

**A COMPARATIVE ANALYSIS OF CONSUMER PROTECTION FRAMEWORK IN NIGERIA,  
UNITED STATES OF AMERICA AND SOUTH AFRICA \***

**Abstract**

The Federal Competition and Consumer Protection Act 2019 introduced ground breaking changes into the Nigerian regulatory regime. The Act was enacted to help protect the welfare of consumers, promote economic efficiency, eliminate monopolies and maintain competitiveness in the Nigerian market. This Paper therefore examines the consumer protection framework in Nigeria and undertakes a comparative analysis of the said framework vis-à-vis those of other jurisdictions, the United States of America and South Africa. The Paper identifies the major similarities between the Nigerian framework and those of the selected jurisdictions. It concludes that Nigeria's recent legislation on consumer protection is largely similar to those of the United States and South Africa and must be implemented to offer more protection to Nigerian consumers.

**Keywords:** Consumer Protection, Comparative Analysis, Nigeria, United States of America, South Africa

**1. Introduction**

Although the concept of consumer protection, as known today, has roots even in the daily lives of the Stone Age cave men who had the right to return to the seller any product they found to be unsatisfactory, the idea started seriously in the mid-1950s when an American political activist, Ralph Nader championed activism for consumer safety and protection in the 1960s.<sup>1</sup> Nader became prominent in this area when he published a book titled, 'Unsafe at any Speed.' His concern and advocacy for consumer safety led to the passage of the 1966 National Traffic and Motor Vehicle Safety Act. This Act birthed series of global safety features for automobiles beginning with safety belts and stronger windshields. Since then, consumer protection has gained more popularity with legislation and policies recognising and protecting consumers' rights globally.<sup>2</sup> The existence of a comprehensive legal regime for the regulation of competition is extremely important to the growth of any advanced economy.<sup>3</sup> Globally, laws are enacted through various acts of Parliament and bodies institutionalised to protect the rights of consumers against fraudulent manufacturers and distributors.<sup>4</sup> Over the years, the existing laws for protection of consumers and regulation of competition in Nigeria were embedded in various pieces of legislation relating to the regulation of different sectors of the economy. These included Investments and Securities Act 2007, Nigerian Communications Act 2003, Electric Power Sector Reform Act 2005, amongst others, which contained provisions on competition relating to the specific sector they regulate.<sup>5</sup> Until early 2019, the operational law on consumer protection in Nigeria was the Consumer Protection Act.<sup>6</sup> This Act was repealed by the Federal Competition and Consumer Protection Act 2019 to establish the Federal Competition and Consumer Protection Commission - the primary institution for consumer protection in Nigeria - and the Federal Competition and Consumer Protection Tribunal.

**2. Conceptual Analysis of Major Terms**

**Consumer**

The definition of the term, 'consumer', by the United Nations Guidelines on Consumer Protection (UNGCP) sets out a conventional definition while recognising the need for flexibility. A consumer generally refers to 'a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognising that Member States may adopt differing definitions to address specific domestic needs.'<sup>7</sup> In defining the term consumer, President John F. Kennedy, in a special message to the United States Congress in 1962 on protecting consumer interest, gave an apt definition of who a consumer is:

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<sup>1</sup> V Mugobo and P Malunga, 'Consumer Protection in South Africa: Challenges and Opportunities for Furniture Retailers in Cape Town, South Africa' (2011) 6 (1) *Mediterranean Journal of Social Sciences*

<sup>2</sup> A Adeleye, 'An Appraisal of the Consumer Protection Council Act and Consumer Rights Nigeria' (2017) 8 (2) *The Gravitas Review of Business & Property Law*

<sup>3</sup>Y Okojie and I Bolu, 'A Review of the Federal Competition and Consumer Protection Bill 2016' <<http://www.spaajibade.com/resources/wp-content/uploads/2018/06/A-REVIEW-OF-THE-FEDERAL-COMPETITION-AND-CONSUMER-PROTECTION-BILL-2016-Okojie-Bolu.pdf>> accessed 17 May 2020

<sup>4</sup> E C Ndubisi, A V Anyanwu and C A Nwankwo, 'Protecting the Nigerian Consumer: An Expository Examination of the Role of Consumer Protection Council' (2016) *Arabian Journal of Business and Management Review*

<sup>5</sup> Okojie and Bolu (n3)

