

Examination of Consumer Protection under the Nigerian Communication Commission Act, 2003

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Abstract

This paper focused on the relevance of Communication and indeed Telecommunication to the existence of man. It also disclosed that, telecommunication in Nigeria has witnessed a lot of transformation, yet the sector could be summed up to be a change in technological advancement, and dynamism without much surge in the protection of the telecoms Consumer's Right. The poor governance, enforcement, and vagueness of available Regulatory Framework(s) in protecting the Rights and Interests of the Consumers/Subscribers against unfriendly market forces are also examined. It traced the different policies adopted at different times, to improve the industry's wellbeing, the history of the Consumer protection forum, history of the Nigerian Communication Commission (NCC), its Regulatory Framework (NCC Act, 2003), its objectives, powers and functions. It also focused its academic beam light on the Rights of a Consumer, and protection offered to the Consumer under various Legislation like the 1999 Constitution, the Consumer Protection Council (CPC) and Service compact (SERVICOM). The challenges faced in excising their Rights under the NCC Act, 2003 and other Laws and Legislation are also discussed.

Introduction

Communication right from creation is a very essential aspect of human existence. Just as it is obtainable in other parts of the universe, the concept of Consumer Protection is same in Nigeria. It is designed to protect consumers from unscrupulous producers and service providers. The telecommunications sector in Nigeria is an active participant in this development as seen in the accelerated growth of the industry with one innovation replacing another in short succession¹. Money, asserts that although consumer protection emerged out of the ambit of the Law of Contract, it is evidently metamorphosing into an independent area of law.² In line with this, at anytime there is a purchase of whether goods or services, a contractual relationship is created³. The implication of this is that, both parties agree to the terms and conditions as stated by them and as implied by law. Also worthy of note is that, the seller agrees to provide to the purchaser "Statutory Rights"⁴.

Consumer

A consumer is "any person who purchases or is supplied goods, or Users of Consumers goods and services at the end of a chain of production"⁵. Consumer could also be "any person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any User of such goods other than the person who buys such goods for consideration paid or promised, or under any system of deferred payment when such is made with the approval of such person but does not includes a person who obtains such goods for resale or for any commercial purpose"⁶.

¹ The Nation: Flashing Report Identifies four million flash calls on mobile network. Available at <http://www.balancingact.africa.com/news/back/balancing-act295.html> accessed on 30th May, 2014

² Monye (2005) op.cit p.192

³ Ibid

⁴ Ibid

⁵ Akomolede, T.I. and Oladele, P.O., in European Journal of Business and Management: ISSN 2222-1905 (paper) ISSN 2222-2839, 2006 (Online) Vol. 4, No. 10, 2012. Available at www.iiste.org accessed on the 4th September, 2014.

⁶ Consumer Protection Act, 1986 of India, West Bengal Government. Available at <http://ubconsumers.nic.in/cpa-detail.htm>. Accessed on 3rd September, 2014.

Two salient features can be pointed out from this definition. First, is that the consumer is a buyer and/or user of a production chain. These features underscore the importance of the consumers in both economics and marketing theories. That is, without the consumers/subscribers (consumption) there can be no basis for production, and consequently, it means no market without the consumer. It is on this premise that the consumer is seen as the pivotal point of not only marketing, but of all business activities and who are interests must be protected at all times⁷. However, there is a paradox of importance in this philosophy of business, because, the consumer rather than being treated as a king as often advertised by businesses, he/she is in actual practice treated as a slave or servant. The story is not different in the Telecommunication industry where the consumer who is also referred to as Subscriber or Customer is a major stakeholder who uses telecommunication products and services; they may also be corporate “bodies, Communities or Institutions”⁸.

Consumerism

The New Encyclopaedia Britannica⁹ defines consumerism as movement or Policies aimed at regulating the products, services, methods and standards of Manufacturers, Sellers and Advertisers in the interest of the buyer. This term is also defined by the Encyclopaedia Americana¹⁰ as the movement towards increased consumer protection.

