you proud, is my driving force. I am also grateful to my mum, Mrs. Jacinta Chinyere obi, thank you for the sacrifices. I am grateful also to my guardians, Mr. Moses and Mrs. Joy ogunwa, for giving me the best and for taking me as your child, I am grateful, to my twin, Eucharika thank you for being my confidante and my other lovely siblings, Chiamaka, Chibuzor, Judith, Kelechi and Baby Kosi, you all are the best gifts I could ever have asked for. My special thanks also goes to my best friend and first love, Richard Abel, for the times you came through for me, words are grossly insufficient.

My thanks goes to Four lecturers in faculty of Law that have made a huge difference in my life, Prof Violet Aigbokaevbo, Dr. Mrs Erhagbe, Dr. Daudu and Dr. Mike Attah, may God richly bless you.

My gratitude also goes to my project supervisor, Dr. Dandy Nwaogu, for his continuous support, perceptive comment, helpful information, guidance that have helped me tremendously in all the time and research and writing of this project. Thank you for your patience with me even after delaying with the ample time given, just like a father, you scolded me with one hand and corrected me with love and patience, I am grateful . I could not have imagined having a better supervisor.

My gratitude further goes out to all my friends, Miss Marian for being there for me and ensuring I won my election, thank you Comrade wisdom for the sacrifices too, pushing you against your will to become eleco secretary to ensure there wasn't any form of electoral malpractice during my election as the Vice President, Law Students Association, Faculty of Law, University of Benin. I want to thank Vivian, Vero and Nkechi for coming through for me during my Law week.

Imade Sandra you deserve an award, you are a committed and true friend, thank you for your encouragement and presence during the Law week.

I also want to thank all Law students University of Benin for believing in me and electing me as the Vice President, Law Students' Association, Faculty of Law, University of Benin, I am honoured.

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- Stevenson v. Rogers (1999) 1 All E.R 613
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- Yesufu v. ACB (1976) 1 All NLR (Pt 1) 328
- Taylor v. H.B Russell (1947) 12 WACA 179
- Paye v. Gaji (1996) 5NWLR pt 450 pg 589 At 605
- Clough v. London and NorthWest Railway Company (1871) LR 7 Exh 17
- Langridge v. Levy (1837) 2 M&W 519, Bebee v. Sales (1916) 32 TLR 413
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- See Denoghue v. Stevenson(1932) A.C 562

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- Consumer Protection Council Act Cap C25 LFN 2004
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LIST OF TREATIES / MODEL LAWS

- Electronic Commerce (EC DIRECTIVE) REGULATIONS 2002 (SI 2002/2003)
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LIST OF ABBREVIATIONS

- ARPANET : Advanced Research Project agency Network
- ATM: Automated Teller Machine
- B2B: Business to Business
- B2C: Business to Consumers
- C2C: Consumer to Consumer
- CPC: Consumer Protection Council
- E-banking: Electronic Banking
- E-Commerce: Electronic commerce
- EDI: Electronic Data Interchange
- EFT: Electronic Fund Transfer
- E-mail: Electronic Mail
- EPS: Electronic Payment system
- GSM: Global System for Mobile Communication
- ICT: Information Communication Technology
- IP: Information Protocols
- ISP: Internet Service Provider
- JILT: Journal of International Law and Technology
- LFN: Laws of the Federation of Nigeria
- M-TEL: Nigeria Mobile Telecommunications Ltd
- NCC: Nigeria Communication Commission
- NESREA: National Environmental Standard Regulation and Enforcement Agency
- NITEL:Nigeria Telecommuications
- OECD: Organisation for economic co-operation and Development
- POS: Point of sale
- UN: United Nations
- UNCITRAL: United nations Commission on International Trade Law
- URL: Uniform Resource Locator

- WWW: World Wide Web

ABSTRACT

There is no doubt that the internet has added a great deal to the quality of human life in the contemporary world. It has knitted the world together as a global village. Many difficulties which hampered international and even national commercial transactions in the past have now been consigned to the dust-bin of history. The emergence of electronic commerce has occurred as a result of the development of the internet, and commercial transactions are conducted through it between parties from different parts of the world who may never see themselves in their lifetimes. However, the emergence of electronic commerce has also brought with it a number of legal and socio-economic issues, especially in developing nations such as Nigeria, which issues pose significant challenges to the legal regime of electronic commerce in those countries. This work examines these legal issues within the context of the current legal and regulatory framework for electronic commerce in Nigeria.

Aims and Objectives.

Consumers in e-commerce are faced with a number of risks arising from the general lack of understanding of the operations of the internet. This has been compounded by a number of legal issues which have been largely taken care of in more advanced and sophisticated countries, but which issues are still being grappled with in developing countries such as Nigeria, where internet trading is something fairly new. These issues include the extent to which the communication between the parties is protected (data protection), the formation of a contract on the internet, the legal means of effecting payment in e-commerce, which court will assume jurisdiction in the event of a dispute between parties to an internet contract, and what law or laws will govern the transactions. Is it the law of the seller or that of the buyer or consumer? Other issues relate to cyber-crimes that are threatening e-commerce, and also the mode of proving internet-related transactions. An examination of the foregoing issues vis-à-vis the position of the law in Nigeria presently is the focus of this thesis.

Statement of Research Problem

To discover the various provisions available in the protection of e-consumers

Expected Findings

- 1) The entirety of what E-commerce entails.
- 2) Legal instrument available for the Protection of E-consumers in Nigeria
- 3) Solutions to the Problems militating against the growth of E-commerce in Nigeria.

Scope of Research

The scope of this research elucidates the concept of Electronic Commerce in Nigeria. The evolution, objectives, its advantages and disadvantages, its features and models, its types and models and its formation. It furthermore talks on the current legal structure in place to facilitate the trade, the factors limiting its rapid growth and also, gives a comparative analysis of legal structure in Nigeria and other selected countries.

Methodology

The research employs doctrinal/analytical method. Pertinent and apposite literature on Electronic Commerce will be retrieved from textbooks, journals, internet materials, while also eliciting professional opinions from jurist and learned academics. The analytical exposition of the subject matter would involve a painstaking and intense research through sourcing and consulting other helpful materials from the library.

Contribution to Knowledge

This research work seeks to:

- 1) Raise the awareness electronic commercial activities as a development that should be welcome by all since it defies most limitations surrounded with physical commerce.
- 2) Provide the extant laws governing electronic commerce in Nigeria.
- 3) Create awareness that will assuage every insecurity built up in the minds of electronic consumers, which has over the years led to poor participation in Electronic Commerce in Nigeria.

CHAPTER ONE

HISTORY OF ELECTRONIC COMMERCE

1.1 Introduction

Information and communication technology (ICT) plays a major role in today's business. According to Bichler Martin¹, information technology provides new opportunities and mechanisms to compete, taking advantage of computer power, the communication possibilities of the network and the fact that millions of people and businesses are simultaneously online.

The mid-1490's was heralded by commercial -entities as ground breaking for worldwide economic development. The reason for this was the information and communication revolution in the context of the opening of the internet for public use². The creation of this open network imputed a new sense of living within a global village where people could be in constant touch regardless of temporal differences³. The internet has provided a ready platform for commerce to flourish.⁴ Sellers now have direct access to a global market, consumers now buy products at competitive prices. Businessmen and consumers use computer to create, transmit, and store information in the electronic form. Traditional form of paper document is being discarded for reason that electronic method is cheaper and easier to store, retrieve and communicate. Thus information technology has revolutionized the whole commercial world. It favors the economics

¹Bichler M., The future of e-market, United Kingdom, (Cambridge) University 2001 P. 4

² Carr. I International Trade Law, 4th Edition...New York, Routledge Cavendish 2010, 103 (hereafter referred to as Carl Int'l Trade Law

³ Ibid

⁴Ijayah H., Nigeria Law and Nigerian Law and Practice in a globalizing world, Sokoto, Usman Dan Fodio University, (2010) P. 19

of both developed and developing nations as it in addition to other benefits creates for penetration of new markets and reduces the cost of transacting business physically.

1.2 What is Commerce?

When the word 'commerce' is mentioned, the next thought that runs through the mind of a businessman is 'distribution'. Thus, it could be said that commerce, in the context of business is in charge of the distribution aspect of business.

Skinner⁵ defines commerce as "that branch of man's activity which is concerned with distribution and exchange of the products of nature and man." He further categorized commerce into six branches: Trade; Transport, Communication, Warehousing; Finance and Banking and Insurance. From Skinner's definition, it is obvious that "exchange of products of nature, and man" refers to the exchange of goods and services and it includes all the activities which directly or indirectly facilitate that exchange (this is where the distribution aspect comes in). Improvement in any branch of commerce, facilitates production, helps to reduce prices and makes possible higher standard of living. People who could afford to buy only a little of a commodity before can afford to buy more at the new lower price, and some who could not afford to buy any before may now be able to buy some⁶

In Nigeria, the umbrella body for all States and bilateral Chambers of Commerce with the Federal Republic of Nigerian is the Nigerian Association of Chambers of Commerce, Industry, Mines, and Agriculture, (NACCIMA). The NACCIMA is the most effective and efficient organ

⁵ Skinner W.G, Commerce for Secretarial and Business Students, (1973), P. 16

⁶ Ibid

through which the Nigerian business class influences the Government on a wide range of issues affecting commerce and industry.⁷

1.3 What is Electronic Commerce?

There is no settled definition of electronic commerce⁸. Different writers have given different definitions of e-commerce. One major reason accountable for this variation as to definition is the fact that e-commerce uses a variety of communicative technique. Indirr Carr⁹ defines e-commerce as trade that takes place over the internet with a buyer visiting the seller's website and includes business-to-business. Business-to-customer, consumer-to-business and customer-to-customer trade. Many of the events and factors associated with a contract such as pre-contractual negotiations offer. Acceptance, terms of contract are conveyed and stored electronically.

However, Johansson¹⁰ argues that e-commerce includes more than just buying and selling on the internet. It can also refer to simple information or service exchanges such as those between Government agency and its constituents, teacher-student relationships and fundraising. It refers to the 'exchange' between a provider and a customer, this time using electronic communication.

Similarly, the United Kingdom Cabinet Office¹¹ defines it as the exchange of information across electronic networks at any stage in the supply chain, whether within an organization, between businesses, between businesses and consumers, or between the public and private sectors, whether paid or unpaid; this definition lays emphasis on the form of communication (electronic network) and parties involved (businesses. consumers. private and public sector).

⁷ <http://www.naccina.com/> [accessed on July 4th, 2014]

⁸ Hereafter referred to as e-commerce.

⁹ Carr. I, *Intl Trade Law*, 125

¹⁰ Johansson I.K, *Global Marketing*, 2nd ed. London, McGraw-Hill, 2000,530

¹¹ United Kingdom Cabinet Office, 1999, Cited in Akomolede, T,I, "Legal and contemporary issues in e-commerce in Nigeria" (2008) 11(13) PER/PELJ,2

Furthermore, the Organization for European Cooperation and Development (OECD)¹² defines e-commerce as all forms of commercial transaction involving both organization and individuals that are based upon the electronic processing and transmission of data, including text, sound and visual images. It also refers to the effects that the electronic exchange of commercial information may have on the institution and processes that support and govern commercial activities.

E-commerce draws on technologies such as mobile commerce, internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems and automated data conversion.¹³

The subject matter under an e-commerce transaction could be intangibles, data products, or tangible goods. The only important factor is that the 'communication transactions take place over an electronic medium.¹⁴

E-commerce has no single legal definition; it refers to commerce taking place via electronic communication media, ranging from the traditional electronic data interchange on closed networks and commerce via fax or telex to the modern forms of online commerce via the web, email and mobile phones.¹⁵

From the various definitions given above, it is clear that .e-commerce involves the use of an electronic network in exchanging information for the purpose of conducting business or other transactions of a commercial nature.

¹² OECD (1997), *Electronic Commerce: Opportunities and Challenges for Government*, OECD, Paris

¹³ Rayport and Jaworski B, *Introduction to E-Commerce*, 2nd Ed, London, McGraw-Hill, 2003, 3 (hereafter referred to as Rayport and Jaworski, *E-Commerce*)

¹⁴ Rowland D and Macdonald E, *Information Technology Law*, 3rded, Australia, Cavendish, 2005, P. 24 (hereafter referred to as Rowland and Macdonald, *IT, Law*)

¹⁵ Rowland D, Kohl U and Charlesworth A, *Information Technology Law*, 4thed, London, Routledge, 2012, P. 233

1.4 History of E-Commerce

E-commerce dates back to the early 1950's with the use of the electronic data interchange (EDI).¹⁶ The electronic data interchange (EDI) is the intercompany computer to computer communication of standard transactions in a standard format that permits the receiver to perform the intended transaction.¹⁷ The usage of standard format suitable for automated processing means that transaction can be processed automatically by the recipient's computer system without the need for any information to be re-keyed or, indeed, for there to be any degree of human intervention¹⁸ Lloyd¹⁹ further gave an example of a supermarket's computer system without monitoring sales and linking with its suppliers system to place orders whenever stock is low. Thus, the EDI standards are a set of formats (much like a language), that trading partners agree to communicate to each other in. A good analogy can be found in the airline industry. All over the world there are airlines and airports in different countries. Pilots and crew may converse in their native tongue, but English is required from all aircraft to control tower communications. Could you imagine the confusion if there was- not one standard language. The EDI has protocols for message format, data storage, logs, acknowledgments of messages and confirmation of their content.²⁰ Thus, the electronic data interchange (EDI) is a secured means of electronic transaction. An system allows a company's business units to submit orders, issue invoices and conduct business electronically with other company units.²¹ In essence, the electronic data interchange (EDI) is a form of paperless trading.²² The electronic data interchange (EDI) only involves

¹⁶ Rowland and Macdonald, I.T, Law, P.243

¹⁷ Carr. I, Intl, Trade Law, 103.

¹⁸ Lloyd, Information Technology Law, 2nded, London, Butterworths, 1997,P. 468

¹⁹ Ibid

²⁰ Rowland and Macdonald, I.T, Law, 243

²¹ Keegan W.J and Green, M.C, Global Marketing, 6thed, United States, Pearson, 2003 P. 206.

²² Walden I. Information technology and The Law, 2nded, United Kingdom, Macmillan, 1990,P. 239

communication occurring within a closed network unlike the internet which involved open network.²³ The values of the electronic data interchange (EDI) are most apparent when an ongoing relationship exists between the panics. A typical situation might be where an electronic data interchange (EDI) arrangement is used between a retailer and wholesaler to ensure that product stocks are maintained at an optimal level. The need for messages to be structured precisely in accordance with pre-determined parameters means that electronic data interchange (EDI) is less relevant in the situation where single transactions are made.²⁴

Furthermore, in the late 1960's, there was a shift from the EDI technology as the United States' Defense Department developed a secure and robust communication network known as the Advanced Research Projects Agency Network. (ARPANET), linking organizations engaged in defense.²⁵ During this period (late 1960's) the ARPANET was strictly limited to use by the United States Defense Department.

