

## TRIANGULAR CONSUMERISM: A CONSUMER PROTECTION FRAMEWORK UNDER THE PETROLEUM INDUSTRY ACT (PIA) 2021\*

### Abstract

The Petroleum Industry Act 2021 produced a solid consumer protection regime. The law contains a legal and institutional framework, which grounds consumerism. Employing the triangle analogy, this work argued that within the bracket of the framework is a three-fold agency otherwise known as triangular consumerism. It adds that while the framework advocates consumerism, the law is not so clear on consumer inclusivity especially as it relates to regulation consultation. The work quizzed the vagueness of the place of the Federal Competition and Consumer Protection Commission (FCCPC) in the Petroleum Industry Act 2021, and asks whether the FCCPC and the principal consumer protection agent (Nigerian Midstream and Downstream Petroleum Authority) shares equal place. The work also asked if at all, the principal agent is of any quasi-judicial nature. It identifies as certain, the angle of the service providers in the framework, but queried their powers to make the consumer's service code, against the backdrop of the prevailing regulatory power of the principal agent.

**Keywords:** Consumerism; Triangular Consumerism; Petroleum Industry Act; Consumer Protection under PIA

### 1. Introduction

Consumerism has long taken its root in decades past. Ijewere had noted that the first consumer movement which took place in the 1990s, in America, was fuelled by rising prices.<sup>1</sup> This was followed by the second movement in mid-1930, which 'was sparked off by an upturn in consumer prices during the Great Depression and another drug scandal'.<sup>2</sup> The third movement which was said to begin in the 1960s ushered in some awareness; an era good enough to be describe as 'one of educated consumers'—that is, an era of enlightened consumers.<sup>3</sup> As a concept, consumerism interprets the concept of consumer protection<sup>4</sup> AD Badaiki traced the history of consumer protection to the Old Testament biblical notes of injunctions, to architects and builders, guiding against injury to men.<sup>5</sup> But William Prosser drew it closer to 1266, referring to the criminal liability measure in English, which was put in place to combat supply of corrupt food.<sup>6</sup> He had made this reference whilst discussing the assault on the citadel of privacy.<sup>7</sup> Laws such as the Assize of Bread and Ale Act, 1266,<sup>8</sup> Bread Act 1836,<sup>9</sup> Weights and Measures (Metric System) Act 1897,<sup>10</sup> Sherman Antitrust Act, 1890,<sup>11</sup> are some evidences of later but old laws enacted to protect consumers.

Consumer protection also has a historical background in Nigeria. It was observed elsewhere that consumer protection has been part of the Nigerian system for relatively a long time.<sup>12</sup> Felicia Monye opined the progression of consumer protection from the traditional system to the English Law system, up to the current consumer protection framework engineered by our current laws.<sup>13</sup> In other words, consumerism was well rooted in the Nigerian system. Recent laws such as the Federal Competition and Consumer Protection Act 2018 and the Petroleum Industry Act 2021 [PIA 2021] (which by the way are the centre of legal discussion here) are not the first legal instruments or maybe measures that protect consumers in Nigeria.

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<sup>1</sup> A.A. Ijewere, 'Consumer Activism and its Implications for Consumer Protection in Nigeria' (2007) 6 (1) *Global Journal of Social Sciences*. 7

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Raph Nadar, *Unsafe at Any Speed* (Kinightsbide Pub Co Mass, 1991) Available at <[https://www.amazon.com/Unsafe-Any-Speed-Ralph-Nader/dp/1561290505#detailBullets\\_feature\\_div](https://www.amazon.com/Unsafe-Any-Speed-Ralph-Nader/dp/1561290505#detailBullets_feature_div)> accessed 4/12/2023.

<sup>5</sup> AD Badaiki, 'Towards an International Legal Regime of Consumer Protection for Developing Countries: Nigeria as Case Study' (1993) *Jus*. 6 (4) p. 43; See also BB Kanyip, *Historical Analysis of Consumer Protection Laws in Nigeria*, Nigeria Institute of Advanced Legal Studies, 1997, 4.

<sup>6</sup> William L Prosser, 'The Assault upon the Citadel: Strict Liability to the Consumer' (1960) 69 (7) *The Yale Law Journal*, Available at <<https://doi.org/10.2307/794385>> accessed 4/12/2023

<sup>7</sup> Ibid.