Station in Monye expresses a wider view¹¹. He defines consumerism as the actions of individuals and organizations (Consumer, Government and Business) in response to Consumer’s dissatisfaction arising in exchange relationships. He writes that consumerism is:

- a) A protest against perceived business injustices and
- b) The efforts to remedy those injustices.

Consumerism is important because it protects the consumer from the claws of the marketers and also promotes the availability of better quality of goods and service at affordable rate(s).

Rights

Rights – Wikipedia regards rights as legal social or ethical principles of freedom or entitlement, that is, Rights are the fundamental normative Rules¹². A critical analysis of the above definition goes a long way to say that Right(s) include morally or socially correct or acceptable facts or truth that are accurate or correct speaking, acting and thinking.

Communication

Section 157 of the NCC Act, 2003 defines it as communication, whether between persons and persons, things in the form of sound, data, text, visual images, signals or any other form or combination of those forms¹³. It gives room for proper expression of one’s feelings and ideas by way of talking through words, signs, action etc (verbal and non-verbal).

Telecommunication

According to the NCC Act, it means any transmission, emission or reception of signs, signals, writing, images, sound or intelligence of any nature by wire, radio, visual or other electro-system¹⁴. Telecommunication reduces the trouble of travelling long distances for messages by way of using the available advanced technological gargets of communication.

⁷ Barksdale, H.C., and Darden, B. “Marketers Attitudes Towards The Marketing Concepts”. Journal of Marketing, 35, pp.28-36, October, 1971.

⁸ Effective Consumer Rights Protection in the Telecom Industry. Being a paper presented by Maryam Bayi, Director Consumer Affairs NCC at a Two Day Capacity, Building Workshop for ICT Journalism in Nigeria, 19th 20th March, 2014.

⁹ *The New Encyclopaedia Britannica* vol. 3, 15th ed. (Chicago: Encyclopaedia Britannia Inc. 1981) p.210

¹⁰ *The Encyclopaedia Americana International Edition*; vol. 7 (Danbury, Connecticut: Grolier Incorporated, 1981), p.628

¹¹ Monye, F., 2005 op cit. pp.19-20.

¹² Rights – Wikipedia, the Free Encyclopaedia. Available at en.wikipedia.org/wiki/Rights

¹³ Section 157 – Nigerian Communication Act 2003

¹⁴ Ibid

Consumer Protection

This phrase according to Money is a Legislation which protects the interests of the consumer's¹⁵. This definition is clearly restrictive. It excludes other forms of protection which are not statutory such as, protection from Judiciary, Trade Associations and Services and from fraudulent and other unfair selling practices especially in the telecommunications industry which is the focal point of this academic voyage. Consumer protection could better be described as the act of safeguarding the interests of the Consumer in matters relating to the supply of goods and services, fraudulent and hazardous practices as well as environmental degradation.

Establishment of the Nigerian Communication Commission

The Nigerian Communication Commission (NCC) is an establishment of the Nigerian Communications Act, 2003. The NCC is the Independent National Regulatory Authority for the Telecommunications industry in Nigeria. The Commission is charged with the responsibility of inter-alia ensuring the realization of the primary objectives of the Act which should be reflected in creating a conducive environment for competition among operators in the industry as well as ensures safe revolutionary development in every nook and cranny of Nigeria as far as communication is concern.

The current laws establishing the NCC are:

The Nigerian Communications Act, 2003 and the Wireless Telegraph Act, 1990. The Nigerian Communications Act, 2003 was signed into law by Mr. President – Olusegun Obasanjo¹⁶ on the 8th of July 2003 after being passed by both the upper and lower Houses of the National Assembly. The Act is NCC's backbone (Legal Strength) in carrying out its regulatory programmes, policies and activities which includes the following:

- a. Entering into contracts with any company, firms or persons;
- b. Summoning persons to appear before the Commission;
- c. Giving written directive to licensees;
- d. Delegating its functions to a committee constituted by it¹⁷;
- e. Consulting with Consumers, commercial and industrial organizations;
- f. Establishing and maintaining subsidiaries to enable the discharge of its functions¹⁸.

The NCC is well structured into various departments so as to enable it function properly and to also exercise its power appropriately.