However, during the 1970's the ARPANET became interestingly used by academics for sharing research materials and eventually evolved into the worldwide network of interconnected computers known as the internet.²⁶ The Internet is defined as a collection of wires, protocols, and hardware that allows the electronic transmission of data over the TCP/IP (Transmission Control Protocol and Internet Protocol).²⁷ The internet forms a global network of computers that can share data and programs.²⁸

²³ Ibid

²⁴ Llyod, supra

²⁵ Keegan and Green, supra

²⁶ Ibid

²⁷ Rayport and Jaworski, E-Commerce, 67

²⁸ Ibid

E-commerce on the Internet started as companies and individuals realized the commercial potential of the vast Internet network. Initially, companies began offering general product information and placing advert²⁹. Gradually, as the technology developed and hits Idle lumber of requests for a site) started to get recorded, companies moved into customer and market research as the cookie technology emerged (a cookie is a memory device that can track a user's activity on a website and customize the information provided), the research moved into questionnaire surveys- and focus groups via interactive chat boxes, text only boxes- that allow type exchanges between seven) people at various remote location³⁰. As the accessibility and versatility of the internet grows, its capabilities as a global market are being realized.³¹

It should be noted that before the Internet breakthrough in the 1990's (the opening of the in seam for public use), were the electronic means of making payments, starting from the usage of credit cards. ATM machines (Automated Teller Machines) and telephone banking, especially in the 1980s.³²

How does the internet work?³³ Although the 'Memel seems like a Single, giant network to which many computers attach, it is not the internet is a consortium of networks, it connects millions of computer and thousands of networks. Wide Area Networks (WAN) allow the internet to work come pin optical boundaries- by providing efficient long distance technology that can connect many networks. The term 'backbone network' is often used to describe a major WAN to which other networks are attached. The backbone reaches some, but not all sites; these locations are called 'backbone sites'.

²⁹ Johansson I,K, Global Marketing, 2nded, London, McGraw-Hill, 2000,P. 530

³⁰ Ibid

³¹ Ibid

³²Mirescu S. "The promises and evolution of e-commerce", (2010) Journal of Information Technology, 3.

³³ The answer to this question is a summary of Rayport and Jaworski, E-commerce, chapter 2

Internet provides access to an enormous quantity of content spread out over many computers using many services. Today's web browsers attempt to allow users to access this content without having to think about which computer is actually storing data, where that computer and what service is being used to access data. Web Pages use links to connect users to other content that may or may not be located on the same server as the page from which it links. The address used to identify the location of this content is called a URL (short form for Uniform Resource Locator). The URL tells the browser several things about how to access the desired content of the transmission protocol. Several protocols are supported by browsers including Hyper Text transfer Protocol (HTTP) for web pages. File Transfer Protocol (FTP) for the transmission of files, and the extended S-FTP for a higher degree of security. One reason why browsers are so powerful is because they have access to several Internet services with one easy-to-use interface. The browser can automatically access a service without requiring the user to run another programme;

- The name of the computer where the content can be found; for identification purposes, all servers on the Internet are assigned an IP address. IP addresses work much like telephone numbers making it easy for computers to uniquely identify other computers on the Internet, in fact, you can use an IP address to get access to a server through your browsers to prevent people from having to memorize long strings of numbers, domain names were introduced. Domain Name Servers basically function like electronic phone books that look up numerical IP addresses when they are given a server's name.
- The directory on the computer where the content is stored and the name of the file containing the content: Each file on a server is stored in a directory. The browser needs to know both the name of the file and the directory in which it is stored.

History of E-Commerce in Nigeria

The origin of e-commerce can be traced to the 1960s when businesses started using Electronic Data Interchange (EDI) to share business documents with other companies. In 1979, the American National Standard Institute developed ASCX 12 as a universal standard for businesses to share documents through an electronic network. While in the 1990s, the rise of eBay and Amazon revolutionized the e-commerce industry. Through this medium, customers can now purchase endless amounts of items online. While e-commerce has proven to be a vibrant source of economic growth in developed countries like America, Europe, Asia etc, e-commerce is experiencing rapid growth in Nigeria and some other African countries including Egypt, South Africa, and Kenya. The emergence of e-commerce has greatly changed the traditional method of shopping. The buying and selling of goods and services can now be done online anytime. While goods are delivered to doorsteps or partner courier service provider, other products like eBook, videos, and audios are delivered electronically. They are affordable and sometimes cheaper than offline prices.

Most times in Nigeria, customers prefer to pay cash instead of using their cards; this is because they are afraid of using the cards online. Why should one be afraid? When we have all, it takes to go automated.

E-commerce has continued to experience growth in Nigeria. It is the same with other Africans and most part of the world. In Nigeria, e-commerce is growing faster; most Nigerians are embracing e-commerce as their preferred platform for buying and selling of goods and services. As a result of its rapid growth, e-commerce has started contributing to the growth of the Nigerian

economy. E-commerce is creating job opportunity for the unemployed which will improve the country's economic system.

The ICT industry directly contributed 10.44 percent to Nigeria's Gross Domestic Product (GDP) in 2013. ICT contribution to another sector of the economy is also increasing. If more internet access is provided, this could positively impact on the e-commerce market.

Internet or mobile network use is becoming an important driver of e-commerce in Nigeria, according to Jumia, "71% of its users in Nigeria now access the website via their mobile phones, compared to 53% of customers in the rest of Africa. In Nigeria, we have exceptional growth in e-commerce volume in the last five years," says Randy Buday, Regional Director for West and Central at DHL Express. "initially the market comprised mainly traditional internet consumers who are looking for the latest fashion items and accessories where buyers and sellers are brought together."

In conclusion, e-commerce is evolving rapidly in Nigeria as a result, we need to embrace new ideas like e-governance, e-learning, e-banking, and e-commerce in order to create exciting opportunities in the aspect of the industrial innovation. However, e-commerce is still at its early stage in Nigeria as the pace of adoption and acceptance is relatively slow. Despite the huge progress recorded in the Nigeria e-commerce landscape, especially with the awareness for globally celebrated festivals such as Cyber Monday, and Black Friday etc, an average Nigerian is still an unrepentant traditional shopper.³⁴

³⁴ <http://www.simply> note(Accessed on May 28 ,2020)

WORLD USAGE AND POPULATION STATISTICS

MARCH 2021 YEAR-Q1 ESTIMATES

World Regions	Population (2021) Estimate	Population Percentage of the world	Internet Users of 31 st of March 2021	Penetration Rate(% Population)	Growth 2000-2021	Internet World %
Asia	4,327,333,821	54.9%	2,762,187,516	63.8%	2,316.5%	53.4%
Europe	835,817,920	10.6%	736,995,638	88.2%	601.3%	14.3%
Africa	1,373,486,514	17.4%	594,008,009	43.2%	13,058%	11.5%
Latin American/Caribbean	659,743,522	8.4%	498,437,116	75.6%	2,658.5%	9.6%
North America	370,322,393	4.7%	347,916,627	93.9%	221.9%	6.7%
Middle East	265,587,661	3.4%	198,850,130	74.9%	5,953.6%	3.9%
Oceania/Australia	43,473,756	0.6%	30,385,571	69.9%	298.7%	0.6%
World Total	7,875,765,587	100%	5,168,780,607	65.6%	1,331.9%	100.0%

The above table³⁵ clearly shows that the Internet has experienced a worldwide spread recently. However, regions like Africa (the second largest continent, after Asia. in size and population.) and the Middle East have not tidly developed their technological culture to boost e-commerce. Asia, on the other hand, has the highest number of Internet users worldwide and the largest potential for the development of e-commerce.

1.5 The Scope of Electronic E-Commerce

The scope of e-commerce is not limited to sales which takes place by electronic means, (via the internet, mobile phones, electronic data interchange (EDI) etc). It also Includes other branches of commerce such as banking and financial services (for example; electronic payment, transportation (e.g.: electronic bills of lading), etc.

Rayport and Jaworski³⁶ characterized the scope of e-commerce as possessing the following attribute:

- a) The exchange of digitized intimation between parties: This information exchange can represent communication between two parties, coordination of the flow of goods and services, or transmission of electronic order. These exchanges can be between organizations or individuals, is technology enabled: E-commerce is about technology enabled transactions, Web browsers are perhaps the best known of these technology enabled customer interfaces. However, other interfaces - including Automated Teller Machines (ATMs) and electronic banking by phone - also fall within the general category

³⁵ www.internetworldstats.com (Assessed on May 28,2020)

³⁶Rayport and Jaworski, E-commerce, 3

of .e-commerce managed transactions with customers and markets strictly through human interaction, in e-commerce, such transactions can be managed using technology.

- b) It is technology enabled: E-commerce is about technology enabled transactions, web browsers are perhaps the best known of these technology enabled customer interfaces. However, other interfaces – including Automated Teller Machines (ATMs) and electronic banking by phone – also fall in the general category of e-commerce managed transactions with customers and markets strictly through human interaction, in e-commerce, such transactions can be managed using technology.

- c) It is technology mediated: E-commerce moves beyond technology enabled transactions to technology mediated relationships. Purchases in the market places at Wal-Mart are technology enabled in that shoppers have human contact with is cashier whose cash register is computer based order promising What is different in c-commerce is that the transaction is mediated much less through human contact and more by technology and, in that sense, so is the relationship with the customer. The place where buyers and sellers meet to transact is, moving from the physical world 'marketplace to the virtual world 'market-space. Hence, the success of the business rests on the machines and screens that manage customers and their expectations. Compared to a time when all transactions involved human-to-human contact, that's a big difference.

1.6 Electronic Payments.

Another name for electronic payment is 'e-payment'. According to Kotoye³⁷ e-payment is the transfer of monetary value from one party to another via electronic means, thereby eliminating the use of cash.

The introduction of e-payment in Nigeria was done initially to eliminate the un-acceptable delay in the payment of government contractors by minimizing interaction between contractors and government officials who have role to play in the payment system but was later extended to cover all payments from any government fund effective 1st January, 2009.

E-payment is a subset of e-commerce and it includes;

- i) Automated Teller Machines (ATMs): Another name for ATM is cash dispenser. One of the most fundamental functions of the banking system throughout the ages has been to provide cash facilities. The means of offering this banking service has become automated today and customers can now make basic transactions without the aid of a branch representative.

An ATM is defined as an electronic funds transfer terminal that is capable of performing many of the roles traditionally undertaken by a bank cashier.³⁸ Thus, ATMs handle cash withdrawal, pay bills, transfers between accounts, balance enquiries etc.

³⁷Kotoye O, 2nd intermark e-payment forum: outlook of e-payment industry within Global dynamics, (2007).

³⁸Aurora A, Electronic Banking and the Law London, IBC, 1998, 112.

An ATM can either be online, or offline. For offline ATMs, each transaction is registered is recorded on a tape and the tape is subsequently transferred to the bank for processing.³⁹ For online ATMs, the ATM is directly connected to the bank's computers and the computer processes each transaction immediately.

An ATM transaction usually involves the following steps:⁴⁰

- i) The customer inserts the card into the terminal;
- ii) The customer enters his pin into a keyboard on the terminal;
- iii) The ATM instructs the customer by displaying messages on the television type screen;
- iv) The customer presses the appropriate unction key indicating the transaction to be performed;
- v) The ATM displays the information that the customers have entered and the customer presses the appropriate keys to verify the transaction or correct any mistakes; and
- vi) The ATM completes the transaction.

The greatest advantage of ATMs is that they go a long way towards reducing restrictions on customers as customers can now make transactions outside banking hours. However it is observed that queues are most times formed by customers to make use of the ATM terminal, whilst the cashier inside the bank has empty counters.

- Electronic Funds Transfer at the Point of Sale (EFTPOS): This is a payment system which enables goods and services to be paid for by transmitting details of the transaction

³⁹ Ibid

⁴⁰ Aurora A, op eit, 113

over a communication network to both the customer's and the retailer's bank without the use of paper vouchers.⁴¹

The three key components⁴² of an Electronic Funds Transfer at the Point of Sale (EFTPOS) payment system are:

1. Terminal equipment installed in retail and other outlets. The terminal is an electronic device placed either on the counter or at the checkout: it will be equipped with a keyboard, a display, a printer and a slot through which the card will be passed to read the details recorded on the magnetic strip of the card;
2. Magnetically striped plastic cards issued to the customers of banks and other institutions;
3. An automated message transmission facility, which links the terminal equipment with the computers of banks and other organizations holding the retailers and customers' accounts.

Using the Electronic Funds Transfer at the Point of Sale (EFTPOS) system⁴³

There are five steps to the Electronic Funds Transfer at the Point of Sale (EFTPOS) transaction:

- i. When the customer wishes to pay by Electronic Funds Transfer at the Point of Sale EFT POS, his plastic card is 'swiped' through the slot in the terminal; and the amount of the transaction is entered.

⁴¹ Aurora A, op cit, 83

⁴² Ibid

⁴³ Ibid

- ii. The cardholder then enters his PIN (Personal Identification Number) on a special keyboard designed to shield the operation from bystanders; alternatively a cardholder may be asked to sign an acknowledgment slip.
- iii. Information is then electronically encrypted and sent over the entire network to the card issuer
- iv. The card issuer replies through the system advising the authorization or otherwise of the transaction.
- v. An acknowledgment is printed out and subsequently, the cardholder's account is debited and the retailer's account is credited with the amount of purchase.

Other means of payment offered by financial institutions are mobile banking and internet banking.

The Federal Government of Nigeria on 22nd October, 2008 directed that payments from all funds of the Federal Government of Nigeria be made electronically as from 1st January, 2009 in order to eliminate the un-acceptable delay in the payment of government contractors who have been certified to have either partly or totally completed contracts awarded to them and are due for payment: minimize interaction between contractors and government officials who have roles to play in the payment of contractors: check to corruption because transaction of government can easily be traced from one source to another, introduce and institutionalize financial probity in the activities of government.

In the Nigerian context, e-payment is effecting payments from one end to another through the medium of the computer without manual intervention beyond inputting the payment data, it is

the ability to pay the suppliers vendors and staff salaries electronically, at the touch of computer button.⁴⁴

1.7 Categories of E-Commerce.

The categories of e-commerce have to do with the actors who are involved in the process of e-commerce. They are:

Business-to-Business (B2B): These actors represent the full spectrum of e-commerce that focuses between two organizations. This category is the most important segment of e-commerce as they represent trans-actions (supply) of goods and services among communes (manufacturers, suppliers, distribution, retailers; etc.).

The main components⁴⁵ of this concept are e-infrastructure (which ensures the minimum requirements related to logistics and operating software) and e-markets, or websites that function as virtual meeting places where buyers interact with the bidders. The purpose of business to business finds utility in the transactions geared towards the consumer.

Major players such as Dell, General Electric are familiar names,

Customer-to-Customers (C2C): Is the second element of e-commerce being centered around the mechanisms which enable to satisfy the consumers' interests (sales and purchase of goods and services, information, etc.) through trade between producers and buyers. The main markets are the e-retail (or c-tail) and e-banking (online financial instruments designed for personal

⁴⁴Asaolu, T, Ayoola, T and Akinkoye, "electronic payment system in Nigeria" (2011) 1(2) Journal Management and society, 16-21.

⁴⁵Feng L, How the Internet Transforms Organisation, United Kingdom, Blackwell, 2007, 136-137

finance management) platforms.⁴⁶ They are usually smaller transactions compared to B2B transactions. Examples include Amazon, Yahoo, Jumia, Konga, Charles Schwab& co etc.

Consumer-to-Consumer (C2C): This category involves electronic transactions between and among consumers. These electronic transactions usually involve a third party, as in the case of an auction website One of the best examples is eBay with its e-auctioning system.

Other operations that support C2C transactions include: owners.com and craigslist (classified adverts), Gnutella (music), Monster (Jobs), Lavalife (personal services) etc.⁴⁷

Consumers-to-Business (C2B): Here consumers band together to present themselves as a buyer group. This group may be economically motivated, as with demand aggregators or socially oriented, as with cause-related advocacy group.⁴⁸

Business-to-Government and Government-to-Business (B2G/G2G)⁴⁹: represents the ways in which commercial transactions take place between companies and public sector. In the first case, companies carry out activities for the benefit of the public sector- (procurement contracts auctions, etc) while through G2B the public institutions are mainly informing the private sector about the legal framework for cooperation opportunities with them.