<sup>6</sup> Cap. 25 Laws of the Federation of Nigeria 2004

<sup>7</sup> *United Nations Conference on Trade and Development, Manual on Consumer Protection* (United Nations Publication, Kenya 2016) p. 6

Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who are not effectively organized, whose views are often not heard.<sup>8</sup>

The above definition is commendable as it encapsulates in one sentence the term ‘consumer’ as including everyone. This is because everyone in the world uses goods and services, and so the qualification is in the usage and not in the buying. The definition of a consumer is further strengthened by the Fair Trading Act, 1973 (UK). Under this Act, a consumer is any person for whom services are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them and who does not receive or seek to receive the goods or services in the course of a business carried on by him.<sup>9</sup>

Within the Nigeria context and framework, the term consumer refers to ‘an individual who buys products or services for personal use and not for manufacture or resale.’ By the Nigerian Communications Commission Act<sup>10</sup> and the Nigerian Communications Act<sup>11</sup> a ‘consumer’, ‘customer’ and ‘subscriber’ mean the same thing, that is, ‘any person who subscribes to and uses a communication service.’ Section 167 of the Federal Competition and Consumer Protection Act 2019 defines a consumer to include ‘any person who purchases, or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or to whom a service is rendered’<sup>12</sup> Regrettably, this definition does not reflect the different categories of consumers which include; trader-buyer, consumer-buyer and manufacture-buyer. It is therefore defective and calls for an expansive definition that would include the highlighted categories. However, it can be surmised from the foregoing that a consumer is a person who purchases goods and services for personal use and not for manufacture or resale. A consumer is therefore someone who can make the decision whether or not to purchase an item at the store, and someone who can be influenced by marketing and advertisements. Any time someone goes to a store and purchases a toy, shirt, beverage, or anything else, they are making that decision as a consumer.<sup>13</sup>

### Consumer Protection

As with most legal conceptions, there is no generally acceptable definition of the term ‘consumer protection’. However, several definitions have been offered, and they all appear to agree, despite the differences in presentation. Consumer protection refers to the laws and other forms of government regulations that govern the relationship between service providers and consumers. The concept is designed to protect the rights of consumers; it is the protection of buyers of goods and services against low quality and dangerous products and advertisements that deceive people.<sup>14</sup> Importantly, consumer protection governs the marketplace by protecting the weaker party in any transaction while also regulating situations where one party takes advantage of the weaker party’s lack of bargaining skill or inexperience. Apart from being essential, consumer protection is universally accepted. The rights of every consumer are well-defined, both in local and worldwide markets as laws afford reasonable redress to those with genuine grievances. While some aspects of consumer law provide clearly defined remedies in specific circumstances, much of it is merely a set of guidelines for dispute resolution.<sup>15</sup> It is not in doubt that ‘rogue traders’ operating in a totally open and uncontrolled market could misrepresent their products deliberately; sell damaged, unsafe or unfit products. Therefore, consumer protection laws are meant to protect consumers against improperly described, damaged, faulty, and dangerous goods and services as well as from unfair trade and credit practices.<sup>16</sup> Protection of consumers’ safety is effected through a range of regulatory and non-regulatory measures that seek to address failures in the private market which leave consumers especially vulnerable to financial loss.’ Invariably, consumer protection is about implementing consumer rights to ensure that consumers are shielded from various unfair trade practices. The purpose of such protection is to avoid the exploitation of consumers in the marketplace and eliminate various business malpractices. Consumer protection is based on the idea that

<sup>8</sup> J Kennedy: ‘Special Message to the Congress on Protecting the Consumer Interest’ March 15th 1962 1962 in G Peters and J Woolley (eds.) *The American Presidency Project* <<http://www.presidency.ucsb.edu/ws/?pid=9108>> accessed 08 June 2020

<sup>9</sup> Fair Trading Act 1973 (UK); Section 137(2)

<sup>10</sup> Cap N9, L.F.N. 2004

<sup>11</sup> Section 157 Nigerian Communications Act No. 19 of 2003.