Objectives of the Nigerian Communication Commission (NCC)

Upon the establishment of the NCC, its objectives were determined as follows:

1. To promote the implementation of the National Communications or Telecommunications policy, this may be modified and amended from time to time.
2. To establish a Regulatory Framework for the Nigerian Communications industry and create an effective, impartial and independent Regulatory Authority.
3. To promote the provision of modern, universal, efficient, reliable, affordable and easily accessible communications services and the widest coverage throughout Nigeria.
4. To encourage local and foreign investment in the Nigerian Communications industry and the introduction of innovative services and practices in the industry in accordance with international best practices and trends.
5. To ensure fair competition in all sectors of the Nigerian communications industry and also encourage participation of Nigerians in the ownership, control and management of communications companies and organizations.

¹⁵Monye, F., 2003, op.cit pp.1-2

¹⁶ The Obasanjo Reforms: "Telecommunications Sector, Building a New and Modern Nigeria by Federal Ministry of Information and National Orientation Agency. Over-view of the Nigerian Telecommunications Reforms 2012. 19.

¹⁷ John, M.G. and Mpammah, C.A., "The Legal Regime of the Establishment and Functions of the NCC". Being a paper presentation at the University of Jos, School of Post-Graduate Studies. May, 2013 (Unpublished).

¹⁸Ndukwe, E.C., "Stimulating Investment in Network Development" (A Keynote paper presented at the World Dialogue on Regulation for Network Economics), 2011.

6. To encourage the development of a communications manufacturing and supply the sector within the Nigerian economy and also encourage effective research and development efforts by all communications industry practitioners.
7. To protect the rights and interests of service providers and consumers within Nigeria.
8. To ensure that the needs of the disabled and elderly persons are taken into consideration in the provision of communications services.
9. To ensure an efficient management including planning, coordination, allocation, assignment, registration, monitoring and use of scarce national resources in the communications sub-sector, including but not limited to frequency spectrum, numbers and electronic addresses, and also promote and safeguard national interests, safety and security in the use of the said scarce resources¹⁹.

Current Regulations Implemented by the NCC includes:

Type approval regulations; Numbering Regulations; Telecommunications networks interconnection Regulations; Competition practices Regulations; Quality of services Regulations; Universal access and universal service Regulations; Consumer protection Regulations; Deployment of Wi-Fi; Frequency spectrum (fees and pricing) Nigerian Communications (enforcement process)²⁰.

The Function of Nigerian Communication Commission

The functions of the NCC as presently constituted are contained in Section 4(1)(a-w) and 4(2). The functions of NCC are numerous and can be summarized in line with the policy objectives contained in the National Telecommunications Policy viz:

- i. Facilitation of investments in and entry into the Nigerian market provision and supply of communications services, equipment and facilities.
- ii. Licensing of telecommunications operators.
- iii. Assignment and registration of frequency to duly licensed operators.
- iv. Administration of National Numbering Plan.
- v. Facilitating private sector participation and investment in the telecommunications sector of Nigerian economy.
- vi. Promoting and enforcing a fair competitive environment for all operators, as outline in the policy.
- vii. Defining standards for economic regulation of dominant operators, including tariff regulation as outlined in the policy.
- viii. Establishing mechanisms for promoting universal access to telecommunications services in Nigeria, as outlined in the policy.
- ix. Establishing and enforcing technical operational standards and practices for all operators including the imposition of penalties for violations.
- x. Ensuring that the public interest is protected²¹.

As part of its regulatory functions, the Nigerian Communications Commission regularly measures the success of its regulatory activities and functions over the telecommunications industry. It does this via the collection of the following industry statistics through regular surveys and studies of the Nigerian telecommunications sector.

- i. Increased level of private sector participation;
- ii. Increased range and quality of services available to citizens;
- iii. Effective lowering of costs of acquiring and using the services;
- iv. Increasing level playing field for service providers via the removal of bottlenecks hitherto created by the monopoly operator;
- v. Drastic reduction in the waiting time for telephone installation and service delivery;
- vi. Improved service penetration to a larger and growing number in under-served and un-served urban, semi-urban and rural areas alike;

¹⁹“Pyramid Research: The Impact of the Mobile Services in Nigeria. How Mobile Technologies are Transforming Economic and Social Activities” 2010pp. 27-30.