⁴⁶Mirescu S, “The premises and evolution of e-commerce”, (2010) Journal of Information Technology 4,

⁴⁷Rayport and Jaworski, E-commerce, 4

⁴⁸ Ibid

⁴⁹Mirescu S. “The premises and evolution of e-commerce”, (2010), Journal of Information Technology 4

Converging Categories of E-commerce.

Some authors argue that a single chain of e-commerce will ultimately emerge.

Rayport and Jaworski⁵⁰, argues that the categories of c-commerce are not distinct, but rather intimately linked in a broader network of supply and demand.

For example⁵¹: The purchase of a Harry Porter book at Amazon.com. Here, thousands of consumers buy the most recent Harry Porter book through Amazon. This purchase triggers an electronic exchange between Amazon and the publisher to request more books. These orders force the publisher to pant new copies. The new copies trigger order of paper products, shipping materials (from cardboard suppliers), and ink. Meanwhile, consumers may be able to "demand aggregate" through public websites or through corporate bulk purchases rate. Finally, after the books are read, they can be sold to other consumers in websites such as May, OLX etc.

⁵⁰Rayport and Jaworski, E-commerce, 5

⁵¹ Ibid

CHAPTER TWO

CONSUMER PROTECTION IN NIGERIA

2.1 Introduction

There is the growing awareness over the world for the protection of consumers who are at the lowest rung of the distribution ladder; but indeed are indispensable in the production and distribution processes as those stages are incomplete without the consumers. It is now beyond any controversy that the consumers need protection in the power relationship between the producers or suppliers of goods and services and the ultimate consumers. The paradox of this relationship, however, is that the consumers are so much traumatized and maligned such that consumers of today can best be described as mere pawns in the hands of more powerful producers or suppliers of goods and services. The consumer protection philosophy therefore is directed at offering a measure of security to the consumers in their dealings or relationship with the producers of goods and services.⁵²

The foregoing therefore necessitated the giant strides that have been, made in different jurisdictions, especially the advanced countries to rescue the consumers from the jaws of the over ambitious businessmen who are often motivated by the desire to make super profit at the expense of the vulnerable and innocent consumers.

Nigeria is not an exception and has in recent years made effort through law, policies and institutions to protect her vast consuming public. This study examines the adequacy of the consumer protection regime in Nigeria with the view to determining whether the consumers are

⁵² Harvey, B and Parry, D (1987), The Law Of Consumer Protection and Fair Trading 3rd Edition p 44

indeed protected or not. This foregoing objective is achieved by examining the laws and institutions that serve as the vanguard for the protection of the consumers in Nigeria. Some theoretical issues are also used to justify the intervention of the government in the complex relationship between the consumers and producers or suppliers of goods and services.

2.2 Who is a consumer?

Writers and researchers have not been unanimous on the definition of consumers.⁵³ A consumer is defined by the Black Law Dictionary as one who consumes individuals who purchase, use, maintain and dispose of products and services.⁵⁴ The foregoing definition is on all fours with the definition of consumer contained in the Consumer Protection Council Act which defines a consumer as an individual, who purchases, uses, maintains or disposes of products or services.⁵⁵ To the extent that this definition removes contractual relationship as the basis of the relationship between the consumer and the producer of goods and services, the definition is preferable.

However, reference is made only to individuals as consumers in the Act which excludes by logical interpretation, incorporated bodies or organizations. The truth today is that the concept of consumers is not only limited to individuals but should also cover artificial persons who “consumer” goods and services for purposes of achieving their goals and objectives. Thus, the definition should be amended to reflect the suggestions made above.⁵⁶ Again, the use of such words as “maintains and disposes” in the definition is suggestive of the fact that persons can still

⁵³ Monye, F, Law of Consumer Protection, Spectrum Publishers, 1st Ed p 20

⁵⁴ Blacklaw Dictionary, 6th Edition at p 316

⁵⁵ Sec 32, Consumer Protection Council Act, 1992, Now Cap 25, Laws of the Federation 2004

⁵⁶ For example, Section 189(1) of the Consumer Credit Act, 1974(UK) where the individual was defined as including partnerships and other incorporated association.

be described as consumers after the purchase and usage of a product or services. This approach is clearly untenable and has been described appropriately as superfluous.⁵⁷

In contemporary times, consumers have been interpreted to include any person who purchases or is supplied goods, or uses or consumes goods or services at the end of a chain of production.⁵⁸

Thus, the modern conceptualization of the consumer includes purchaser of any kind of goods or services including passengers on a bus, train or aircraft, banking and telecommunication services, purchasers of goods through the internet and any person that is supplied electricity, telephone, water or petroleum or gas products.

2.3 What Is Consumer Protection?

Consumer protection relates to the need to offer a measure of security to the consumers in their dealings or relationship with the producers of goods and services.⁵⁹ The relationship between the consumers and manufacturers or producers of goods and services and others in the chain of production is skewed in favor of the latter and as such, the former needs protection. The consumers that are often described as “kings” in today’s sellers’ markets are left to the whims and caprices of the producers who are better informed about their products and often use their position not only to marginalize the consumers to their advantage, but to subject them to perpetual servitude and subjugation such that they do not have value for their money.

⁵⁷ Akomolede, T.I , ”consumer Protection in a deregulated economy”, issue 5 Research journal of international studies pg 13

⁵⁸⁵⁸ Note that the definition of Consumer contained in the Model Law on Consumer Protection in Africa is more comprehensive as it includes consumers of technological services.

⁵⁹⁵⁹ Harvey , B & Parry, D (1987) The Law of Consumer Protection

Conceptually, consumer protection has been defined as safeguarding the buying public from dangerous or inferior goods and services and from fraudulent and other unfair selling practices.⁶⁰ To the extent that the foregoing definition limits protection to buyers alone, it has been criticized as being deficient since the notion of the modern consumer now goes beyond buyers, but include all others that may derive title from him.⁶¹ A more and acceptable definition has been offered by a learned author who defined consumer protection as the act of safeguarding the interests of the consumers in matters relating to the supply of goods and services, fraudulent and hazardous practices as well as environmental degradation.

2.4 Objectives and strategies of consumer protection

The underlying reason for a consumer protection regime is the inequality of bargaining power as between consumers and producers of goods and services. The producers, who are often driven by their profit maximization objectives, are more sophisticated than the uninformed or predominantly ignorant consumers who lack the capacity to make informed decisions. This has led to what a learned author described as the producer hegemony.⁶²

The Nigerian economy is characterized by the features of the capitalist system. The producers are more interested in pursuing their profit maximization objectives with little or no regard for production of quality goods or services. The consumer and producer relationship is characterized by an avalanche of sharp and unwholesome trade practices.

In the Australian jurisdiction the justification for an efficient consumer protection regime has been captured as follows:

⁶⁰ Encyclopedia Americana, International Edition, 1st Ed, 1981 at p 638

⁶¹ For example, the Consumers in *Grant v. Australian Knitting Mill Ltd* (1940) AC 88

⁶² Kanyip B, "Consumers, Producer Hegemony as the dominance of the producer Group on the Consuming Public"

In consumer transactions, unfair practices are widespread. The existing law is still founded the principle known as Caveat emptor, meaning let the buyer beware. That principle may have been appropriate for transactions conducted in village markets. It has ceased to be appropriate as a general rule. Now the marketing of goods and services is conducted on an organized basis and by trained business man who attempts to persuade the consumer to buy goods or services on terms and conditions suitable to the vendor. The consumer needs protection by the law.⁶³

Again, the economic interdependence of different countries of the world and trade liberalization policies of the government have resulted inconsiderable growth in international trade in recent years. Goods and services are now moved across borders with greater ease. The grave consequences such scenario can better be imagined than real, if the consumers are not adequately protected especially in the area of dumping fake and adulterated products.

The foregoing situation therefore calls for conscious and concrete efforts aimed at the protection of the consumers. A worthwhile consumer protection regime must therefore achieve the following objectives:

- (a) It must ensure that consumers derive maximum satisfaction from goods or services bought by them.
- (b) It must also ensure that goods and services produced are of high quality and that low quality goods are not promoted through flowery advertisements to deceive the consumers.

⁶³Senator Murphy, Australian Attorney General introducing the Trade Practices Bill of Australia in the Senate and quoted in Harvey and Parry, op cit p 13

- (c) It must reduce exploitation of consumers by the manufacturers wholesalers and retailers through unwholesome price increase effected through hoarding, etc.
- (d) It must put measures in place to avoid the use of deceptive weights and measures in selling commodities to consumers.
- (e) It must close the information gap between the buyer and the seller of goods and services, and
- (f) It must compel sellers or manufacturers to give appropriate warnings on the risks and legal effect of the transaction.

Strategies for achieving the objectives of any meaningful consumer protection regime include legislation, regulation, consumer information and awareness and enforcement of consumer protection laws. The earliest strategy for protecting the consuming public in Nigeria was through legislation and regulation. Early legislation in the area include the Sale of Goods Act, 1893⁶⁴, Food and Drugs Act, 1974,⁶⁵ Weight and Measures Act, 1974⁶⁶, and Standard Organization of Nigeria Act, 1974⁶⁷. Institutions were also established to enforce these laws. Earliest of such agencies included the Food and Drug Agency and the Standard Organization of Nigeria.

Another important strategy of consumer protection is sensitization of the consumers through necessary awareness and consumer information. An important and education.⁶⁸ The consumers are also educated on their basic rights since lack of awareness on the part of the consumers of

⁶⁴ It is the statute of general application, but ceased to be applicable to the old western states in 1959 and in Lagos in 1973. Some states have now enacted their Sale of Goods Law based on the Nigerian Law Reform Commission Model.

⁶⁵ Cap F32, Laws of The Federation, 2004

⁶⁶ Cap W3, Laws of the Federation, 2004

⁶⁷ Cap 59 Law of the Federation, 2004

⁶⁸ Section 29 Consumer Protection Council Act, for Example.

their possible rights is one of the problems of consumer protection especially in the developing nations.⁶⁹

Enforcement of consumer rights is also another strategy of consumer protection. The regulatory agencies are to enforce the rights of the consumers and provide remedies in deserving cases.⁷⁰ They are expected to bring complaints arising from their dealings with manufacturers or sellers of goods and services for possible redress. Consumers are also encouraged to come together as consumer associations to be able to present strong and formidable opposition to the exploitative tendencies of producers of goods and services.

2.5 The legal regulatory framework of consumer protection

There are a plethora of laws that directly or indirectly protect the consumer. Again, there are pockets of protection offered by common law. However, some of the laws and the institutions created under them shall be examined with the view to determining their adequacy or otherwise for the continued protection of the consumers in the era of deregulation.

2.5.1 The Standard organization of Nigeria (SON) Act

The Act⁷¹ was enacted in 1971 with the aim of standardizing products in industries throughout Nigeria and to ensure compliance with the government policy on standardization. It has been amended a number of times to ensure that the objectives of the Act are in conformity with the

⁶⁹ Akomolede, T. I , & Oladele. P.O “Consumer Protection and marketing Laws as Applicable to the manufacturing Sector in Nigeria.

⁷⁰ Section 2 of the consumer Protection Act

⁷¹Originally Promulgated as Decree No 56 of 1971, but now Cap S9, Laws of the Federation of Nigeria, 2004.

objectives of successive governments in Nigeria.⁷² The Act established the Nigerian Standards Organizations (SON) which is vested with wide functions and powers in respect of standardization.⁷³ Also the Act established the Standards Council to award certification marks to manufacturers whose products do not only fall within those standards but are also of importance to the national economy.⁷⁴

The Act is thus of particular relevance to the consumers in that it regulates industrial standards and ensure that substandard products are not sold to the consumers. There is no doubt that the law will continue to serve as a reference point in the protection of the consumers in Nigeria.

2.5.2 Food and Drug Act

This Act was enacted in 1974⁷⁵ not directly as a consumer protection legislation⁷⁶, but to all intents and purpose, its intentment is to protect the consuming public. The Act makes elaborate provisions for the regulation of manufacture, sale and advertisement of food, drugs, cosmetics and devices.⁷⁷ These terms are elegantly defined in the Act⁷⁸. Under the Act, sale of any article of food which is unfit for human consumption is prohibited.⁷⁹ What is unfit for human consumption is not defined in the Act, but generally an article of foods should be unfit for human consumption if it is shown that it is injurious or dangerous to health. The Act also prohibits the sale, importation and manufacture or storage of poisonous or harmful food, drugs and cosmetics. Thus, any substance which is capable of producing any adverse effect on the health of the consumer is

⁷² Originally Promulgated as Decree no 20, 1976, Decree No 32, 1984 and Decree no 18, 1990

⁷³ Section 1(i) Standard Organisation of Nigeria

⁷⁴ Section 2 Cap S9 (Supra)

⁷⁵ Decree No 4 of 1974 Now Cap F32, Laws of the Federation of Nigeria, 2004

⁷⁶ The word 'Consumer' is not mentioned in the Act. See Further Preamble to the Act

⁷⁷ Sec 4 of the Act

⁷⁸ Sec 20. The definition section which defines the terms

⁷⁹ Sec 1(1) b of the Act

regarded as harmful or poisonous. It is an offence which attracts penalties under the Act. The Act further prohibits the sale of adulterated food or drugs. The Act does not define adulterations but somewhere else⁸⁰ as the act of debasing a commercial commodity with the object of imitating or counterfeiting a pure or genuine commodity or substituting an inferior article for a superior one in order to gain an illegitimate profit.

The greatest challenge that is facing the Nigerian consumer today is in the area of fake and adulterated foods and drugs and the debilitating effect on the health and psyche of the consumer,⁸¹ while it is agreed that the National Agency for Food and Drug and Administration (NAFDAC), an agency set up to enforce the provisions of the Food and Drugs Act has been up and doing in the area of creating consumer awareness of the existence of adulterated products and taking steps to destroy same, offenders should be prosecuted and penalized in accordance with the provisions of the Act to act as a deterrence to others. It is further suggested that such prosecution and conviction should be publicized to the knowledge of the consumers.

The Act also prohibits the importation and exportation of drugs specified in the Second schedule except as authorized by regulations.⁸² It is also an offence to import into Nigeria any regulated product unless it is accompanied by a certificate from the manufacturer to the effect that it was manufactured in accordance with an existing standard or code of practice and where such code does not exist, in accordance with any international standard.⁸³

⁸⁰ Strands Judicial dictionary of words and Phrases, 4th ed. Sweet and Maxwell Ltd, London, 1973

⁸¹ Note however that NAFDAC publishes from time to time, the list of fake and adulterated products and warns the public against the dangers of buying and consuming such products.

⁸² section 5(3) of the Act

⁸³ The Laudable Provisions of Section 8(2)

The foregoing provisions are no doubt meant to safeguard the country from being used as a dumping ground for fake, adulterated and sub-standard products that may not have been accepted in international markets. It is however disheartening that despite the foregoing provisions, our markets are inundated with fake and adulterated and sub-standard products that may not have been accepted in the international markets, it is however disheartening that despite the foregoing provisions, and our markets are inundated with fake and adulterated products. Goods worth millions of Naira are being destroyed on regular basis where they are found to be adulterated or sub-standard.

It is a defence under the Act that a retailer was not aware of any fraud or sharp practice by the manufacturer when he sells or offers for sale goods manufactured by the manufacturer. In that situation, the manufacturer would be held responsible for contravening the provisions of the Act. It is suggested that the penalty of ₦50, 000:00 or imprisonment for a term not exceeding two years.⁸⁴ Should be reviewed upwards considering the gravity of the harm usually done to the consumers and even the cost of doing such illicit business.