<sup>12</sup> U Udoma and Bello-Osagie, ‘Regulation of Mergers, Acquisitions and Joint Ventures’ (2011) *International Law Office Journal- (Telecommunications-Nigeria)*

<sup>13</sup> ‘Consumer’ *Investorwords* <<http://www.investorwords.com/1055/consumer.html>> accessed 08 September 2019

<sup>14</sup> ‘Consumer Protection’ *Cambridge Dictionary* <<https://dictionary.cambridge.org/dictionary/english/consumer-protection>> accessed 09 June 2020

<sup>15</sup> *Mugobo and Malunga* (n1)

<sup>16</sup> *Webster’s New World Dictionary* (Wiley Publishing, inc. Hoboken, New Jersey 2010)

consumers have an inherent right to basic health and safety. It is designed to protect individual rights in the pursuit of considerate treatment and dignity. Consumer rights are part of the range of social rights which individuals are entitled to claim in a modern society. Such rights have been enshrined in national Constitutions. This is because consumer protection measures contribute to equity and social justice primarily by achieving bargaining equality between consumer and producer interests and alleviating the problems of those who are particularly vulnerable in the market place such as children, the poor and illiterate populace and those with particular needs including persons with disabilities.<sup>17</sup>

### **Consumer Protection Framework**

A consumer protection framework generally includes the introduction of greater transparency and awareness about the goods and services, promotion of competition in the marketplace, prevention of fraud, customer education, and elimination of unfair practices. Different countries apply different frameworks for consumer protection. The nature of the framework adopted by a particular country is dependent on the country's legal environment and a number of other factors such as the economic system, the competitive environment, literacy of consumers, etcetera. Regardless of the peculiarities, consumer protection framework, through various policies and regulations, has to fulfil certain key objectives. Firstly, the framework should provide a mechanism that would protect consumers from unfair, unjust or deceptive conduct and unsafe or somehow defective goods or services. Secondly, the framework should indicate the nature of assistance available to consumers when they suffer loss as a result of malpractices by sellers. For instance, there should be specification of how the rules and regulations would be enforced on the marketplace, the method to apply in resolving disputes between consumers and sellers and available remedies to aggrieved parties. The framework should also be able to provide mechanisms to assist consumers to make better purchasing decisions on the marketplace by providing certain information or mandating certain terms or conditions. In essence, the framework must provide a mechanism to inform and educate consumers on their rights and obligations on the marketplace.<sup>18</sup>

At the international level, a set of general guidelines for consumer protection, the United Nations Guidelines for Consumer Protection (UNGCP), was unanimously adopted on 9 April, 1985 by the General Assembly of the United Nations. The UNGCP are likened to a 'Model Code for consumer protection' and represent an internationally recognised set of minimum objectives for consumer protection, which have become the baseline for entitlements of consumers worldwide. Guideline 5 sets out the legitimate needs of consumers and has become a template or checklist which serves to bring about widespread recognition of consumer rights. Nations throughout the world have enacted laws to give recognition to these rights, including newly drafted national constitutions. The objectives of the Guidelines as set out in Guideline 1 are to: a) Assist countries in achieving or maintaining adequate protection for their population as consumers; b) Facilitate production and distribution patterns responsive to the needs and desires of consumers; c) Encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; d) Assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers; e) Facilitate the development of independent consumer groups; f) Further international cooperation in the field of consumer protection; g) Encourage the development of market conditions which provide consumers with greater choices at lower prices; and h) Promote sustainable consumption. The guidelines were later expanded to include a new section on sustainable consumption. The revised UNGCP of 2015 make specific reference to the needs of developing countries, including the setting of the Sustainable Development Goals (SDGs). Specifically, Guideline 49 defines sustainable consumption to include meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable. Guideline 58 makes provision for the integration of sustainable consumption into Consumer Protection. States are called upon to apply sustainable consumption principles to their own operations. In summary, the ideas incorporated within the concept of sustainable consumption are as follows: satisfaction of basic needs to improve quality of life; improving efficiency in resource use; adopting equitable consumption patterns that will not jeopardise the needs of current and future generations; and ensuring equity in consumption within countries and between countries.<sup>19</sup>

### **3. Legal Framework for Consumer Protection in Nigeria**

Until recently, the Consumer Protection Act (CPA) No. 66 of 1992<sup>20</sup> was the primary law on protection of consumers. The Act established the Consumer Protection Council to provide a holistic protection of the consumer in line with the United Nations Guidelines for Consumer Protection. However, the CPA was replaced in 2019 by the Federal Competition and Consumer Protection Act (FCCPA) which is currently the

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<sup>17</sup> *ibid* (n7)

<sup>18</sup> *Mugobo and Malunga* (n1)