²⁰ Ibid

²¹ National Telecommunications Policy (NTP) 2000 pp. 33-34

- vii. Creation of direct and indirect employment opportunities for skilled, semi-skilled and unskilled citizens.
- viii. Additional revenue for government through spectrum and numbering fees, import duties, VAT, etc.
- ix. Increased participation of the banking sector in the financing of telecommunications network development and roll out of services;
- x. Increased foreign investment from private companies, international and multilateral institutions based overseas²².

Powers of the NCC

The powers of the NCC are enshrined in Chapter V of the Act, as reflected in the various sections below:

Section 53(1-5) provides that “the Commission may, from time to time issue directions in writing to any person regarding the complacence or non-compliance of any licence conditions for provisions of the Act or its subsidiary legislation including but not limited to the remedy of a breach of any license condition or the provisions of the Act or its subsidiary legislations”²³.

Section 54 talks about the modifications of direction which vary. It may also revoke a direction and the procedure set out in Section 53 of the Act and shall apply Mutatis mutandis in respect of any modification, variation or revocation of a direction²⁴.

Section 55 is concerned with non-compliance and direction. The Act without prejudice empowers the Commission to penalize any defaulter in the industry²⁵.

Section 56 bothers on register of direction²⁶. It strengthens the Commission to maintain a register of all directions issued by it, including any written instruments modifying varying or revoking a direction, in accordance with Part V of Chapter V²⁷.

A careful look at the powers of the Commission leaves no one in doubt that, the Act especially Chapter V Sections 53-56 is the compass of the Commission without which NCC may get lost in the forest of communication and telecommunication to be specific and it possibly would have been a toothless bulldog in the Sector.

Protection Offered To the Consumer under Various Legislation/Laws

A few of these rights will be discussed:

- i. **Right to Safety:** The right to be protected against the marketing of goods and services, which are hazardous to life and property. It also means that, the purchased goods and services availed should not only meet their immediate needs, but also fulfil long term interests. This is an indication that, personal data and privacy should be respected.
- ii. **Right to be informed:** Right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices (UTPs)²⁸. The key aspects in this right are:
 1. The right to be given the facts needed to make an informed choice and to be protected against misleading advertising or labelling.
 2. The responsibility to search out and use available information. The relevance of this right makes it possible to be reflected in various legislation including the Universal Declaration of Human Right (UDHR) 1948, (Article 19).
 3. Consumers can make “informed choice” with this right. Right to information is a key enabler of good governance, and a tool to ensure transparency and accountability in the government. It also helps ensure participation of the public in governance, eliminate corruption and empower the people.

²² See NCC Website at www.ncc.gov.ng Accessed on 8th September, 2014

²³ Section 53 (2-5) of the NCC Act, 2003

²⁴ Section 54 of the NCC Act, 2003

²⁵ Section 55

²⁶ Section 56

²⁷ Ibid

²⁸ Godwin, C., “Piracy: Recognition of Consumer Rights”. <http://www.istor.org/pss/30000257> accessed on the 2nd February, 2009.

It gives the citizen the right to seek information and makes it binding on the officials to store and make the information easily available to the consumers²⁹.

4. **Right to Choose:** Right to be assured, wherever possible of access to variety of goods and services at competitive prices. In case of monopolies, it means Right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This is because unrestricted Right of the minority to choose can mean a denial for majority of its fair share. This Right can be better exercised in a competitive market where a variety of goods are available at competitive prices. The key elements of this Right include:
 - a) The right to choose products and services at competitive prices with an assurance of satisfactory quality³⁰.
 - b) The responsibility to make informed and responsible choices. In spite of a fair amount of legislation and other safeguards, the right to choice of the Nigerian consumer is far from realized.
5. **Right To Redress:** The right to fair settlement of the genuine grievances of the consumer. Consumers must make complaint for their grievances. Many of times, their complaint may be of small value but its impact on the society as a whole may be very large³¹. The key aspects are:
 - a) The Right to be compensated for misrepresentation, shoddy goods or unsatisfactory services.
 - b) The responsibility to fight for the quality that should be provided.
 - c) To complaint effectively and refusing to accept shoddy workmanship.