2.5.3 The National Agency for Food and Drug Administration and Control Act

The National Agency for Food and Drug Administration and Control Act⁸⁵ was promulgated in 1993 by the Federal Government to regulate and control the importation, exportation, manufacturing, advertisement, sale and distribution of foods, drugs and cosmetics and medical

⁸⁴The fine was reviewed upwards by the 1999 Amendment made to Section 17 of the Parent act. Under the repealed Section 17, the maximum Penalty was #1000.

⁸⁵The Act was amended by the NAFDAC (Amendment) Act No 19 Of 1999 and the Tribunals (Certain Consequential Amendment etc)Act No 60 Of 1999

devices.⁸⁶ The Act also deals with the regulations and control of bottled water, chemical and detergent powder.⁸⁷

The Act created a regulatory body known as the National Agency for Food and Drug may also sue and be sued in its corporate name.⁸⁸ The agency ensures that manufactured products are safe for consumption by conducting appropriate tests from time to time on these products and by also ensuring that the manufacturers comply with the various specifications and standards set up by the Agency. The various consumers products to which the Act relates cannot be produced except the manufacturer has registered the products with NAFDAC. The agency has functions that are similar to those performed by the defunct Food and Drugs Department of the Federal Ministry of Health and Social Services under the Food and Drugs Act.⁸⁹

The Agency is vested with very wide powers under the Act ensure that regulated products are safe for human consumption.⁹⁰ Thus, it has powers amongst others to carry out appropriate investigations into the premises where consumer products are produced and can also inspect the raw materials for making such regulated products and establish relevant quality assurance system including certification of production sites.

The truth is that the agency as it is constituted today has been in the forefront of the crusade for consumer protection in Nigeria. The agency has evidently overcome the slumber that largely characterized her existence in the formative years. It has been transformed into a veritable

⁸⁶ section 5 of the Act

⁸⁷ Section 5,24(5) and (9)

⁸⁸ Section 1 of the Act

⁸⁹ The Functions Are Spelt out under Section 5 and 25 of the Act. Also, See Section 3 of Decree 19 Of 1999 which amended the Principal Act

⁹⁰ Regulated Products are defined under Section 30 to mean Food, drugs, cosmetics, medical devices, bottled water and chemicals

instrument in the formative years. It has been transformed into a veritable instrument through which a modicum of protection and comfort has been brought to Nigerian consumers.

The agency does not only regulate and control the manufacture and sale of consumer products, harmful, adulterated or obnoxious products that might have found their ways into the Nigerian markets are also prohibited and the consumers are also warned through paid adverts in the print and electronic media to be wary of such products.⁹¹ That the war against fake and adulterated products in Nigeria has not been won is perhaps attributable to the diverse nature of the Nigerian market and the extent to which these unpatriotic businessmen are involved in these nefarious activities.

The Act also creates a number of offences.⁹² For instance, a person who obstructs an officer of the Agency in the performance of his duties is guilty of an offence and liable on conviction to a fine of ₦5, 000 or imprisonment for a term not exceeding two years or both and by Section 25(2), any person who contravenes the provision of any regulation made under the Act is guilty of an offence and shall be liable on conviction on the penalties specified in the regulation and where no penalty is specified, shall be liable to a fine of ₦50, 000.00 or imprisonment for a term of one year or both.⁹³ Where the offence is committed by a body corporate with the negligence or contrivance of her Director, Manager or Secretary or any of her officers, the body corporate shall be guilty of an offence and be liable on conviction to a fine of ₦400, 000.00.⁹⁴ The foregoing offences were introduced in 1999 by the NAFDAC (Amendment) Act. Prior to the time, the only offence under the principal Act was that of obstruction of officer from performing their duties.

⁹¹ The list of drugs found have been faked or adulterated through Laboratory analysis are published on regular basis by NAFDAC.

⁹² Sec 25, Also ,Section 3 of NAFDAC(Amendment) Act No 19 Of 1999

⁹³ Sec 25(3)

⁹⁴ Section 25(4)

The Act does not contain a specific offence. Offences can only be committed in relation to specific regulations made by the Agency under the Act.

Again, the Agency has the power to prosecute offenders under the Act.⁹⁵ Thus any officer of the Agency may conduct criminal proceeding in respect of the offence under the Act and any regulation, but such criminal proceeding must be with the consent of the Attorney General. The Idea of subjecting such proceeding to the consent of the Attorney General is good to the extent that frivolous proceeding can be prevented, but it is also hoped that the bureaucratic process of obtaining such consent will not hamper possible prosecution of offenders under the Act. It is Federal High Court that has exclusive jurisdiction to try offences under the Act.⁹⁶

2.5.4 The Consumer Protection Council Act

This Act⁹⁷ makes provisions directly for the protection of consumers against hazardous products unlike other legislation that indirectly protect the consumers. The Act established the Consumer Protection Council as a body corporate which can sue and be sued in its corporate name.⁹⁸ The council is invested with wide powers ranging from provision of speedy redress to consumers' complaints to seeking ways and means of removing or eliminating from the markets, hazardous products and causing offenders to replace such products with safer and more appropriate alternatives.⁹⁹

The Act also creates the Consumer Protection Committees in the 6 states.¹⁰⁰ The State Committees are to function under the control of the Council for the purpose of achieving the

⁹⁵ Section 25(a) of the act which was introduced by the 1999 Constitution

⁹⁶ Part 1 of the Tribunal (Certain Consequence Amendment etc) Act No 62 of 1999

⁹⁷ Consumer Protection Council Act 1992 but now Cap C25, Laws of the Federation of Nigeria, 2004

⁹⁸ Section 1 of the Act

⁹⁹ Section 2 on the functions of the council

¹⁰⁰ Section 5 of the Act

objectives of the Act. The Idea of the committees at the state level is to enable numerous consumers all over the country have access to the Council whose head office may be far away from such towns.

As laudable as the foregoing idea is, it is however regrettable that the Committees in most of the states are not firmly established and as such their activities and even presence are not known to the consumers. The effect is that the Nigeria consumer continues to suffer in silence in the hands of the greedy manufacturers or producers of goods and services.

Again, the activities of the Council fall short of the expectation of the consumers in relation to the articulation and enforcement of consumer rights. The Council in deserving cases can only promote negotiations, mediation or reconciliation. Where this fails as the case sometimes, the aggrieved consumer is left to pursue his right as provided in the laws of obligations and this is only possible when such a consumer is economically empowered to pursue such rights.¹⁰¹

Though a number of offences are created under the Act to check the manufacturer or distributor of a product from interfering with the right of the consumer, the law has only succeeded in providing a regulatory framework for consumer protection without articulating, by way of codification, the right of the consumers. This perhaps the reason why the impact of the Council is not being felt by the average Nigerian consumer.¹⁰²

The provisions entitling the consumer to compensation for personal injury in addition to whatever penalty that may be imposed on an offender are noteworthy as this may obviate the necessary of the consumer instituting another civil action against the offenders for damages

Section 8, it however, preserves the civil rights of the consumers

¹⁰² Section 8, however, preserves the civil Right of the consumer

especially with the excruciating economic situation in which the consumers have fund themselves.¹⁰³

By and large, that this legislation has the consumer directly in focus is heartwarming. The scope of the law should be expanded to provide more and practical consumer remedies. The identified grey areas of the law should be removed to sharpen its protective gadgets for the consumers. The Council under the present leadership has also become more alive to her responsibilities. For instance, regulations are made recently by the Council to regulate sales promotions and monitor products and services that are circulated within the economy. The Council has also been monitoring the activities of GSM providers for their poor services to the consumers.¹⁰⁴

Concrete efforts at ensuring protection for the consumer in Nigeria must not only stop at the reformation of the laws and institutions but must also include the sensitization of the generality of the consumers as to the existence of such laws and institutions including the remedies provided under them.

2.5.5 The Sale of Goods Act 1893

The Sale of Goods Act (SGA) is a Statute of General Application (SOGA). However, it has no effect in the former Western Nigeria (as its reception of English law made no reference to the reception of SOGA). Thus, the sale of Goods Law 1959 was enacted and the law subsequently became applicable in states created there from. Also, Lagos State¹⁰⁵ and Bendel State¹⁰⁶ all the sale of Goods Statutes in the various states of Nigeria are similar in content. Thus, the principles

¹⁰³ Section (13)(1) on the rights of the consumers to compensation

¹⁰⁴ Monye F, op cit at p62: Kanyip, B, "Reflections on Consumer Protection Law in Nigeria" In Law Justice and the Nigerian Society, NIALS 1995, P.282

¹⁰⁵ Sale of Goods, Law Cap, 174, 1994. Laws of Lagos State

¹⁰⁶ Sale of Goods Law, 1979, The former Bendel State is now known as the Edo and Delta states.

of law as stated therein uniformly apply throughout the country. The SGA imposes implied terms as regards contract for the sale of goods. These implied: Terms protects the weaker party which is usually the buyer or consumer.¹⁰⁷ These Terms apply in all contracts (including e-commerce for the sale of goods unless expressly excluded¹⁰⁸. The SGA implies terms that goods must correspond with their description, and sample and that goods would be of merchantable quality and reasonably fit the buyer's purpose. A breach of any of these implied terms entitles the aggrieved buyer the right to claim damages. Section 11 (1) (c) of the Act provides!

Where a contract is nor severable and the buyer has accepted the goods, or part, There or where the contract for specific goods the property in which has passed to the buyer the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty.

Sale by Description (s.13)

Section 13 of the SGA reads:

"where there is a contact for the sale of goods by description, there is an implied term that the goods will correspond with their description"

What constitutes a sale by description? A sale by description arises where the buyer has not seen the goods and relies on the seller's description of the goods.¹⁰⁹*In Varley v Whipp*¹¹⁰ an old reaping machine was described by the seller as new. The buyer whorelied on this description and bought without first seeing it was allowed to rescind the contract and recover his money.

¹⁰⁷ Sagay L., *Law of Contact*. 2nd ed., Ibadan, Spectrum, 2000, 143

¹⁰⁸ Ibid

¹⁰⁹Sagay. op cit, 145

¹¹⁰ [1991] QB513

Thus, under electronic transaction where most times the consumer heavily relies on the Visuals and words used in describing the goods, when these description does not conform with what is actually delivered the vendor would be in breach of an implied warranty and would be liable in damages claimed by the buyer.

Fitness for Purpose (s. 14 (1))

Station 14 implies the term that the goods are fit for the purpose for which it is bought. It reads:

Where the buyer expressly or by Implication makes known to the seller the particular purpose for which the goods are required, so as to show than the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply, there is an implied condition that the goods shall be reasonable for such purpose.

The condition as to fitness for purpose does not apply unless the buyer makes known to the seller the purpose for which he wants in such information will not be necessary if the goods can only be used for one purpose.¹¹¹ In “*Preist v Last*”¹¹² the buyer purchased a hot water bottle which busted on use the buyer sued the seller for breach of warranty that the bottle was fit for use as a hot water bottle. It was held that, since the hot water bottle as described is used for only one purpose, the provision on making the purpose of requirement known to the seller was satisfied.

“Sale in the course of business”, this phrase was specifically used in s.14(1) in describing the position of the seller. Potter L.J in *Stevenson V Rogers*¹¹³ explained that this phrase was

¹¹¹ Sagay, op cit/ 146

¹¹² [1993] 2 KB, 148

¹¹³ [1999] ALL ER 613,623

specifically included in that section to “*distinguish between a sale made in the course of a seller's business and purely private sale of goods outside the confines of the business (if any) carried on by the seller*”. Thus, as long as a sale is not purely private, it falls under the seller's course of business.

In electronic contracts, the implied term for fitness for purpose similarly arises when the goods are of a description which it is the seller's course of business to supply and the buyer intimates the seller via electronic means of communication, the particular purpose for which the good is required, however the buyer need not bother communicating where the good is used for only one purpose.

Merchantable Quality (s. 14 (2))

Section 14 (2) reads:

"goods bought by description from a seller who deals in those goods must be of merchantable quality"

Under the common law a good is merchantable if it is fit for at least one purpose for which they were commonly used.¹¹⁴

Where the buyer examines the goods before the contract is made as regards defects which the examination ought to reveal the implied condition as to their being of merchantable quality will no longer apply and the buyer takes away the goods to his own detriment.¹¹⁵

¹¹⁴ Sagay, op cit, 148

¹¹⁵ Ibid

In electronic transaction for the sale of goods, the implied term of merchantable quality still applies as the buyer, due to the nature of the means of transaction cannot physically inspect the goods to check for their defect.

Even though the sale of Goods Act leans towards the benefit of the consumer, the remedies available to an aggrieved buyer are remote. For example, in the case of breach of an implied term, all the buyer is entitled to is a claim for damages irrespective of the implied term breach. It would have been more adequate if the buyer is entitled to reject the good where such a breach occur and treat the contract as repudiated.

2.7 Consumer Remedies

Consumer remedies refer to various measures provided by law to redress any wrong committed against consumers in commercial transactions. Generally speaking, remedies are available to an aggrieved consumer in the Law of contract. Law of Torts, Criminal Law and Administrative or statute Law.¹¹⁶

The contract-based remedies provide a wide spectrum of remedies to consumers because more often than not relationship between the consumers and manufacturers are contractual such relationships having arisen from the conscious acts of the parties to the bound by the express or

¹¹⁶ These are Known as Contract-based remedies, tort-based remedies, criminal law based remedies and statute or administrative law based remedies respectively.

implied terms of the contract of sale. The contract can be in writing or orally made, but when it is made, it is the duty of the courts to guard it jealously and preserve its sanctity.¹¹⁷

The remedies available to a consumer under the Law of Contract are damages, specific performance, restitution, rescission and reinstatement. Damages are the main remedy available to the aggrieved consumer at common law. It is the monetary award payable to the aggrieved consumer to put him in the position he would have been but for the wrong committed against him. The consumer is entitled to damages for breach of the contract or misrepresentation made by the producer or seller in the course of commercial transactions. However, damages as a remedy to the consumer has its shortcomings and may not completely serve the interest of a particular consumer in commercial transactions. For instance, a consumer may desire to have the goods as against awarding damages in his favor against an erring seller or producer who has breached a term of the contract of sale. In such situation, the remedy of specific performance will meet the justice of the case as against damages if the grievance of the consumer is to be adequately redressed. The fact that damages is awarded at the discretion of the courts also makes it not entirely satisfactory to the consumer.¹¹⁸

Despite perceived inadequacies of damages as a consumer remedy, it remains the most popular remedy that is available to the consumer in commercial transactions and one remedy that the courts would be willing to make available to the consumers. Consumers are thus entitled to sue for damages where there is a breach of a warranty, where he elects to treat a breach of a condition as a breach of a warranty and where he is compelled to treat a breach of a condition as a breach of a warranty.

¹¹⁷ The Cases of Printing and Numerical Registering co.v. Sampson .(1875) L.R 19 Exh.462, Moroya v. Idris (2000) FWLR (pt 23) 1237 p 1250

¹¹⁸ The cases of Olagunju v. Raji (1986) 4 NWLR(pt 42) 408: Robinson v. Harman (1848) 1 Exh 850

Another notable remedy that is available to the consumer is specific performance which is issued by the court at the instance of an aggrieved consumer directing the defendant to perform the contract which he has entered into in accordance with the terms.¹¹⁹ Specific performance is often granted to the buyer where it is shown that damages will not be adequate. The rationale for its application was aptly captured in Kay, L.J. in the case *Ryan v. Mutual Tontine Association*.

This remedy by specific performance was invented and has been cautiously applied in order to meet cases where the ordinary remedy by action in damages is not an adequate compensation for breach of contract. The jurisdiction to compel specific performance has always been treated as discretionary and confined within well known rules.