<sup>19</sup> *ibid* (n7) pp. 158-159

<sup>20</sup> Cap. C25 Laws of the Federation of Nigeria, 2004

principal legislation on consumer protection in Nigeria, from which all other laws derive their consumer protection provisions. The Federal Competition and Consumer Protection Act was signed into law by President Muhammadu Buhari on 30 January 2019 to promote economic efficiency, maintain competitiveness in the Nigerian market and protect the welfare of consumers. The Act applies to all businesses and all commercial activities within Nigeria and extends to any establishment in which the Federal, State or Local Government engages in for commercial purposes. It also applies to conduct outside Nigeria by a citizen of Nigeria or a person resident in Nigeria in relation to the acquisition of shares or other assets outside Nigeria resulting in the change of control of a business, part of a business or any asset of a business, in Nigeria.<sup>21</sup> Like its predecessor, the Federal Competition and Consumer Protection Act has established the Federal Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal for the promotion of competition in the Nigerian markets at all levels by eliminating monopolies, prohibiting abuse of a dominant market position and penalising other restrictive trade and business practices, facilitating access of all citizens to safe products, securing the protection of rights for all consumers in Nigeria, and related matters. Indeed, the Act has introduced ground breaking changes into the Nigerian regulatory regime. Its oversight function extends beyond just consumer protection issues, and covers all entities in Nigeria, whether they are engaged in commercial activities as bodies corporate, or as government agencies and bodies.<sup>22</sup> The objectives and scope of the application of the Act are to promote and maintain competition in the Nigerian market, promote economic efficiency, protect and promote the interests and welfare of consumers by providing them with wider variety of quality products at competitive prices, prohibit restrictive or unfair business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria, etcetera.<sup>23</sup>

As provided under Sections 17 and 18 of the Act, the functions and powers of the Federal Competition and Consumer Protection Commission (the 'Commission') are wide and far-reaching, thus giving the Commission a free hand to carry out its functions.<sup>24</sup> The Commission is charged with the responsibility of facilitating access by all citizens to safe products and to secure the protection of rights for all consumers in Nigeria. Additional responsibilities include initiating broad-based policies, advising the Federal Government on national policies relating to competition and consumer protection, performing adjudicatory roles, eliminating anti-competition agreements, enforcing provisions of the FCCP Act and rules and regulations made pursuant to the FCCP Act. Section 39 of FCCPA establishes the Federal Competition and Consumer Protection Tribunal (the 'Tribunal'). The Tribunal's primary purpose is to adjudicate on conduct prohibited under the Act. It is also empowered to hear appeals from, or review any decision of the Commission taken in the course of the implementation of any of the provisions of the FCCPA, and to hear appeals from or review any decision from the exercise of the powers of any sector-specific regulatory authority in a regulated industry with respect to competition and consumer protection matters. The Tribunal can impose administrative penalties for breaches of the Act, and oversee forced divestments, partial or total, of investors from companies. Appeals against the Tribunal's decisions lie directly to the Court of Appeal, although its decisions are to be enforced after registration at the Registry of the Federal High Court for enforcement purposes only. The Commission's powers also extend to investigation of monopolies as same is prohibited by the FCCP Act. Where any monopoly is found to exist, the Tribunal's remedial efforts may include prohibition of an acquisition transaction, business break-up, forced publication of price lists, etcetera. Also, the Commission's oversight over monopolies is not restricted to those arising in Nigeria if the undertaking is of Nigerian origin. The Act prohibits and voids restrictive agreements between business entities. The description of restrictive arrangements which are likely to prevent, restrict or distort trade is very wide-ranging, and includes direct or indirect price fixing, withholding supply of goods and services from a dealer, exclusionary contractual provisions, et cetera. It enables the President to declare price regulations for the purpose of regulating and facilitating competition, by an order published in the Federal Gazette. Such regulations are required to be for a stipulated period and narrowly designed. The Act directs that suppliers of regulated products are required to keep their accounting records for their supply for three years. Furthermore, the Act prohibits the abuse of a dominant position in any industry by any business undertaking.<sup>25</sup> The Act stipulates offences and stiff penalties against competition such as price-fixing, conspiracy, bid-rigging, obstruction of investigation or inquiry, offences against records, giving of false or misleading information, etcetera. The acts of abuse of dominance specified in the Act are those related to unreasonably lessening competition and impeding the transfer or dissemination of technology.