Protection Offered To the Consumer under the 1999 Constitution

The first point of call for Right of Consumer in Nigeria is the Nigerian Legal Jurisprudence. The 1999 Constitution as amended provides the following protection for the consumer:

Section 37 provides protection of privacy for citizens, their homes, correspondences, telephone conversations and telegraphic communication³².

By the Constitution, the individual's right to privacy is sacrosanct; it can only be fettered by laws made by democratically enabled public authorities in the interest of national security; public safety; or economic wellbeing of the country; for the prevention of disorder or crime; for the protection of the rights and freedom of others. This exception is explicitly stated in Section 45(1)(a)(b) of the Constitution as follows: "Nothing in Section 37, 38, 39, 40 and 41 of this Constitution shall invalidate any laws reasonably justifiable in a democratic society:

- a) In the interest of defence, public safety, public order, public morality or health, or
- b) For the purpose of protecting the rights and freedom of other persons.

It is obvious from the above quoted Section that the right to privacy is not absolute. The state may pass a law for the above purposes and thus curbs the right of privacy. But such a law has to be reasonably justifiable and in a democratic setting. In order to make other consumer right a reality, Section 6(4)(a) of the Constitution empowers the National Assembly to establish courts as exigencies may demand. It is believed that such courts will no doubt apply the provision of the Act more fully than the generalized courts such as the High Court's do³³. This is as a result of the narrow focused jurisdiction to which cases brought before the courts will be routed.

Protection Offered To the Consumer under the Consumer Protection Council (CPC)

Consumer Protection Council (CPC) is a parastatal of the Federal Government of Nigeria established by Act No. 66 of 1992. However, it became operational only in 1999, when its institutional framework was put in place.

²⁹ Working paper on the proposed Right to Information Act, 2002. 31st January, 2002. At www.humanrightsinitiative programme accessed on the 22nd October, 2014.

³⁰ Chatterjee, A., and Sahoo, S., op.cit pp. 161 - 162

³¹ Odufuwa, F., "Quality of Service and Manpower Development – Persecond Billing as Man of the Year 2004". <http://www.gbt.nigeria.org/ournews-php> accessed on 29th December, 2009.

³² See also Article 17(1) of the International Covenant on Civil and Political Rights, 1966, Article 12 of the Universal Declaration of Human Rights 1948

³³ Bello, K.B., & Suleiman, Opcit pp.76-77.

The Consumer Protection Council is the apex Consumer Protection Agency of the Federal Government of Nigeria established to promote and protect consumers interests in all areas of products and services, provide speedy redress to their complaints; inform; educate and empower them (Consumers) to act as discerning and discriminating consumers in the market place³⁴.

The Consumer Protection Council noted that the market economy can succeed in delivering goods and services sufficiently to those who can afford them but at the same time, it creates opportunities for dubious businesses to exploit poor and vulnerable consumers with sub-standard products and services, deny them value for their money. In Nigeria, with a developing economy and a substantial number of its people as illiterates and uninformed, a favourable climate for exploitation of consumers is readily available. The CPC attends to these failures by sharpening consumer's skills, providing protection against obnoxious practices and their unscrupulous exploitation in the market place³⁵.

The Consumer Protection Council on Sunday the 14th September, 2014 received the African Regulator Award in London for quality services in protecting the rights of consumers in the country³⁶. The award is justified, and will definitely be an encouragement for them to do more and churn in further and better results.

Consumer Protection Offered By Servicom

Service Compact (SERVICOM) gives Nigerians the right to demand good services. It is established to carry out independent surveys of the services provided to citizens by the Ministries and Government Departments; it also covers their (bodies) adequacy; their timeliness and customer satisfaction. Details of these rights are contained in SERVICOM Charters which are now available in all government agencies where services are provided to the public. The Charters tell the public what to expect and what to do if the service fails or falls short of their expectations.³⁷

Consumer Responsibilities

With rights, there are always responsibilities. There is also an expectation that Consumers act rationally, and accept a reasonable level of responsibility when exercising choice and entering into transactions in the market place³⁸. A consumer has a responsibility to be informed as best as possible; exercise due care when making decisions in the market place; consider the detrimental consequences that may arise from ill-considered decisions; and honour reasonable obligations arising from one's decisions.