Thus, the remedy, being a discretionary one, is not granted to the buyer or consumer as a matter of course. The court will consider a myriad of factors which include adequacy of damages, whether the buyer is not guilty of an undue delay, whether undue hardship will not be suffered by the seller and whether the buyer has performed or part-performed his own part of the contract.¹²⁰ Finally, restitution, rescission, rejection and reinstatement are also remedies available to the buyer under the terms of any sales contract.¹²¹

In relation to the tort-based remedies, the Consumer can sue for the tort of deceit where he has been deceived into buying a product that turns out to be unsatisfactory. He can also sue for negligence arising from a breach of a duty of care that the manufacturer or producer owes him. The consumer may also be able to obtain an injunction against an injurious act that is continuous

¹¹⁹ Sagay, I.E Nigerian Law of Contract, Spectrum Books, 2002 at p 664

¹²⁰ the cases of Taylor v. H.B Russell (1947) 12 WACA 179, Paye v. Gaji (1996) 5NWLR pt 450 pg 589 At 605

¹²¹ Clough v. London and NorthWest Railway Company (1871) LR 7 Exh 17

and repetitive.¹²² Negligence, however, presents the most popular ground of seeking redress by consumers under the law of tort. This is done by alleging a breach of duty of care owed them by the producers or sellers of goods and services.¹²³ Lord Atkin articulated the nature of the duty in the case of *Donoghue v. Stevenson*¹²⁴ when he said as follows:

*A manufacturer of products which he sells in a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property. Owes a duty to the consumer to take reasonable care.*¹²⁵

In negligence cases, it must be proved that a duty of care exists which duty has been breached resulting in damages or loss to the consumer. It has been held to be applicable in a plethora of cases which include where the plaintiff was injured in the leg by a piece of metal flying off from an inefficiently repaired lorry, where a decayed tooth was found inside a biscuit and where a retailer was held responsible for the loss resulting from selling unsafe and improperly tested or labeled jewelers cleaning fluid which splashed into the plaintiff's eyes.¹²⁶

It is not very easy for consumers to succeed on grounds of negligence. This is because, except in strict liability offences, the consumer must prove by affirmative evidence that the producer or seller was negligent or at fault. It is therefore suggested that the offences should be made strict

¹²²The Cases of *Langridge v. Levy* (1837) 2 M&W 519, *Bebee v. Sales* (1916) 32 TLR 413

¹²³ for Example *Osembor V. Niger Biscuits (NIG) ltd* (1973) NCLR 382

¹²⁴ (1932) A.C 562

¹²⁵ *Denoghue v. Stevenson*(1932) A.C 562

liability offences as it is the position in most advanced jurisdictions to relieve the consumers the burden of having to prove fault or negligence before they can succeed in their actions.¹²⁷

Other remedies available to the consumers include criminal law-based remedies and statue-based or administrative remedies. The various laws through which the consumers are incidentally, but tangentially protected make provisions for penalties in cases of breach of their provisions. For example, a producer who is aware of an unforeseen hazard that is inherent in the use of a product and puts same in the market is under an obligation to inform the general public of such risk or danger and cause the product to be withdrawn from the market otherwise he is liable on conviction to a fine or imprisonment or to both.¹²⁸ The basis of the criminal liability rules is that the wrong is being committed against the society as a whole and not the particular consumer who has suffered a loss in the circumstance. Thus, the reason for the intervention of criminal law is to deter offensive conduct and to encourage safety and show the society's indignation to substandard, adulterated or inferior products.¹²⁹

However, remedies provided for the consumers through criminal law have not been satisfactory due to a lot of reasons which include the enforcement procedure which is left into the hands of the police machinery that is known to be largely ineffective and the pittance that is often provided by the law as penalties.¹³⁰

¹²⁷ for Example, the Provisions of the English Consumer Protection Act, 1987 (UK)

¹²⁸ Section CPC Act

¹²⁹ Tur R.H.S. "Litigation and the consumer Interest: The Class Action and Beyond" (1932) 2 Journal of Legal Studies, 126

¹³⁰ For Example, the penalty for dealing in fake and adulterated drug formerly was fixed at a maximum of N2000.00 or imprisonment for a term not exceeding two years or both. See Section 2(1)(a) of the repealed Counterfeit and Fake drugs Miscellaneous Provisions Act of 1988

Lastly, statute-based or administrative remedies are available to the consumer. These are contained in statutes or legislation on consumer protection. The statutes may also establish regulatory agencies that are vested with the powers of enforcing the provisions of the statutes. The Consumer Protection Council Act, however, makes more elaborate provisions for consumer remedies and redress. Thus, any person that contravenes any enactment that is made for the protection of the consumer or who issues wrong advertisement about a consumer item or who fails to inform consumers about hazardous producers are liable on conviction to penalties prescribed in the Acts. The Act further provides for the right of the aggrieved consumer to pursue civil action for compensation or restitution in any competent court in addition to whatever redress the council may have given to the consumer through the state committees. Also, noteworthy is the provision that enables an aggrieved consumer to receive compensation from a person convicted in respect of a personal injury, loss or damage which resulted from the offence he committed.

The enforcement of these provisions is through the Consumer Protection Council who exercises its jurisdiction to institute civil or criminal proceedings against any erring manufacturer through the office of the Attorney General of the Federation. Considering the bottlenecks and bureaucratic tendencies of public offices in Nigeria, the procedure under the Act may not be in the best interest of the consumers.¹³¹

Lastly, in relation to other remedies, the administrative remedies through complaints and the settlement or grievance procedure put in place by the regulatory institutions have appeared to be cheaper, efficient and more result – oriented.

¹³¹ Since the cases are presented at the instance of the Council by the Office of the Attorney General of the federation, they may not be expeditiously determined. A functional legal department for the council with the power to prosecute is better desirable.

CHAPTER THREE

THE LEGAL FRAMEWORK FOR ELECTRONIC COMMERCE IN NIGERIA

3.1 INTRODUCTION

The history of mankind is replete with instances of new technologies that have had an enormous impact on Society and both policy and lawmakers have stepped in to regulate the behavior of those using the technology.¹³² Thus, the emergence of any new technology raises interesting issues for lawmakers, policy makers and other stakeholders. A good example is the Aviation industry, different policies and Law were put in place to promote efficiency and development of the industry and also to provide a minimum level of protection for air passengers.¹³³

However, the radical character of the internet is a major challenge for legislators and policy makers. The internet is borderless in feature, it lacks geographical containment Information posted on a website in Benin can be accessed within seconds from any part of the world.

Thus, it is quite obvious that a functional legal framework to adequately support and facilitate electronic commerce (e-commerce) is necessary for its proper development.

3.2 Nigeria's Legal framework of E-Commerce

There is no doubt that E-commerce is increasing daily in length and breadth. Nigeria as a Nation is catching up with the trend. There are currently no specific laws on e-commerce in Nigeria, however there exists some scanty provisions of the law, but it has not addressed the salient issues surrounding it. There are also several Bills on the subject before the National Assembly awaiting assent. Developing a new legal framework is needed on the subject of E-commerce in Nigeria.

3.3 Existing Legislations

¹³²Carr L. *International Trade Law*.4th Ed. New York, Roatledge-Cavendisk, (2011) P. 103

¹³³ Ibid

The need for developing a new legal framework is necessary, however there are some existing legislations on the subject though not comprehensive to meet the challenges of a changing face of e-commerce. The regulation of the E-commerce is essential to National economy most especially to consumers thus, Protection of consumers from exploitation and an 'unregulated electronic banking system led to the enactment of the Nigerian Consumer Protection Council Act, 1992 Cap C25 Laws of the Federation 2004 which is a first attempt by the federal military government to regulate commerce.

3.4 The Evidence Act 2011

The emergence of e-commerce has spurred evidential issues in relation to transactions committed online. The area of computer generated evidence is important to e-commerce. Section 84 of the Act contains criteria for admissibility of electronic generated evidence, but this has always been met with disappointment in the courts as it is sometimes difficult to prove most especially when the original of the document is not available. In *Dickson v Kubor*¹³⁴ the Supreme Court of Nigeria held; "There is no evidence on record to show that the appellants in tendering exhibits "D" and "L" satisfied any of the above conditions. In fact they did not as the documents were tendered and admitted from the bar. No witness testified before tendering the documents so there was no opportunity to lay the necessary foundations for their admission as e-documents under section 84 of the Evidence Act, 2011. No wonder therefore that the lower court held at page 838 of the record thus; a party that seeks to tender in evidence computer generated document needs to do more than just tendering same from the bar. Evidence in relation to the use of the computer must be called to establish the conditions set out under section 84(2) of the Evidence Act 2011.'

¹³⁴ (2013) All FWLR(Pt 676) P.392

In the area of electronic signature, the Evidence Act acknowledges that an electronic signature satisfies the rule of law as to signature, electronic signature is one that is essential to e-commerce transaction. Section 93 (3) of the Evidence Act, 2011 provides as follows: ‘a signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person’.¹³⁵

Though this provision makes valid electronic signature, it cannot address all the salient issue of E-commerce, since electronic signature is just an aspect of E-commerce. A new legal framework will be able to address the issue.

3.5 Cybercrimes (Prohibition, Prevention, Etc.) Act, 2015

Cybercrime is indeed a threat to e-commerce, parties who are not privy to commercial transactions infiltrate the cyber space for their own calculated gain.¹³⁶ A learned author put it as follows: ‘It is also predictable that the proliferation of commerce on the internet will be matched by an expansion of crime on the internet. The rise in the use of digital cash and credit cards over the internet provides a greater incentive to hack than ever before’.¹³⁷ The Act provides for an effective, unified and comprehensive legal framework for the prevention and prohibition of cybercrime in Nigeria. It was enacted on 15th May, 2015 by the National Assembly of Nigeria.

¹³⁵ Oloyede R. ‘ Understanding the Legal Framework for Digital Electronic Signature in Nigeria’ 2017 www.Lawyard.ng ‘ Understanding –the-Legal- Framework- for- Digital- Electronic- Signature –in Nigeria/

¹³⁶ Akomoledede T.I ‘Contemporary Issues in Electronic Commerce in Nigeria’ PER/PELJ 2008 (11) P. 3

¹³⁷ Gringas and Nabarro Laws of the Internet 211

A section of the Act that is most fascinating to e-commerce is Electronic Signatures. Electronic signature in respect of purchases of goods, and any other transactions shall be binding, Whenever the genuineness or otherwise of such signatures is in question, the burden of proof, that the signature does not belong to the purported originator of such electronic signatures shall be on the contender. It provides further that any person who with the intent to defraud and or misrepresent, forges through electronic devices another person's signature or company

mandate commits an offence and shall be liable on conviction to imprisonment for a term of not more than 7 years or a fine of not more than N10,000,000.00 or to both fine and imprisonment.¹³⁸

Another section of the Act talks about Intercepting Electronic Messages, Emails Electronic Money Transfers. Any person who unlawfully destroys or aborts any electronic mails or processes through which money and or valuable information is being conveyed is guilty of an offence and is liable to imprisonment for 7 years in the first instance and upon second conviction shall be liable to 14 years imprisonment.¹³⁹

Another interesting section of the Act provides for Breach of Confidence by Service Providers. Any person or organization who being a computer based service provider and or vendor does any act with intent to defraud and by virtue of his position as a service provider, forges, illegally used security codes of the consumer with the intent to gain any financial and or material advantage or with intent to provide less value for money in his or its services to the consumer shall if corporate organization be guilty of an offence and is liable to a fine of N5,000,000.00 and for feature of further equivalent of the monetary value of the loss sustained by the consumer. The Act places heavy duty on service providers this can be found in section 38 of the Act. A service

¹³⁸ Section 17 Cyber-Crime Act 2015

¹³⁹¹³⁹ Section 9 ibid

provider shall keep all traffic data and subscriber information as may be prescribed by the relevant authority for the time being, responsible for the regulation of communication services in Nigeria, for a period of 2 years. With the advent of the Cybercrime Act, e-commerce has found a little solace in Nigeria, the punitive sanctions of offenders of e-commerce transactions makes it worthwhile.¹⁴⁰

3.6 Developing New Legal Framework

A new legal framework means specific Law or legislations on the subject and practice of E-commerce in Nigeria, in this wise, there are several Bills before the National Assembly to regulate e-commerce in Nigeria, but most of the Bills are awaiting presidential assents or have never gone through all the process of Reading. Some of these will be discussed below.

3.6.1 The Electronic Transaction Bill 2015

The paradigm shift came in 2011, when a member of the Nigerian National Assembly, sponsored a bill on facilitating the use of electronic technology and attempt to remove impediments to e-transaction. In effect, it allows some legal requirements to be satisfied by electronic means and gives most electronic transactions and information the same legal effect as paper-based equivalents.¹⁴¹ Now, The Senate at its plenary session of Thursday, May 18th 2017 passed the Electronic Transaction Bill. The Bill seeks to provide a legal and regulatory framework for conducting transactions using electronic or related media, and for the protection of the rights of consumers including the facilitation of electronic commerce in Nigeria. The existence of a

¹⁴⁰ Cyber Crimes Act 2015

¹⁴¹ Aliyu S A 'Analysis of Electronic Transactions Bill in Nigeria': Issues and Prospects Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy Vol 5 No 2 January 2014

legislative framework is premised on the need to upgrade Nigeria's Commercial system through ICT revolution. Speaking on the resolution of the Committee during its technical session, he mentioned that the Committee had considered the Bill from both Houses and had adopted the version of the Senate owing to the fact that it was more elaborate.¹⁴²

The Courts in Nigeria are faced daily with challenges on the issue of admissibility of computer generated evidence. A party is expected to give the best evidence¹⁴³ In the area of e-commerce, information fed into the computer and posted on the websites of sellers and suppliers of goods and services, when retrieved from the web, would only be copies of such information and at best would be hearsay evidence. The communication between the parties would also be copies as against originals when downloaded from the internet, and for it to be admitted it would have to be put in under any of the exceptions to section 91 of the Evidence Act.¹⁴⁴ The review of the Evidence Act made by the Nigerian Law Reform Commission is pending before the National Assembly. The Draft Law makes fundamental changes to the existing rules of evidence in relation to computer generated evidence, but only in respect of civil proceedings.¹⁴⁵

3.6.2 Provisions/Summary of Electronic Transaction Bill, 2015

The Bill is made up of forty five sections. A section of the bill that is relevant to E-commerce is the provision for electronic signature which is contained in section 11. It provides as follows:

¹⁴² 28 <http://placng.org/wp/2021/05/senate-passes-the-electronic-transaction-bill/> accessed on 30th May 2021

¹⁴³ This is known as "The Best Evidence Rule" and is contained in s 77 of the Nigerian Evidence Act 1945 (hereafter the Evidence Act). See also *Subramanian v Public Prosecutor* [1956] WLR P.965, 969

¹⁴⁴ Akomolede T.I 'Contemporary Legal Issues In Electronic Commerce In Nigeria' Per/Pelj 2008(11)3 31

¹⁴⁵ Aliyu S A 'Analysis of Electronic Transactions Bill in Nigeria': Issues and Prospects *Mediterranean Journal of Social Sciences* MCSER Publishing, Rome-Italy Vol 5 No 2 January 2014

(1) Where the signature of a person is required, that requirement is met in relation to an electronic communication if:

(2) Any method is used to identify the person and to indicate the person's approval of the information communicated.

The Bill provides for the protection of Data, Data protection being a challenge to E-commerce. Section 17 of the Bill on Data Protection provides for the general provisions on Data protection, while section 18 states the processing requirement of personal Data.