<sup>21</sup> O Ojekunle, 'Everything You Need to Know about the Federal Competition and Consumer Protection Act' *Business Insider* <<https://www.pulse.ng/bi/politics/everything-you-need-to-know-about-the-federal-competition-and-consumer-protection-act/wlk0211>> accessed 09 June 2020

<sup>22</sup> 'Federal Competition and Consumer Protection Act' *KPMG* <<https://www.proshareng.com/news/REGULATORS/Federal-Competition-and-Consumer-Protection-Act/44557>> accessed 09 June 2020

<sup>23</sup> *ibid*

<sup>24</sup> *Okojie and Bolu* (n3)

<sup>25</sup> Under Section 70 of the Act, 'an undertaking is considered to be in a dominant position if it is able to act without taking account of the reaction of its customers, consumers or competitors.'

Upon conviction by a court of law, the penalty for defaulters as prescribed under Section 74 (1) includes ‘fine not exceeding 10% of its turnover in the preceding business year or to such a higher percentage as the court may determine given the circumstances of the particular case.’

#### **4. Legal Frameworks of United States of America and South Africa**

##### **Overview of Consumer Protection Framework in United States of America**

In the United States of America (US), consumer rights were based on the Consumer Bill of Rights as presented to the Congress by President Kennedy in 1962.<sup>26</sup> They include; the right to know or the right to information, the right to be heard, the right to safety, the right to choose, the right to satisfaction of basic needs, the right to redress, the right to consumer education, the right to representation and right to healthy environment. These consumer rights gave rise to ‘consumerism’ which contributed a lot in stabilising the market place as most producers and service providers complied with the world best practices of doing business especially in the advanced countries.<sup>27</sup> America’s current consumer protection efforts grew out of the business definition of consumerism which means to promote the rights and safety of consumers. American consumers are protected from unsafe products, fraud, deceptive advertising, and unfair business practices through a mixture of national, state, and local governmental laws and the existence of many private rights of actions. These public and private rights both protect consumers and, at a formal level, equip them with the knowledge they need to protect themselves.<sup>28</sup> The United States Federal Trade Act created the Federal Trade Commission (FTC) on September 26, 1914. The Commission serves as the principal consumer protection agency and administers a wide variety of consumer protection laws, like the Telemarketing Sales Rule and the Equal Credit Opportunity Act. The overall goal is to afford consumers a deception-free marketplace and to maintain competition by preventing anticompetitive business practices. Specifically, Section 5(a) of the FTC Act prohibits ‘unfair or deceptive acts or practices in or affecting commerce.’ The Act specifies that deception occurs when there is a material representation, omission, or practice that is likely to mislead a consumer who is acting reasonably under the circumstances. Unfair practices are those which cause, or are likely to cause, reasonably unavoidable and substantial injury to consumers without any offsetting countervailing benefits to consumers or competition. The FTC also functions as an investigative and enforcement authority, with powers to uncover deception, unfair activities, or violation of any statute under which it has authority. Seven divisions of the Bureau of Consumer Protection carry out the FTC’s mandate to protect consumers against unfair, deceptive, or fraudulent practices. These divisions include: Advertising Practices, Financial Practices, Marketing Practices, Privacy and Identity Protection, Planning and Information, Consumer and Business Education, and Enforcement.<sup>29</sup> The FTC has the power to bring civil suits in federal court to secure financial compensation and penalties for individuals, or for class-action litigants damaged by violators of applicable laws. Fines and punishments against violators are imposed by the courts, rather than directly by the FTC.<sup>30</sup> The FTC does not have the power to bring criminal charges. All such federal cases in the consumer protection area are to be brought before the federal courts by the US Department of Justice. A criminal conviction against a defendant can only be secured upon proof beyond a reasonable doubt before a judge or jury.

It must be emphasised that in the US, there exists a decentralised nature of consumer protection law and the combined roles of federal, state, local, and private law are fully utilised in deterring, detecting, and punishing deceptive and unfair conduct that injure consumers. There are also federal, state, local, and private litigation options to obtain damages, restitution, and injunctive relief for consumers on an individual and class action basis. Although the American mechanisms for consumer protection are lauded for their in-depth variety of protection, it is often criticised as existing separately from each other without a form of centralisation. In fact its utterly decentralised nature poses a great challenge. While its strength is visible from the array of governmental actors, formal legal rights, and remedies protecting consumers, its weakness lies in the unequal reality of who has access to the government and the courts.<sup>31</sup>