Challenges of A Consumer in Exercising Available Rights under the NCC Act, 2003, Various Laws, Regulations and Code of Conducts

Despite the structure set up by the Federal Government and the civil society in Nigeria to ensure that the consumers are protected, the consumer is still faced with a lot of challenges. Some refer to these challenges as factors responsible for the ineffective and inefficient consumerism in Nigeria. These also include the telecommunication industry and every other following sector of the economy. They have been found to include the following:

- 1) **Low level of Literacy:** The high level of illiteracy in Nigeria is a major factor for the failure of consumerism. According to statistics, "Nigeria is among the nine most illiterate countries in the world". What does one expect from a consumer that cannot read, write or understand the components of a product to do when given an adulterated version of the same product³⁹? How does he/she know that although two products share similar packaging, they are not the same in composition? How does he know about his/her rights as a consumer if he/she is not told?⁴⁰

³⁴ Jurind, 2011 op cit pp. 189

³⁵ Ibid

³⁶ Nigerian Television Authority, NTA News Line National Telecast at 9:pm on Sunday 14th September, 2014

³⁷ SERVICOM. <http://www.servenigeria.com/home>

³⁸ "Consumer Obligations or Responsibilities. www.ucc.co.ug/data/smenu/62/consumer accessed on the 18th September, 2014.

³⁹ Abubakar M., 'Nigeria Among Nine Most Illiterate Countries in the World'

www.nairaland.com/nigeria/topic/illiteratecountries accessed on 5th July, 2011

⁴⁰ Ibid

- 2) **Ignorance:** Ignorance, they say, is a disease. Major fallout of illiteracy is ignorance. Majority of the consumers in Nigeria are ignorant of their rights as consumers, hence they seem helpless in the face of exploitation by producers and marketers who are fellow Nigerians in a bid to get-rich-quick. Who then will save Nigerians from themselves (Exploiters)? Enlightenment is apparently the best answer.
- 3) **Government Ownership of Business:** Government ownership of such parastatals as Power Holding Company of Nigeria (PHCN), Telecommunication Company, Water Corporation, Railway Companies, and many others, poses a great hindrance to the ability of the Civil Society to successfully prosecute these companies when they exploit consumers or perform below expectation. Will government ever and can government ever prosecute self and find itself guilty in Nigeria?
- 4) **Low Level of Import Substitution:** Nigeria is a seller country and not a producer country, hence most of the products sold in the market are imported, this action makes the country to have less control over their production and little or no choice for the Nigerian consumer. The situation will obviously be different if Nigerians produce these products in Nigeria for Nigerians.
- 5) **Corruption:** Corruption is the bane of Nigeria's development. High level corruption among the same people that should be in the forefront of consumerism militates against the success of consumerism in Nigeria. Many of consumer activists easily succumb to material and financial inducement to abandon the fight against the exploitation of the consumer.
- 6) **Unpatriotic Activities:** It is ironical to know that most of the fake products in the Nigerian markets are imported into the country by Nigerians⁴¹. There are rampant cases of fake and adulterated products, shoddy services being rendered by many establishments, malpractices in several institutions, just to mention a few. What all these reveal is that the practice and essence of consumerism in Nigeria are yet to be firmly rooted and felt by the Nigerian consumers⁴².
- 7) **Poverty:** Nigeria is rated among the poorest countries in the world, with a majority of Nigerian consumers in the poverty brackets. Who will help the poor consumer in a typical Nigerian village to prosecute a multinational food company which has sold to him/her a sub-standard milk powder or any other goods?
- 8) **Dormancy of the press:** This can be attributed to the fact that majority of business owners in Nigeria are in one way or the other linked to the ownership of the press in addition to having journalists that are not brave enough to take the lid off the bad practices of some companies.
- 9) **Unresponsive Government:** The success of consumerism in any country depends greatly on the support and infrastructure provided by the government. The Nigerian government has not shown enough enthusiasm in practice for the success of consumerism in the country. Though there have been series of deliberations on telecoms Consumer Parliament/Forum of which some have become part of useful feedback in far reaching regulatory interventions by the NCC.
- 10) **Weak Consumers' Association:** There is no gain saying the fact that majority of the Consumers' Association in Nigeria are not strong enough to fight the powerful and wealthy business owners whose products or services have been found to be of very low quality.
- 11) **High Cost of Seeking Redress:** The high cost and technicalities of seeking legal redress have prevented a lot of poor consumers from taking up legal action against erring but richer manufacturers or marketers. Consumerism in Nigeria can be made to deliver the desired dividends to the society by addressing all the factors militating against its growth and effectiveness as outlined above. Consumers' organizations in Nigeria can step up their activities by imitating USA and Britain where consumer organizations conduct independent product tests, carry out independent consumer surveys; issue out product alerts inform and educate consumers and draw the attention of the government to the need for the full implementation of consumer protection laws and prompt prosecution of offenders to serve as deterrent to others. To achieve this milestone, the government, the marketers and the civil society must become better disposed to the objectives of consumerism by providing the necessary education, infrastructure, funding, enlightenment and legislation to make consumerism in Nigeria what it is in the developed countries of USA and Britain⁴³.