The Bill has scaled the Hurdles of reading at the National Assembly, but it is yet to receive the presidential assent. All hopes are high that soon, it will receive the much needed assent, to complement existing laws on the subject of e-commerce in Nigeria .If the Bill becomes Law, it will encourage better and quicker customer service. Online customer services make customers happier and brings about lower transaction costs and encourage faster billing system in the economy. The Bill will also encourage quicker transactions and enhance productivity, it will create transaction database, stores transaction information in database for as long as you want.¹⁴⁶

3.6.3 Critical infrastructure protection Bill of 2009

The Bill when passed into Law will ensure that Telecoms infrastructure all around the country is protected and identified as an important national asset. Some of the challenges facing the country include criminal vandalism of infrastructure, theft and digging up of cable. The Bill when passed into law will recognize Telecoms infrastructure as critical to national economic security of the

¹⁴⁶ Aliyu S A 'Analysis of Electronic Transactions Bill in Nigeria'

country as well as its citizens and this will make the destruction or theft of telecom facilities a criminal offence¹⁴⁷

2.4 Nigerian Antitrust (Enforcement, Miscellaneous Provisions etc.) Bill of 2008

The bill by its preamble prohibit monopolies to trade, commerce or industry, to regulate the business activities of combines and trusts with regard to restraints in trade or commerce, to establish the antitrust division for the purposes of enforcing the provisions thereof and to foster the sustenance and development of a free market system, and secure the practice of a fair and open market economy based on free competition between varied enterprises operating in the federation.¹⁴⁸

3.6.5 Electronic Fraud (Prohibition) Bill of 2008

The Bill makes provisions for the prohibition of electronic fraud in Nigeria. It provides steps that prospective Cyber Café operators must take before they are registered. It goes further to define what constitute unauthorized access and also defining computer.¹⁴⁹

3.7 THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNICTRAL)

¹⁴⁷ www.ncc.gov.ng/thecomunicator/index.php?option=com_content&view=article&id=645 accessed 15th May, 2021

¹⁷ Nass.go.ng/search/documents/?search+antitrust&doc_cat=ALL&CHAMBER_ID=All&year accessed 17th May 2021.

¹⁴⁹ E-commerce Association of Singapore

The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the U.N. General Assembly (UNGA) responsible for helping to facilitate international trade and investment.

Established by the UNGA in 1966, UNCITRAL's official mandate is "to promote the progressive harmonization and unification of international trade law" through conventions, model laws, and other instruments that address key areas of commerce, from dispute resolution to the procurement and sale of goods.

UNCITRAL is formulating modern, fair, and harmonized rules on commercial transactions. These include: conventions, model laws and rules which are acceptable worldwide; legal and legislative guides and recommendations of great practical value; updated information on case law and enactments of uniform commercial law; technical assistance in law reform projects; regional and national seminars on uniform commercial law. In an increasingly economically interdependent world, the importance of an improved legal framework for the facilitation of international trade and investment is widely acknowledged. UNCITRAL plays an important role in developing that framework because of its mandate to prepare and promote the use and adoption of legislative and non-legislative instruments in a number of key areas.¹⁵⁰

As early as 1985, UNCITRAL had called upon all national governments to review the legal barriers to electronic commerce found in writing and signature requirements of legal systems. "Concluding that paper-based requirements combined with the lack of harmonization in the rules applicable to electronic commerce constituted a barrier to international trade UNCITRAL undertook the preparation of legal rules on the subject in 1992. Its Model law on

¹⁵⁰ UNCITRAL is an arm of the UN Organisation and has a mandate to harmonise and Promote International Trade Law.

Electronic Commerce could be viewed as the first stage in accommodating the law to the demands at electronic commerce. Drafted to facilitate electronic commerce by removing existing legal barriers, and to do so in a technology neutral, non-regulatory manner, the provisions of the model law, and its companion, the United Nations Model Law on Electronic Signatures, provide the basic framework for the validity and enforcement of electronic contracts.¹⁵¹

3.8 THE ELECTRONIC TRANSACTION BILL 2011

The non-existence of an enacted law on electronic transactions in Nigeria has created an unpredictable environment for e-commerce in Nigeria. This led to the creation of the Electronic Transaction Bill sponsored by Hon. Uzona Nkem-Abonta of the National Assembly. This bill is modeled after the United Nations Commissions on International Trade Law (UNCITRAL) Model law on Electronic commerce. 1996 The UNCITRAL was established by the United Nations General Assembly by resolution 2205 (XXI) of 17 December 1966. It is a core legal body of the United Nations system that works to create accessible, predictable, and unified commercial laws.

Other countries of the world have adopted this model law domestically to govern electronic transactions. For example Malaysia adopted this model law as their Electronic Commerce Act, 2006. Singapore, in 1998 did same as their Electronic Transaction Act Australia as their

¹⁵¹ https://en.wikipedia.org/wiki/united_Nations, accessed 14th May 2021

Electronic Transaction Act, 1999. The United States of America also adopted this law in 1999 as their Uniform Electronic Transaction Act.

Thus, it could be said that the UNCITRAL model law on e-commerce has a worldwide impact as the legislations of many countries have either adopted it or drawn inspiration from it when enacting their own law.¹⁵²

3.9 LEGAL ISSUES ARISING

Electronic Evidence

E-commerce transactions as distinct from traditional transactions are paperless transactions, they are susceptible to alteration or modification without notice of such alteration or modification. Thus, by virtue of the fact that electronic records are more vulnerable to alteration and degradation than records on paper, there is need for rules for Admissibility of such electronic evidence in court.

Electronic evidence is sub-set of documentary evidence. Documentary evidence refers to evidence supported by documents, which must be authenticated before the evidence is admissible.

The repealed Evidence Act¹⁵³ was created in 1943 before the advent of development in Information and communication technology. Thus, provisions such as the definition of

¹⁵² Adaramola, 'The concept of E-commerce in Nigeria (2003) P.42

¹⁵³¹⁵³ Blackslaw dictionary, 9th Edition P.636

document' in Section 2 of the Act and the provisions on documentary evidence in Sections 33, 91 and 93-97 did not contemplate admissibility of documents other than paper documents. Section 2 of the Act defined document as including books, maps, plans, drawings, photographs and also includes any matter expressed or described upon by substance by means of letters, figures or marks or by more than one of these means intended to be used or which be used for the purpose of recording that matter.

The above definition of document does not make any provision for documents from computer (computer printout). However, it made provision for analog computers and its negative (for example, pictures from a camera).

Failure of the repealed Evidence Act to make provision for electronic evidence made such evidence inadmissible in court.

The inadmissibility of electronic evidence without regard to its relevance prompted the call for a change in the attitude of The courts towards this type of evidence and several judges commented on this issue on and implored the legislature to remedy this anomaly.

Thus in *Yesufu v A.C.B*¹⁵⁴ the Supreme Court stated obiter:

"....it would have been much better particularly with respect to a statement of account contained in document produced by a computer. If the position is clarified beyond doubt by legislator..."

¹⁵⁴(1976) 1 AII NLR (pt. 1) 328.

However under the new Evidence Act 2011, Section 251 (1) (d) defines a document to include any device by means of which information is recorded, stored or retrievable Including computer output.

The same section defines a computer as:

"Any device for storing and processing information and any reference to information being derived from other information is a reference to its being derived from it by calculation comparison or any other process."

3.10 JURISDICTION

The issue of jurisdiction is a difficult one in the area of electronic transaction. It is observed that e-commerce recognizes no boundaries; thus, the issue arises as to which country has jurisdiction over the transaction in e-commerce. In international trade the contract is deemed to be concluded at the place where its definite and unequivocal acceptance is affected because this act transforms the arrangement from mere negotiations to an enforceable legal obligation.¹⁵⁵ In Private International Law a contract is governed by the law which the parties intend to apply to their agreement or, if they have not formed such an intention the law with which the contract is most closely connected.¹⁵⁶

The problem of contracting at a distance is not new and the postal rule constitutes are established aspect of the law of contract, providing that a contract is conducted when an acceptance is

¹⁵⁵ Schmithoff C. Export Trade: The Law and Practice of International Trade. 7th Edition, London, Stevenson and sons P.131

¹⁵⁶ Schmithoff C. Export Trade P. 127

posted.¹⁵⁷ To date, there have been no cases concerned specifically with the status of electronic commerce but two decisions concerned with contracts made by apposite precedents.

In *Entores limited vs Miles For East Corporation*¹⁵⁸ the question in issue was where a contract made following communication by telex was to be regarded as having been concluded. The plaintiffs, who were located in London, had made an offer which had been accepted by the defendants in Amsterdam. If the rules regulating postal contract had been applied the contract would have been concluded when the acceptance was committed in this case in Amsterdam. Holding that the contract was made when it was received by the plaintiffs in London Parker I.J held that where:

".....parties are in each other's presence or though separated in space communication between them is in effect instantaneous, there is no need for any such rule of Convenience to hold otherwise would leave no room for the operation of the general rule that notification of the acceptance must be received. An acceptor would say, "i spoke the words of acceptance in your presence albeit softly and you did not hear me or I telephoned you and you accepted and it matters not that the telephone went dead and you did not get my message". So far as telex messages are concerned, though the dispatch and receipt of a message is not instantaneous, the parties are to all intents and purposes to each others presence just as if they were in telephone communication and I can see no reason

¹⁵⁷ Lloyd I., Information Technology Law, 2nd Edition, London, Butterworths, 1997 P.474

¹⁵⁸ (1955) 2 All E.R 493

*in departing from the general rule that there is no binding contract until notice of the acceptance was received by the offeror.*¹⁵⁹

This view was endorsed by the House of Lords in the case of *Brinkbon Limited v Sieberg Und StahlwarenhandelGmbH*.¹⁶⁰ Although Lord Wilberforce recognized that the situation might have to be changed in the event it could be established that there was;

*“...some error or default at the recipient's end which prevents receipt at the time contemplated and believed in by the sender no universal rule can cover all such cases they must be resolved by reference the intentions of the parties by Some sound business and in some cases a judgment where the risk should lie.”*¹⁶¹

It may be questioned whether e-mail exchanges should be classed as instantaneous communication.¹⁶² The determination where a message is received may itself create problems. A website, for example, may offer to supply software and provide a facility for orders to be placed electronically. The site's address may be for example <http://www.supersoftwarecia.com>. A user will receive no indication which country the site is based in.¹⁶³ Even where a geographic location is given for example <https://supersoftware@co.ok> this may not be determinative of the location of the service provider. The site owner might be located in France with order being received at the website and forwarded automatically to that country. It is relatively common practice based in

¹⁵⁹ (1955) 2 all E.R 493 at 498.

¹⁶⁰ [1982] 1 All ER 293

¹⁶¹ [1982] 1 All ER 293 at 296

¹⁶² Lloyd I., *Information Technology Law*, 2nd Ed. London, Butterworth, 1997, 475

¹⁶³ Ibid

part upon security concerns to keep web servers geographically separate from the physical undertaking.¹⁶⁴

3.11 CONFLICT OF LAWS

Where a Nigerian consumer orders goods via electronic means, pays with his credit card or smart card, and receives goods which he is dissatisfied with; it is easy to assume that one of the various Nigerian Sale of Goods Law applies and that the consumer should have rights under the provisions of such laws. Bamodu¹⁶⁵says that to assume this is to jump the gun however asserts that there is a strong possibility that by the terms of the tract of purchase between the Nigerian consumer and the merchant's law, the law of another country applies. Usually most web merchants have a clause in the terms and conditions link on their website as to the applicable law of the transaction is a particular country's legal system.

Electronic commerce in Nigeria is receiving high boom. However, the need to regulate it in a proper legal framework is needed, this has been aptly demonstrated in this study. Nigeria has a capacity for a standard ecommerce operation in the world. Though there exists some scanty provisions of the law in some documents, these have not addressed the issues that are arising from e-commerce. Nigeria should borrow from United Kingdom which have plethora of Laws on e-commerce, some segments and parastatal of that country has a legal framework that regulates e-commerce transaction. Singapore on the other hand have gone into partnership with several companies both in China and Japan because of their array of laws in e-commerce arena, this

¹⁶⁴ Ibid

¹⁶⁵ Bamodu 'Information Commuication Technology and E-Commerce: Challenges and Opportunities for the Nigerian Legal system' (2004) P.2. The Journal of Information Law and Technology, P. 23

shows that e-commerce is a remedy for economic and financial growth when effectively utilized and controlled.

The Nigeria National Assembly have so many Bills on e-commerce before them awaiting to pass through the stages of reading and presidential assent. Our Lawmakers, should pass all the Bills before them on e-commerce into Law so that Nigeria will be at par with other countries that have a standard e-commerce regulation. Also, the Nigerian Evidence Act greatly affects e-commerce transactions because of the provision of computer generated evidence, the section 84 has always proved difficult to establish in the Law courts. This is a call on the Nigerian Law Reform commission to reform the evidence Act and all other Laws that affects e-commerce transactions in Nigeria¹⁶⁶.

The average Nigerian must be educated on their rights on e-commerce and the laws, every Nigerian should follow the trend and have the law in their hands. Furthermore, there should be established well regulated bodies that will be in charge of ecommerce in Nigeria. The Laws are not just enough, bodies like the ones that exists in the Singapore like the E-commerce Association of Singapore should be established in Nigeria to cater for the needs of consumers.

Finally, when this and other measures taking in this study are followed, e-commerce growth will go towards the positive direction.

CHAPTER FOUR

CHALLENGES AND PROSPECT OF E-COMMERCE IN NIGERIA

4.1 Introduction

¹⁶⁶ Gboyega Phillip Ogundele, 'Developing Legal Framework for Electronic Commerce in Nigeria: Some Lessons from the U.K and Singapore P.17

Electronic commerce emerging from Information and Communication Technology has revolutionized the way commercial transactions are conducted. Its ability to shrink space and time, to bring people together without traversing long distances, to create new marketplaces and to contribute to global economic growth is overwhelming¹⁶⁷, Thus we can pay bills, make funds transfer, sell products. Check the status of our bank accounts, make purchases for goods and so much more from the comfort of almost any keypad. Consumers at the comfort of their homes and at any time of the day visit electronic stores (e-stores) via the internet, locate and select products, make payments through credit cards, debit cards, or cash on delivery and get delivery at their door steps. Thus, e-commerce brings the market straight to the homes of consumers, making it really convenient for consumers

Mobile phones are the most widely used communication technologies in both the urban and rural parts of the country. The introduction of mobile phones improved access to personal computers and internet service facilities.

.This chapter in summary examines the practice of c-commerce in Nigeria and the issues consumers facetelecommunication sector,the criticism, challengesand prospect ofE-commerce in Nigeria.

4.2 The Practice of E-Commerce in Nigeria.

Telecommunications which literally means communication at a distance (examples include: telephone, computer, radio, fax machine etc.) has in a great measure (especially the use of mobile phone facilitated the practice of e-commerce in Nigeria. With telecommunication,

¹⁶⁷ Carr I, International Trade Law, 4thed, New York, Routledge-Cavendish, 2010, 125, (hereafter referred to as Carr. Intl trade law)

Nigerians are able to communicate with the rest of the world Mobile services are having no positive impact on Nigeria by enabling greater interaction and bringing a wide variety, of services to the majority of the country's population.¹⁶⁸ Mobile services have a wider economic impact, since they enable a different way of conducting business, reducing the time and cost of transactions improving .1c...cm to markets, commoditizing information and generally allowing businesses to operate more efficiently.¹⁶⁹ Mobile communication improves efficiency and generates time savings. Checking emails on the move calling a client while traveling and accessing market information instantly are tusks that are easily conducted over mobile phones during traditionally unproductive limes such as commutes.¹⁷⁰ Telecommuting and working from remote locations is becoming an increasingly attractive option among employers enabling them to maintain input quality while imposing the work life balance of employees.¹⁷¹

4.3 A Critique of the Practice of E-Commerce in Nigeria

E-commerce is Nigeria is still at a developing stage when compared with its practice in the western world such as the United Kingdom. The full development of ecommerce in Nigeria suffers many setbacks. These setbacks include:

¹⁶⁸ Pyramid Research, "*The Impact of Mobile Services in Nigeria*"
<http://pyramidresearch.com/documents/IMPACTofMobile>

¹⁶⁹ Pyramid Research, op cit, 38

¹⁷⁰ Ibid

¹⁷¹ Pyramid Research, op cit, 100.