##### **Overview of Consumer Protection Framework in South Africa**

Consumer protection is not a new concept in South Africa as various acts of parliament have been passed in decades before the current legislation. The first notable Act which sought to protect consumers in South Africa

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<sup>26</sup> Kennedy (n8)

<sup>27</sup> Ndubisi et al (n4)

<sup>28</sup> S Waller, J Brady and R Acosta, ‘Consumer Protection in the United States: An Overview’ (2011) *Mondaq* <[https://www.researchgate.net/publication/228208216\\_Consumer\\_Protection\\_in\\_the\\_United\\_States\\_An\\_Overview](https://www.researchgate.net/publication/228208216_Consumer_Protection_in_the_United_States_An_Overview)> accessed 08 June 2020

<sup>29</sup> *ibid*

<sup>30</sup> ‘A Short History of the US Federal Trade Commission’ Investopedia <<https://www.investopedia.com/articles/financial-theory/10/the-us-federal-trade-commission.asp>> accessed 18 May 2020

<sup>31</sup> *ibid*

was the Merchandise Marks Act of 1941. This Act regulated the marking of merchandise and of coverings in or with which merchandise was sold and the use of certain words or emblems by businesses.<sup>32</sup> Currently, the applicable regulation on consumer protection in South Africa is the Consumer Protection Act 68 of 2008 which aims to provide protection to consumers in terms of goods or services that are delivered or rendered by a provider during the course of business. The Consumer Protection Act (CPA) replaced many laws regulating consumer protection with a single comprehensive framework for protecting consumer rights in South Africa. The Act builds on many principles contained in the National Credit Act (NCA) but extends to all consumer-facing businesses. Issues such as unfair contract terms, product liability, disclosure and pricing are regulated by the Act.<sup>33</sup> Heralded as the best consumer legislation in the world, the CPA Act defines a consumer as a person to whom goods and services are being marketed, a person who enters into a transaction with a supplier thereof, for the purchase of goods. The aim of the Act is to promote, protect and advance the social welfare of consumers in South Africa, thus making the South African consumer, arguably the most protected consumer in the world. In order to achieve this objective, the Act established a legal framework for maintaining a fair accessible market place for consumers, in order to reduce the disadvantages that consumers experienced in accessing quality goods or services. The Act further established a framework to protect consumers from unfair trade practices.<sup>34</sup> Jacobs, Stoop and Niekerk postulate that the CPA's far-reaching provisions regarding the marketing of goods and services cover almost every imaginable scenario from consumer loyalty programmes and promotional competitions to referral selling. The CPA aims to rid the market of unethical trading practices, unsafe products and unfairly discriminatory marketing, and generally applies across most industries involved in the supply of goods or services in the ordinary course of their business (unless an exemption applies) and also to franchise arrangements.<sup>35</sup>

Furthermore, Chapter 2 of the Consumer Protection Act introduced a formal set of consumer rights into law by referring to eight specific consumer rights namely; the right to equality in the consumer market; the right of a person or class of persons not to be unfairly excluded by a supplier or a service provider from accessing the goods or services provided – the right not to be discriminated against; right to privacy which seeks to protect the consumer from direct marketing; consumer's right to choose a supplier for the goods he or she wishes to purchase or a service provider to render services, including the right to choose the products and goods they wish to purchase and to examine such goods after purchasing; right to reject products that do not correspond with the examined samples; right to be given information in plain and understandable language; right to demand agreements, contracts, sale recordings and any other documents relating to the goods purchased or services that will be rendered to the consumer in a language that he or she understands; right to fair and responsible marketing. The Consumer Protection Act established the National Consumer Commission, a body assigned to investigate consumer complaints. There is also a National Consumer Tribunal which was created by the National Credit Act in September 2006. The Tribunal is responsible for the adjudication of violations and transgressions of the National Credit Act and the Consumer Protection Act.<sup>36</sup>