⁴¹Ijewere&Obeki, Op. Cit at 191

⁴²Omenazu P., *Consumer Protection in Nigeria*, 2010. <http://trifiter.com/africa/Nigeria/Consumer-protection-in-Nigeria> accessed on 5th August, 2011.

⁴³Ijewere, A.A., &Obeki S.O., "Consumerism in Nigeria Department of Business Administration", University of Benin, Benin City December, 2011.

Right to Privacy under the NCC Act, 2003 and the Telephone Subscribers' Regulation (RTS) 2011

The Right to privacy remains a cherished and inalienable right globally. The importance attached to this makes it justice able and enforceable⁴⁴. In August, 2009, the Nigeria Telecommunications Regulator, the Nigerian Communications Commission (NCC), in exercising its regulatory powers under the Nigerian Communications Act, 2003, issued a directive which was published in the "This day Newspaper" to the effect that from 1st March 2010 all new 'Subscriber Identity Module' (SIM) cards must be registered before activation⁴⁵. This was followed by a subsequent directive for registration of the SIM cards by existing SIM card holders at a later date, failing which such SIM cards would be deactivated and refused data transmission in Nigeria. According to the NCC, the directives become necessary in order to have a credible database of SIM card holders in Nigeria which will be used to identify (for possible prosecution) criminal elements who perpetrate criminal activities through the use of mobile phones by hiding under the ugly canopy of anonymity of unregistered SIM Card.

Protection Offered By the Act With Regards To the Quality of Services (QoS) Received By Consumers

This Commission stipulates the minimum standard of quality service the Service Providers are expected to meet up with in (Section 104) (a)⁴⁶. Thus, the implication is that the Commission is allowed to adjust these telecommunication sectors. This power is actually given to the Commission in Section 72 of the Act which allows the Commission to modify, vary or repeal any of its rules which:

- a. Is no longer in the nation's interest.
- b. Are no longer necessary to ensure the objects of this Act or Subsidiary Legislation.
- c. For any reason the Commission thinks is relevant.

The down side of this provision is that the Act does not stipulate the parameters the Commission would consider in determining these minimum standards of quality services. Apart from stipulating the minimum Standards Service Providers are to comply with; the Act also stipulates that service providers are expected to deal reasonably with consumers and also adequately address consumer complaints⁴⁷. The short coming of the provision contained in Section 104(b) is that the provision is quite vague.

Protection Offered Consumers With Regards To the Resolution of Disputes

The NCC Act, 2003, in Section 105(1) empowers the Commission to use its powers under the Act to resolve complaints received from consumers in relation to matters of consumer service and consumer protections. This Includes issues but not limited to matters involving the quality of service or failure by a licensee to comply with the Consumer Code prepared by virtue of this chapter.