4.3.1 Inadequate Power Supply: Adequate power supply is very necessary for any nation's development but acquiring and using it is very expensive and remains a problem in Nigeria today. Nigeria is still facing challenges in the power distribution throughout the nation. In order for Nigeria to effectively meet up with either industrialized nations there must be generation of adequate power, which must effectively reach the consumers.

In order to operate a business you need regular power supply and in order to use your computer e-commerce transaction like placing orders or checking your e-mails for confirmation n electricity is needed. But the lack of electricity in Nigeria discourages even the business minded people since they cannot effectively carry out their business without electricity¹⁷².

4.3.2 Illiteracy: By illiteracy we mean computer illiterates. Thus, one may be educated in the sense of academic knowledge and still don't know how the internet work. Commerce can only be exploited by those who have at least basic knowledge on how to communicate via electronic means. Thus, the uneducated in rural areas have no opportunity exploiting the benefits e-commerce brings.

However, there have been a lot of efforts to educate rural dwellers on grass root computer education. For example, the United Nations Education, Scientific and Cultural Organization UNESCO, with it world youth empowerment foundation, carries out computer lite programs for rural dwellers in Nigeria.¹⁷³

Furthermore, the Nigeria legal framework currently for e-commerce does not adequately provide for the electronic element in electronic transaction. The current legal framework is limited paper

¹⁷²172 Mirescu S. "The promises and evolution of e-commerce", (2010) Journal of Information Technology P. 3.

¹⁷³ <http://Impact-of-UN-in-rural-development>(accessed 28,May 2021)

based transactions. The National Assembly needs a wakeup call. It is high time they are proposed and passed bills into laws which are relevant to facilitate e-commerce in Nigeria.

It is general knowledge that a bill in all its glory cannot be enforced by the courts of Nigeria until it is enacted into law. Several bills currently before the National Assembly include: Electronic Transaction Bill, 2011 The Electronic commerce Bill, 2011, The Security of Communications Interception and Monitoring Bill, 2009, Electronic Fraud (protection) Bill, 2008.

The challenge is on for Nigeria to develop an adequate legal framework that will optimize and exploit the benefits of e-commerce and also allow the Nigeria merchants to enter the international competitive market which will indirectly foster trade and development in Nigeria.

A legal framework which would have the effect of promoting business, growth and development, enable new job creation, expand international trade and new markets; and improve the quality of life of all Nigerians (just like the South African Green Paper Policy) should be created. This legal framework must not only address the commercial aspect of the transaction but also technological issues.

4.4 Benefits of E-Commerce¹⁷⁴

E-commerce is successful around the world because of the benefits it offers

The benefits of e-commerce will be addressed in two categories:

¹⁷⁴Akomoledede "The conceptual Framework of E-Commerce in Nigeria" Journal of Internet Banking and Commerce P.42

1. Benefits to consumers: and

2. Benefits to businesses

1. Benefits to Consumers: E-commerce benefits to consumers include:

- **Convenience:**E-commerce creates high convenience for the Nigerian consumer as it allows for the buying of goods and services without taking into account the time element coupled with the home delivery of such goods or services.
- **Variety:**Commercial activities, especially the sale of goods over the internet 'rot ides Mt several compete the brands and products from different online sellers. Thus consumers arc at liberty to buy goods from any part of the world without being limited by their geographical area.¹⁷⁵
- **Better Prices:** Most Nigerians prefer shopping in the informal markets with lower prices when compared to shopping in supermarkets and, modem shopping centers. Thus, Nigerian e-commerce consumers benefits from the competitive' price offered by businesses in the same line of business Also, the manufacturers howl direct access to the ultimate consumers without the aid of the middleman an most times goods sold online are not taxed.

4.5. Why Consumer Prefer Shopping Online?

2. Benefits to Businesses: such benefits includes:

¹⁷⁵Kalatoka and Whinston Electronic Commerce P.69

- **New Markets:** The borderless character of e-commerce makes the world the vendor's market. Here's easy access to markets that were hitherto, inaccessible.¹⁷⁶ For example the internet provides a potential worldwide audience of over 300million and still counting.
- **Low Transaction Cost:** E-commerce reduces cost associated with various business processes. Unlike the cost of transacting business offline, c-commerce lowers transaction cost from the stage of acquiring information to producing relevant documents such as invoice and export and import documentation as these jobs would be performed by the computer not humans. Furthermore, the possibility of errors: are eliminated as the documents are prepared by computers.
- **Communication Speed:** E-commerce improves the communication speed between business owners and customers. This instantaneous means of communication maintains- and strengthens the relationship between them

4.6 Challenges of E-Commerce in Nigeria.

Beyond the above mentioned benefits enjoyed by consumers. exists a pool of issues faced by the consumer in e-commerce in the context of uncertainties and risks involved especially for

¹⁷⁶Adewuyi I., "Electronic Banking in Nigeria" (2011) International Journal of Economic Development Research and Investment P.153

commercial transaction via the internet. These issues act as a barrier for the development of e-commerce, they include. The issues of fraud, security, trust etc.¹⁷⁷

4.6.1 Fraud

Fraud occurs when a person intentionally deceives another for personal gain, Black's law dictionary¹⁷⁸ defines fraud as *"a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment."*

Thus, Internet fraud is an intentional deception for personal gain committed with the aid of the internet. Interestingly enough, the frauds occurring on the Internet are simple dilutions of standard consumer fraud and simple mail or telephone order. In other words, the same old wine in a new and improved bottle.¹⁷⁹

Fraud in e-commerce could be faced in various ways, they include:

4.6.1.1 Credit Card Fraud: At one time, it could be claimed that the largest threat to an organization was fraud by employees.¹⁸⁰ Whilst employees still pose a serious threat, there has been a significant increase in fraud on e-commerce websites by criminals using stolen or forged credit card data.¹⁸¹

A key component to conducting business is accepting payment. In e-commerce, Credit Cards are the dominant form of payment on the web, their electronic nature allows customers and e-

¹⁷⁷Nehf J.P "Borderless Trade and the Consumer interest: Protecting the Consumer in the age of E-commerce"(1999) Colum J. Transnat Law P.457

¹⁷⁸ Black's law dictionary, 9th ed, 731

¹⁷⁹ Curry S, "An Inside Look at E-Commerce Fraud" Available at <http://www.scambusters.org/e-commerce-fraud.pdf> [accessed, May 6, 2021]

¹⁸⁰Brainbridge D, Introduction to Computer Law, 5thed, England, Pearson, 2004, 420.

¹⁸¹ Ibid

commerce stores to pay and receive payment immediately. Given the virtual nature of e-commerce transactions, credit card fraud is much prevalent in online business transactions than offline transaction; the credit is physically present, while in an online transaction the card is not physically present. When fraud occurs online, e-commerce vendors are often helpless to protect themselves. This is because the credit card was not physically present during the transaction. All a potential thief needs to commit this is a valid credit card number, name and expiration date of the credit card. Thus, no signature or personal identification number (PIN) of the credit card is required.

The thief does not even need to have the card. The rate of online credit card fraud is at least ten times greater than the credit card fraud rate in the offline world.

4.6.1.2 Advanced Fee Fraud: The Black's law dictionary¹⁸² defines this as

A criminal fraud in which the victim is persuaded by the perpetrator to pay "fees" in anticipation of receiving a much larger benefit that is ultimately never delivered.

The perpetrator usually claims to have, or to represent someone with, a large sum of money that must be immediately transferred out of a foreign country for some compelling reason, such as to avoid seizure by a government. The criminal promises the victim a portion of the money in return for the victim's agreement to open a bank account in the victim's name. The victim must pay "upfront fees" to the designated "bank" and others. Although the internet has become a favorite tool for this fraud, it has been around for years, beginning with handwritten or typed letters and later faxes. Because advance fee fraud is believed to have originated in Nigeria, it is

¹⁸² Black's Law Dictionary, 9thed., P. 731

termed 419 fraud after the section of the Nigerian penal code designated to punish those who defraud by this method.

Section 419A of the Criminal Code Act¹⁸³, provides for the offence of obtaining credit by false pretenses or other fraud. It reads:

(1) Any person who by any false presence for by means of any other fraud obtains credit for any other person -

(a) In incurring any debt or liability or

(b) by means of an entry in a debtor and creditor account between the person giving and the person receiving credit

is guilty of a felony and is liable to imprisonment for three years

(2) The offender cannot be arrested without warrant unless found committing the offence.

Thus, advanced fee fraud is a serious issue faced by consumers in e-commerce especially in the aspect of electronic payments

Mr. Ezeoha Abel, a lecturer in the Department of Banking and Finance, Ebonyi State University, Abakaliki, Nigeria,¹⁸⁴ had this to say on the advance fee fraud.

The Advance Fee Scheme or 419, which is one of the most popular of all Internet frauds, has us on gm from Nigeria in the 1980s. Its development and Spread pillows the path of the developments in information technology. At inception, postal letters were used as key media for committing 419 frauds: later in the .early 1990s, it

¹⁸³ CAP C38LFN 2004

¹⁸⁴Ezeoha A, "Regulating Internet Banking in Nigeria" (2005) 10(3), Journal of Internet Banking and Commerce, P.4

became integrated into telecommunication facilities such as the telephone and fax, from the late 1990s following the introduction of computers and internet, 419 crimes became prevalently perpetrated through the use of e-mail and other Internet means. The latest, dimension taken by the perpetrators of this crime is the use of fake Internet bank sites and using that to encourage victim to accounts with them. The country is currently rated as having gone of the highest records of Internet frauds in the whole world. According to the National Consumer League (2002), the country is the third highest ranked in Internet 'Money offer' frauds. As was reported in one of the national newspapers frauds and forgeries in Nigerian banks as at June 2005 stood at 329 or N1.15 billion time tiny equivalents, against 222 cases or N1.47 billion monetary equivalents in April this same year. There is even global suspicion that a Nigerian crime syndicate that coordinates global crimes such as Money laundering, bank fraud and 419 scams exists today. These issues basically defeat the key ingredients of the banking which includes confidentiality, Integrity and availability.

4.6.1.3 Online Auction Fraud:

This type of fraud began in 1995 with the establishment of eflay.co. and since then has expanded dramatically.¹⁸⁵ Online auction facilitates consumer-to-consumer transaction Online auction is quite different from the traditional auction Most internet sites distance themselves froth the actual transaction process and explicitly state that they should not be treated as traditional auctions for example : May's user agreement contains the following text: You acknowledge that

we are not a traditional auctioneer. Instead, our sites are a venue to allow anyone to offer, sell, and buy just about anything, at anytime from anywhere. in a variety of pricing formats and locations, such as stores skips fixed price formats and auction style formats" In online auctions, bidders act purely in response to the details and description provided on such website. When the auction is met, and a bid is accepted, the seller deals directly with the buyer in relation to payment and delivery. Fraud occurs where: substandard and defective goods are intentionally auctioned; fake goods are auctioned and, where illicit bidding arrangements are made.¹⁸⁶ The very nature of a sale by auction lends itself to fraudulent activity by rigging the bidding.¹⁸⁷ Sellers can Arrange to inflate the bidding artificially by acting in collusion with others, making bids on their own items (Shill bidding). On the Other hand, unscrupulous buyer either alone or in collusion with others can place, multiple bids of differing values for an item some of which will be high to deter other potential purchasers (Bid shielding) in the final minutes of the auction, the buyer then removes all the high bids leaving only their own low bid at which the item is sold.

4.6.1.4 Phishing: Phishing is defined as the sending of a fraudulent electronic, communication that appears to be a genuine message from a legitimate entity or business for the purpose of inducing the recipient to disclose sensitive information.¹⁸⁸ Here, consumers are fooled by a website designed to look like a legitimate online business into giving up their relevant details as to credit cards.

How does phishing works¹⁸⁹

¹⁸⁶ Rowland D and Macdonald E, *Information Technology Law, 3rded, Australia, Cavendish, 2005, 110*

¹⁸⁷ Ibid

¹⁸⁸ Black's Law Dictionary, 9thed, 1263

¹⁸⁹ <http://www.paypal.com/us/webapps/mpp/security/what-is-phishing> [accessed on July, 11, 2014]

A criminal sends thousands, even millions, of entails to a variety of people, usually at random. These entails appear to be messages from a well known company. A common example contains a concocted story designed to lure you into clicking on a link or calling a phone number.

The phishing entail contains links or buttons that take you to a fraudulent website.

The fraudulent website mimics the company referenced in the entail, and aims to extract your sensitive personal data.

4.6.2 Security: Closely to the issue of fraud is the issue of security. Security in this context is defined as a set of procedure, techniques and safeguards designed to protect hardware, software, data, and other system resources from unauthorized access, use modification or theft.¹⁹⁰ Following the rise of fraud envisaged in electronic transactions especially credit card fraud on the web, thus the need for secured means to assure customers that the means of electronic payment is safe. Thus, security entitles hacker's to have access to a vendor's website, steal names, addresses, and credit card details of their customers.

In the English case of *R v Brown*¹⁹¹, Lord Hoffman lucidly captures the thrust of problems associated with security as follows:

Vast amounts of information about everyone are stored on computers, capable of constant transition anywhere in the world and accessible at the touch of a keyboard. The right to tell other

¹⁹⁰Aminu A, "Challenges Militating against Online Shopping in Nigeria" (2013) 1(1), Journal of Marketing Management, P.28

¹⁹¹ (1996), I, All ER P. 545,556

people, that contain things are none of their business is under technological threat.

Most credit card transactions are completed by submitting important details over the internet which can be easily monitored, Manipulated, or intercepted if not secured. Although no website is ever 100 percent secure, several technologies¹⁹² can be employed to help reduce the risk to companies and their customers when conducting e-commerce transaction.

4.6.3 Passwords: Password protection may be the most common online security measure. Log-ins and passwords identify who is trying to access a website or part of a website. When attempting to access a secured website; customers are presented with a screen that requests user identification and a password. After supplying the appropriate password for that user identification, then, customers can access a confidential account information (for example, order, status, shipping address, payment information etc.). Two major drawbacks on Password is that (1), It is easily forgotten and. (2) It is not encrypted, this, giving hackers easy access to vital information

4.6.4 Encryption: Encryption technology encodes and decodes information transmitted over the internet so that only the sender and the intended recipient can read the information. This is accompanied through the use of complex mathematical formulas. Encryption is mainly used to transmit sensitive data such as credit card details, Use of encryption requires that an encryption software be installed on both the sending and receiving computers. For example, to send a secure e-mail to a friend, the sender would write higher message. use encryption software to encrypt the message, and then, send the message. The friend would receive the message in encrypted form, use the encryption software to decrypt the message and read h. If other people (3rd

¹⁹²Rayport J and Jaworski B, *Introduction to E-commerce*, 2nded, London, McGraw-Hill, 2003, 57

party) somehow gets a copy of the message in transit or by other means, they would not be able to read the encrypted version.