## 5. Comparative Analysis of the Legal Frameworks

It is interesting to observe that all three frameworks discussed above have remarkable similarities. First, the Federal Competition and Consumer Protection Act (FCCPA) of Nigeria, the United States Federal Trade Act (FTA) and the Consumer Protection Act (CPA) of South Africa all serve as the principal consumer protection regulations in their respective countries. They were all enacted for the sole purpose of protecting consumers from unsafe products, fraud, deceptive advertising, unfair business practices, and promoting competition. Another similarity between the provisions of the Acts is evidenced in their establishment of Commissions. In Nigeria, the FCCPA has created the Federal Competition and Consumer Protection Commission and charged it with the responsibility of securing protection of rights for all consumers in Nigeria. In the US, the Federal Trade Commission was established as far back as 1914 by President Woodrow Wilson, while the Consumer Protection Act established the National Consumer Commission in South Africa. Also, both the Nigerian and South African Acts established for themselves Tribunals - the Federal Competition and Consumer Protection Tribunal and the National Consumer Tribunal - and charged them with responsibility to adjudicate on violations of the provisions of the Acts. In US, although there is no established Tribunal, the Federal Trade Commission has power to bring civil suits in federal courts to secure financial compensation and penalties for individuals, or for class-action litigants damaged by violators of applicable laws. The fines and punishments are imposed by the courts against violators.<sup>37</sup> However, one of the major differences between the three Acts is in the area of price regulation

<sup>32</sup> *Mugobo and Malunga*, (n2) p. 225

<sup>33</sup> *ibid*

<sup>34</sup> *ibid*

<sup>35</sup> W Jacobs, P Stoop and R Niekerk, 'Fundamental Consumer Rights Under The Consumer Protection Act 68 of 2008: A Critical Overview and Analysis' (2010) 13 (3) *Potchefstroom Electronic Law Journal*

<sup>36</sup> 'Consumer Protection Act in South Africa' <<http://www.saconsumercomplaints.co.za/your-rights/>> accessed 13 June 2020

<sup>37</sup> *ibid* (n30)

which is contained only in the Federal Competition and Consumer Protection Commission. There are no provisions in the Federal Trade Act and the Consumer Protection Act for regulation of price.

## **6. Critical Examination of the Federal Competition and Consumer Protection Act**

In spite of the nascent nature of the Federal Competition and Consumer Protection Act, few criticisms are already evident in some of its provisions. For instance, it is not clear why a process for registration of its decisions with the Federal High Court (FHC) should be necessary at all as it suggests that there might have to be recourse to an extant or new protocol at the FHC. Procedurally, that would set the FHC up to serve as a review panel for decisions of the FCCP Tribunal. Procedurally, this is tantamount to setting the FHC up to serve as a review panel for decisions of the Tribunal. Again, there is a potential problem with the jurisdiction the proposed Act seeks to confer on the Tribunal. This arises from a possible conflict with the exclusive jurisdiction conferred on the Federal High Court by Section 251 (r) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Because the Commission is an Agency of the Federal Government, it follows therefore that the jurisdiction the proposed Act seeks to confer on the Tribunal to review decisions of the Commission<sup>38</sup> may be in conflict with the exclusive jurisdiction conferred on the Federal High Court.<sup>39</sup> Also, the provisions of Section 104<sup>40</sup> of the Act outlining its superiority in the event of any conflict with other existing Acts, save the Constitution, may be contested as impracticable, particularly with respect to highly regulated industries, such as financial services and telecommunications, having specialised skills and industry-specific legislation. Disappointingly, the Act does not go far enough to cover the current gap in the Investments and Securities Act (ISA) and Securities and Exchange Commission (SEC) Rules around de-mergers, spin-offs,<sup>41</sup> deconsolidations,<sup>42</sup> et cetera. Consequently, there are still no provisions governing such transactions. The Federal Competition and Consumer Protection Commission is yet to issue guidelines to delimit or modify the merger threshold.

Additionally, the Commission is empowered to arrange for the conduct of tests on products, and seal up any premises where sub-standard products are produced.<sup>43</sup> Section 27 authorises the Commission to also enter and search any premises, inspect and remove from any premises any article, document or extract in the possession or under the control of any person who has engaged, is engaging or likely to engage in conduct constituting or likely to constitute a breach or contravention of the FCCPA. Before now, this function had been the responsibility of the National Agency of Food, Drugs Administration and Control (NAFDAC) or the Standards Organisation of Nigeria (SON). It would have been more practicable to allow such tests and retributive administrative action to remain within the remit of NAFDAC and SON. Making this an additional task of the Commission is tantamount to imbuing it with powers in many wide-ranging directions, thereby making the Commission a ‘jack of all trade.’<sup>44</sup> Finally, the reintroduction of price regulations<sup>45</sup> into the Nigerian polity for competition and consumer protection purposes, poses a major concern in the face of the current challenges in price regulated sectors. In a competitive market, competition brings out the best from producers and manufacturers of goods and services. Apart from discouraging competition, price regulation would not challenge business men and women to improve their products for consumer satisfaction. While it may be practicable for some businesses, there is no doubt the practice can hamper investment and economic growth.<sup>46</sup>