On this aspect of resolving disputes what the Commission does is that:

- a. It establishes procedures and guidelines for the receipt and handling of the complaints of consumers with regards to the conduct or operation of licensees⁴⁸.
- b. The Commission may also at its discretion institute alternative dispute resolution process for the resolution of complaints or disputes provided that the Licensee's dispute resolution procedure shall first be exhausted by the consumer without the complaint being resolved before the presentation of the complaint to the Commission⁴⁹.

However, this provision is not without its defects. This provision made use of the phrase "at its discretion". This implies that it may not be in all instances that the Commission will decide to resolve an unresolved dispute by Alternative Dispute Resolution.

⁴⁴ "Privacy and Human Right- Overview" glic.org/privacy/survey/intro.html accessed on 15th October, 2014

⁴⁵ Thisday Newspaper, 31st December, 2009 pg. 32.

⁴⁶ Section 104(a) of the Nigerian Communication Commission Act 2003

⁴⁷ Section 104(b), of the Nigerian Communication Commission Act 2003

⁴⁸ Section 105(2) of the Nigerian Communication Commission Act 2003

⁴⁹ Ibid

Protection Offered To Consumers under the Consumers Code

The consumer code of practice is published by the NCC pursuant to Section 106 of the 2003 Act. The Section stipulates the development of a consumer code which will govern the provision of services by licensed telecommunication operators in Nigeria.

This Code is expected to apply to all licenses in regards to all telecommunication services offered to the public. It is intended to guide the production of individual codes by each licensee with this substantive content of the General Code as the minimum set of requirements⁵⁰.

Protection Offered To Consumers through Tariff Regulation

This is provided for in Section 108 of the Nigerian Communication Commission Act 2003. It stipulates that individual licensees are only to impose tariffs which have been approved by the Commission⁵¹ and that Licensees are to provide the said services base do the tariffs approved by the Commission and they cannot depart from them without the approval of the Commission proposed change⁵².

Conclusion

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

And corruption could be pointed at as the major setback in the pursuit of consumer's right in a general term as far as Nigeria is concern. The Nigerian Communication Commission has gone a long way in trying to ensure that consumers are protected but then, there are a number of lessons we can learn when we formulate or reform laws with regards to information technology. One of such countries that have done this is the United States and the European Community (EU) especially with regards to the protection of the privacy of the information of consumers.

Recommendations

Nigerians should be sensitized or educated about their Consumer Protection Rights and on how to enforce these rights. Though the current weekly programme, "Consumers Speaks" on the National Radio Network is a step in a right direction, efforts should be extended to local radios and the programme aired in local languages, to aid the understanding of the local populace. Telecommunications consumer parliament held once in a year in the six geo-political zones of the country should be decentralized to the 774 Local Government Areas and the Federal Capital Abuja for easy accessibility of the local consumers (Masses). Anti-trust laws should be enacted to encourage competition in the market place and invariably, guarantee the rights of choice to consumers especially the telecom consumers.

The media should assume the role of Whistle-blowers with a view of checkmating unwholesome business practices by unscrupulous entrepreneurs and organizations. Section 105(2) of the Act should be amended to make it mandatory for the Commission to establish functional Alternative Dispute Resolution Centres Nationwide. To make these more effective, service providers should compulsorily give consumers who complained a duplicate of the complaint forms so as to prevent or manage disputes properly.

There is need for amendment of the Registration of Telecommunication Subscribers' (RTS) Regulation 2011 as well as the NCC Act, so as to provide for the rights of subscribers to sue for the breach of the right to privacy in a competent court. Based on that, it is also recommended that prior consent of subscribers be sought and obtained before certain information that will infringe their right to privacy is disclosed.

⁵⁰ Regulation 1 of the Schedule to the consumer code of practice regulation 2007

⁵¹ Section 108(1) of the Nigerian Communication Commission Act 2003

⁵² Section 108(2) of the Nigerian Communication Commission Act 2003

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

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