4.6.5 Trust: The issue of trust is closely related to the issue of fraud In Nigeria, consumers: prefer visiting the commercial site to obtain the relevant information of the product they have the intentions of buying, then, physically visit the stores, touch, and compare the product before actual purchase is made. For example: which Nigerian will buy a car online simply on the basis of a picture and a mouthwatering price on the web? Furthermore, the culture of making payments for goods and on the 'theme via credit cards is pretty much alien to Nigerians and, serves as a limitation. With the high rate of internet fraud- among Nigerian youths, Nigerians prefer to pay in cash than make electronic payments for purchased goods. Nigerians majorly fear that, they have no control over their credit cards-details disclosed, how their credit card details will be treated by the vendor, the fear that the vendor may not :satisfactorily deliver the goods ordered as the goods may be inferior in standard, defective in quality, incorrect or even, may never arrive.

4.7 Prospect of E-Commece in Nigeria

Several challenges to E-commerce were itemized in the foregoing Chapter. For E-commerce to thrive in Nigeria, solutions must be proffered. Most of the challenges identified centers around computer illiteracy and fraud. Therefore combating computer illiteracy and cyber related crimes general will lead to active participation in Electronic commerce in Nigeria.

4.7.1 Computer Literacy

Computer literacy is defined as the knowledge and ability to use computers and related technology efficiently, with skill levels ranging from elementary use to computer programming and advanced problem solving. Computer literacy can also refer to the comfort level someone has with using computer programs and applications. Another valuable component is understanding how computers work and operate. Computer literacy may be distinguished from computer programming, which primarily focuses on the design and coding of computer programs rather than the familiarity and skill in their use.¹⁹³ Various countries, including the United Kingdom and the United States, have created initiatives to improve national computer literacy rates.

Computer literacy differs from digital literacy, which is the ability to communicate or find information on digital platforms.¹⁹⁴ Comparatively, computer literacy measures the ability to use computers and to maintain a basic understanding of how they operate¹⁹⁵.

Digital literacy refers to an individual's ability to find, evaluate, and clearly communicate information through typing and other media on various digital platforms. It is evaluated by an individual's grammar, composition, typing skills and ability to produce text, images, audio and designs using technology. The American Library Association (ALA) defines digital literacy as "the ability to use information and communication technologies to find, evaluate, create, and communicate information, requiring both cognitive and technical skills."¹⁹⁶ While digital literacy initially focused on digital skills and stand-alone computers, the advent of the internet and use of social media, has resulted in the shift in some of its focus to mobile devices. Similar to other

¹⁹³ Tobin, Catherine D., "Developing Computer Literacy", *The Arithmetic Teacher* (February 1983) P.30

¹⁹⁴ Buckingham David, "Defining Digital Literacy" 2010

¹⁹⁵ "An overview of Basic Computer Literacy Skills" (PDF) Hampers College

¹⁹⁶ "Digital Literacy" Welcome to ALA's Literacy Cleaninghouse

expanding definitions of literacy that recognize cultural and historical ways of making meaning, digital literacy does not replace traditional forms of literacy, but instead builds upon and expands the skills that form the foundation of traditional forms of literacy. Digital literacy should be considered to be a part of the path to knowledge.¹⁹⁷ Digital literacy is built on the expanding role of social science research in the field of literacy¹⁹⁸ as well as on concepts of visual literacy, computer literacy, and information literacy. Overall, digital literacy shares many defining principles with other fields that use modifiers in front of literacy to define ways of being and domain-specific knowledge or competence. The term has grown in popularity in education and higher education settings and is used in both international and national standards.¹⁹⁹

E-commerce which is already thriving in Nigeria will thrive more when 90% of Nigerians are computer cum digital literates.

4.7.2 Legislating against Cybercrimes

Another factor hindering the efficient participation in e-commerce in Nigeria is the lack of confidence in such technologies due to the risk of cybercrimes.

Globalisation, a characterising feature of the 21st Century, is fast shrinking the world into a borderless global village. This trend is being facilitated by advancement in technology by which people and information residing miles apart are readily accessible through one or few clicks on a simple digital device, such as a smartphone or the iPad. A new digital revolution is said to be

¹⁹⁷ Kegel, "Towards More Individualized Interfaces: Automating the Assessment of Computer Literacy" (2010) P.8

¹⁹⁸ Reedy Katharine: Parker, Jo eds 'Digital Literacy Unpacked.

¹⁹⁹ Knobel, M and Lanskear, C. "Digital Literacies: Concepts, Policies, and Practices (2008)

underway in which about 30% of global population is actively living in the cyberspace, in real terms. Today, virtually all business transactions and other daily human endeavors (teaching, learning, sales and promotional activities, commercial transactions, shopping, procurement, supply, payments, banking, insurance and professional services) take place via online platforms. The world's growing cyberspace is driven by new innovations which are increasingly being aided by modern computer technologies, the Big Data phenomenon and the Internet of Things.

A cybercrime is 'any action directed against confidentiality, integrity and availability of computer systems, networks and computer data as well as the misuse of such systems, networks and data'.²⁰⁰ Such crimes are induced by fraud and generally characterized by spyware, malwares or fictitious emails sent by phishes, which aim to steal personal information.²⁰¹ Fundamentally, cybercrimes cannot be remedied through the same mechanisms as ordinary crime since the two differ in several respects. As Brenner²⁰² points out:

- i. Cybercrimes lack proximity between victim and perpetrator. Unlike normal instances of fraud which often involve face-to-face communication between the victim and perpetrator, online fraudsters can easily use fraudulent web- sites and emails to remotely scam victims.
- ii. While most normal crimes have physical crime scenes, a number of cyber- crimes lack crime scenes, while in others the scene may be scattered throughout cyberspace. Moreover, cyber

²⁰⁰ Convention on Cybercrime, Opened for signature 23 November 2001, CETS No 185 (entered into force 1 July 2004).

²⁰¹ 160) Phishing is a method of committing online fraud or identity theft whereby a fraudster uses a fraudulent website designed to fool a victim into giving his personal information e.g. social security number, credit card details and account passwords. See O. Dejo, 'Cyber-Crimes and the Boundaries of Domestic Legal Responses: Case for an Inclusionary Framework for Africa' (2009) (1) *Journal of Information, Law and Technology* P.4

²⁰² S. Brenner, 'Cybercrime Metrics: Old Wine, New Bottles' (2004) 9(4) *Virginia Journal of Law and Technology* 1-52.

criminals quite often operate outside their victims' jurisdiction. Both these factors make it difficult for law enforcement agencies to apprehend online fraudsters.

Normal crimes usually operate at a personal scale involving one crime per perpetuated against one victim at a given time.²⁰³ However, cybercrimes operate at a much wider scale as automation makes it possible for a fraudster to scam thousands of victims around the world at one given time.²⁰⁴

While real world crimes rely on tangible evidence, cybercrimes often involve intangible digital evidence owing to the fact that the crimes are committed in a virtual environment.²⁰⁵

These differences call for a different approach to combating cybercrimes requiring specialised cyber legislations and law enforcement agencies. The criminalisation of cybercrimes is a prerequisite for the investigation and prosecution of such crimes.²⁰⁶ In addition, the regulations should cater for a special policing unit, trained to handle cybercrimes, which will effectively protect online users.

Since activities which, before the computer age, took place only in the physical spheres like land, air and the sea (but are now taking place over the cyberspace) are governed by laws made to handle the peculiar natures of those spaces; it is imperative that cyber laws are enacted in order to cater to the needs of, as well as the problems emanating from, doing business through the cyberspace.

²⁰³ Most domestic have one-to-one element that arises out of the physical constraints imposed on human activity. For instance a thief cannot pick more than one pocket at a particular time. However, there are certain crimes such as acts of terrorism that may involve several victims at one particular time.

²⁰⁴ *Ibid.*, p. 9.

²⁰⁵ *Ibid.*, p. 11.

²⁰⁶ A. Ojedokun 'The Evolving Sophistication of Internet Abuses in Africa' (2005) 37 (1) *The International Information and Library Review* 11–17, at 15

Many advanced countries of the world had long enacted their respective cyber laws. However, online transactions continued in Nigeria for a long time without any specific governing law, thereby posing great risks to individuals, businessmen, organisations and even the government; some of whom in many instances in the past, had fallen victims to cybercrimes without any concrete legal regime for seeking redress. Succour, however, came in May 2015 when the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 (the "Cyber crime s Act") – was signed into law.

Apart from criminalising certain acts, prescribing punishments for their commission and creating an institutional and enforcement framework, the Cybercrimes Act addresses most of the lacunae which had hitherto rendered the Nigerian cyberspace unsafe for transacting business. However, in addition to potentially improving investors' confidence in the Nigerian e-business environment, the Cybercrimes Act has also generated fresh risk management issues.

There is hope that the new legal regime will boost the confidence of individuals, firms and companies to transact more businesses and render services online, without the fear of falling victims to identity theft, plagiarism or copyright violation. For instance, the Cybercrimes Act criminalizes cyber squatting, that is any act which amounts to "the acquisition of a domain name over the internet in bad faith to profit, mislead, destroy reputation, and deprive others from registering the same, if such a domain name" is an existing and legally registered trademark or is confusingly similar or identical to it; or similar and identical to the name of a person; or acquired without right or with intellectual property in it.

CHAPTER FIVE

CONCLUSION

E-commerce encourages a single world trading system and globalization. If e-commerce is properly managed in Nigeria and its safeguard put in place, it will improve the Nigerian economy. Nigeria's population is currently estimated to be about 200 million. Imagine this figure actively engaged in e-commerce both nationally and internationally, buying and selling. E-commerce has not been fully exploited by the Nigerian populace. Even the few Nigerians engaged in e-commerce have no law protecting their interest. The Government of Nigeria must wake up from their slumber if it wants to reap the benefits of e-commerce as there is a lot hard work to be done to put the legal framework in check.

The ability of the internet to bring together distant parts of the world in a global electronic market place and information exchange has a far-reaching and potentially beneficial impact on the developing economies like Nigeria.²⁰⁷ These have facilitated a dramatic increase in the volume of trade and economic information available on-line. The overall level of electronic commerce, or business transaction conducted via internet from 1999 to 2020, was impressive and growing exponentially.²⁰⁸

E-commerce is more than just electronics and commerce added together. It represents an entirely new way of doing business over a medium that changes the very rules of doing business. It is therefore, far more about strategy and business management than it is about technology.²⁰⁹

²⁰⁷ Ayo C.K, &Adewoye J.O and Oni A.A, 'Business to Business Commerce in Nigeria' Prospects and Challenges, African Journal of Business Management, Vol (5) P. 5109

²⁰⁸Chaffey D. E-Business and E-Commerce Management: Strategy,Implementation and Practice,4th Edition 2009 P.

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²⁰⁹ Roger Clarke, 'Electronic Commerce Definitions' Xamax Consultancy property ltd

E-commerce and the internet, if correctly utilized for development, can be instruments for ensuring future sustainable economic growth ²¹⁰. Throughout the world, the profound impact of electronic commerce in the economics and societies of the globe will no doubt improve economic efficiency, competitiveness, and profitability (for those engaging in e-commerce) and, therefore result in the development of the information society. E-commerce and the new emerging digital technologies and services can be tools for development and help improve the livelihood of millions across the globe, by linking up remote regions and bringing together scientist, administrators development professionals, managers, and people into projects and programmes to promote economic and social development.

Farooq Ahmed ²¹¹ reported that the enormous flexibility of the internet has made possible what is popularly called e-commerce, which has made inroads in the traditional method of business management. All facets the business tradition with which we are accustomed in physical environment can be now executed over the internet including online advertising, online ordering, publishing, banking, investment, auction and professional services.

E-commerce involves conducting business using modern communication instrument: telephone, fax, e-payment, money transfer systems, e-data inter-change and the internet.

E-commerce is not limited to the purchase of a product, it include, beside e-mail and other communication plate form, all information or services that a company may offer to its customers over the Net, from pre- purchase information to after sale service and support. These are essentially two major uses of e-commerce. The first is to use it to reduce transaction cost by

²¹⁰ International Labour Organisation(1999), Human Resource Implication of Globalization and Restructuring in Commerce, ILO Geneva

²¹¹ Farooq Ahmed(2001); Electronic Commerce: An Indian Perspective; International Journal and Information Technology; Vol (9)2 2001, pp133-170

increasing efficiency in the use of both time and procedure²¹², and thus lowering cost. The other is to use it both as a marketing tool to increase sales (and customer services) as well as to create new business through it. For example, information technology enabled business, call-centers, software maintenance services etc. It is thus a tool for both existing business as well as an opportunity for new business, both for existing companies as well as for new entrants. E-commerce provides consumers the ability to bank, invest, purchase, distribute, communicate, explore, and research from virtually anywhere an Internet connection can be obtained²¹³

E - Commerce provides tremendous opportunities in different areas but it requires careful application for consumer issues.

5.2 RECOMMENDATIONS

1) Infrastructure: the fact that the legal framework for e-commerce is inadequate has been overstressed. Thus, it is recommended that this issue be addressed by the National Assembly. The Electronic Transaction Bill and the Electronic Commerce Bill should be passed into law. The purported legal framework should cover all the areas addressed in the United Kingdom legal framework for e-commerce which include: consumer protection, data protection and, restriction of unfair terms. Consumer rights should be included in Chapter IV of the Constitution of the Federal Republic of Nigeria (1999 as amended). This will ease the burden of proof placed on consumers in e-commerce. Also, the Central Bank of Nigeria Guidelines for Electronic Banking should be given the force of law by making it an Act of the National Assembly to regulate electronic banking and mobile payment. The tax laws at local State and Federal levels must be amended to enable e-commerce taxation in Nigeria. To address the issue of e-waste, a law

²¹²TillaberiMobile 2011

²¹³ ALLEY VIVIAN M. September 2010. The University of Sheffield JozeKuzie, Julie Fisher, Angela Scollary electronic Commerce, Benefits, Challenges and Success

Modeled after the Basel Convention on the Control of Trans boundary Movement of Hazardous and other waste should be enacted.

2) Information and Awareness: all Nigerians, from the e-commerce consumer (e-consumer) both in rural and urban areas to the law enforcement agents need to be educated on the whole idea of commerce. For consumer in rural areas, it is recommended that the Government of Nigeria team up with non-profit. Organizations which are already working on similar project (grass-root computer education) should support them through funds. For the potential e-consumers in urban areas, they still need to be educated on how to make use of the internet. The fact that a person resides in an urban area does not automatically raise the irrefutable presumption that she is computer literate. A funny example is the recent disgrace case of the Lagos State Computer literate. A funny example is the recent disgraceful case of the Lagos State Commandant of the Nigeria Security and Civil Defense Corps, NSCDC, who was asked on air on Channels Television interview, about the name of the NSCDC website, and the Commandant who was ignorant of this knowledge sought for permission on from his *“oga at the top”* as a means to evade answering the question. Also a vast majority of legal practitioners still need to upgrade their I.T. skills.

3) Consumer Protection: in the world of commerce, the consumer is king, thus, the government should ensure that the e-consumer’s needs and expectations are met and sharp practices, incorrect billings, untrue and deceptive advertisements, non-disclosure of vital products and services information are curtailed. The Consumer Protection Council should work hand-in-hand with law enforcement agents to ensure that the e-consumer’s rights are redressed and enforced.

4) Computer Related Offences: a special unit should be created in the Nigerian Police to deal with issues relating to computer misuse and investigation personnel under this unit should be trained in this field.

5) Power Supply: as a way of reducing the cost of conducting business in Nigeria and further achieving reduction in the price of the internet service, the Federal Government should improve the current epileptic electricity supply in Nigeria.

Trade Deficit: to solve the balance of trade deficit as it relates to importation of mobile phones, the Government of Nigeria should place a quota on the importation of mobile phones into Nigeria and encourage local production of mobile phones. This will create jobs for the Nigerian youths, increase mobile penetration which in turn would boost mobile commerce and at the same time cure the trade deficit and result in economic growth.

This essay does not purport to provide all the answers to the issues associated with e-commerce but to give a food for thought for the development process.

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