## **7. Conclusion and Recommendations**

The enactment of the Federal Competition and Consumer Protection Act in 2019 has come to improve existing competition laws largely criticised as being grossly inadequate when viewed against the size and complexity of Nigeria’s economy. This step has brought Nigeria closer to having a codified set of laws governing competition in the market place.<sup>47</sup> The striking similarities between the FCCPA and the consumer protection frameworks of the United States of America and South Africa are notable and indeed commendable. If properly executed, the 2019

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<sup>38</sup> Section 47 (2) of the FCCPA

<sup>39</sup> *Okojie and Bolu* (n3)

<sup>40</sup> It states thus, ‘Notwithstanding the provisions of any other law but subject to the provisions of the Constitution of the Federal Republic of Nigeria, in all matters relating to competition and consumer protection, the provisions of this Act shall override the provisions of any other law.’

<sup>41</sup> The distribution by a business to its stockholders of particular assets and especially of stock of another company – Merriam-Webster Dictionary, <<https://www.merriam-webster.com/dictionary/spin-off>> accessed 17 May 2020

<sup>42</sup> Separating a ‘consolidated’ (usually containerised) shipment into its original constituent shipments, for delivery to their respective consignees - BusinessDictionary <<http://www.businessdictionary.com/definition/deconsolidation.html>> accessed 17 May 2020

<sup>43</sup> Section 18 (f)

<sup>44</sup> *ibid* (n22)

<sup>45</sup> Part XI Section 88

<sup>46</sup> *ibid* (n22)

<sup>47</sup> *Okojie and Bolu* (n3)

Act has the ability to unleash the entrepreneurial potential of Nigeria's teeming youthful population by reining in monopolistic tendencies, market distortions, and creating a level playing field required for medium and small-scale enterprises to thrive.<sup>48</sup> Regrettably, the FCCP Act is already fraught with a number of criticisms, demonstrating the difficulties associated with implementation of our laws. *It is clear that mere* enactment of the FCCP Act without more does not guarantee full protection of consumers' rights against fraudulent traders. A consumer protection framework must provide a mechanism to inform and educate consumers on their rights and obligations on the marketplace.<sup>49</sup> This is because consumer education is pivotal within the buying society. It has become more relevant due to the rapid growth of products in the market. There is no gainsaying the fact that much improvement is necessary in the area of education for consumers to have the working knowledge to effectively protect themselves and utilise the available legal remedies for protection of their rights. In view of this, critical research must focus not on the law in the statute books, but on the law in action to ensure that consumers fully benefit from the extant law on consumer protection. Consumers need to stay informed on the effects of the economy in order to make the best decisions. It is therefore recommended that Nigerian consumers be informed on how to make better buying decisions that directly affect the functioning of the economy.<sup>50</sup> Furthermore, the degree of practical enforcement of rights is highly dependent on the attitude of the courts in remedying consumer related issues. Monye<sup>51</sup> argues that the extent to which such consumer rights are enforced is not dependent on, neither is it a reflection of the amount of statutory enactments put in place. Rather, it is dependent on the attitude of the Nigerian courts towards consumer-related issues given that the average consumer is faced with overwhelming hurdles in discharging the burden of proof imposed on him by law in negligence claims. This puts the consumer in a precarious position. In view of this, there is need for the courts to adopt a more consumer-friendly approach on consumer protection cases. Finally, this Paper recommends that a Course on Consumer Protection be taught at undergraduate level in the Law Faculties of our tertiary Institutions. This would enable students have a better understanding of consumer protection and the compelling need to protect themselves against low quality and dangerous products and deceptive advertisements.<sup>52</sup>

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<sup>48</sup> *ibid* (n22)

<sup>49</sup> *Mugobo and Malunga*, (n1)

<sup>50</sup> S Hollie, 'What is Consumer Education?: Definition and Importance' <<https://study.com/academy/lesson/what-is-consumer-education-definition-importance-quiz.html>> Accessed 16 May 2020

<sup>51</sup> F Monye, 'The Legal Framework for Consumer Protection in Nigeria', (2005) 1 (1) *Ebonyi State University Law Journal*, p. 151

<sup>52</sup> *ibid* (n14)