<sup>8</sup> See Alan S. C. Ross, 'The Assize of Bread' (1956) 9 (2) *The Economic History Review*, Available at <<https://doi.org/10.2307/2591750>>

<sup>9</sup> Available at <<https://api.parliament.uk/historic-hansard/acts/bread-act-1836>> accessed 4/12/2023

<sup>10</sup> Available at <<https://vlex.co.uk/vid/weights-and-measures-metric-808352273>> accessed 4/12/2023

<sup>11</sup> Available at <[https://www.law.cornell.edu/wex/sherman\\_antitrust\\_act](https://www.law.cornell.edu/wex/sherman_antitrust_act)> accessed 4/12/2023

<sup>12</sup> Felicia Monye, 'Synopsis of Consumer Protection Law in Nigeria: Compendium of Consumer Protection Law in Nigeria' (1<sup>st</sup> Edn, Princeton & Associates Publishing Co. Ltd, 2022). 41.

<sup>13</sup> Ibid. Some of the early Nigerian Laws are the Food Adulteration Act, 1903, Sales of Foot Law 1917 (Northern Nigeria) Cap 121, LFN 1963; Sales of Food Law 1917 (Eastern Nigeria: Cap 117, LFN 1963, Food and Drugs Act 1974, etc.

Conceptually, the term (Consumerism) suffers multiplicity of definition. Put another way, there is no singularity of definition. This is because, like other concepts, it has been interpreted differently by different scholars. It was Fredrik Portin, who in fact, said that, ‘Consumerism is considered a defining feature of contemporary life. However, there doesn’t exist any consensus over how the term should be defined.’<sup>14</sup> The scholar had opined that definitions are framed based on perspectives or specific contexts.<sup>15</sup> Therefore, this work is inspired from a viewpoint of perhaps, a limited conceptuality.<sup>16</sup> The term triangular consumerism is framed from the PIA 2021 legal framework. Triangular consumerism refers to threefold dimension to the concept of consumer protection as framed in this work. The work grounds the view that new Petroleum Industry Act, 2021 (PIA 2021) promotes and protects consumerism from three dimensions, which can be summed up as ‘triangular consumerism’. This is drawn from the analogy of a triangle. Consumerism is not only seen as an idea, as it will be later clarified, but it is also seen as the institutionalisation of consumerism itself. The work argues that while the service providers (gas and petroleum products suppliers or distributors) sits at an angle less than those of the two other institution sit, it is debatable whether the Federal Competition and Consumer Protection Commission (FCCPC or ‘The Commission’) slides at the same degree, with the Nigerian Midstream and Downstream Petroleum Authority (otherwise known as ‘The Authority’). This work critiques the innovations that the PIA breeds and the looming challenges of the consumer protection framework. It finds that the place of the Commission is not so pronounced in the PIA 2021, thus leaving open the debate of the possible overlapping functions of the Authority and the Commission. This is against the underpinning that the Federal Competition and Consumer Protection Act 2018 (FCCP Act 2018) grants supremacy of itself over any other laws on consumer protection. The work also quizzes the place of the petroleum suppliers or distribution in the consumer protection pyramid. The first part of the work focuses on the conceptualization of consumerism. This is followed by an attempt at defining triangular consumerism as it is intended in the work. Thereafter, the challenges will be discussed, where some of the areas to be addressed in the framework would be considered.

## **2. Conceptualising Consumerism**

Consumerism suffers from a multiplicity of definitions.<sup>17</sup> Before considering the specific definition intended in this work, it is important to first define the term ‘customer’ or ‘consumer’. A consumer has been defined as ‘one who purchases goods or services to satisfy a need’<sup>18</sup> Consumers are considered sovereign due to their role in determining the reign of every product.<sup>19</sup> The FCCP Act 2018 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 any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or any person to whom a service.<sup>20</sup>

Although, the PIA 2021 provides for a consumer protection framework, it does not give any definition of a consumer or customer. The PIA 2021, however, defined ‘customer protection’ to mean ‘the standards, practices and service protection for customers including those relating to pricing, service quality and standards, billing practise, performance reporting and any regulations of the Commission and Authority that provide such protections’.<sup>21</sup>

Consumerism, on the other hand, has been defined as ‘an organised movement of citizen and government agencies to improve the rights and power of buyers in relation to sellers.’<sup>22</sup> This presents consumerism as a movement. Different views have been put forth to explain the concept of consumerism. For instance, Fredrik Portin, while writing on Consumerism as a moral attitude proposed that, ‘definition for consumerism is understood as the act of trivializing the good and remaining indifferent towards suffering.’ According to the scholar, this definition challenges the idea of the concept, as an ‘ersatz’ religion.<sup>23</sup> Anne Meneley on the other hand, investigated how consumerism ‘is perceived as an

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<sup>14</sup> Fredrik Portin, “Consumerism as a moral Attitude: Defining consumerism through the works of Pope Francis, Cornel West, and William T. Cavanaugh” (2020) 74:1, 4-24, *Studia Theologica – Nordic Journal of Theology*.

<sup>15</sup> Ibid.

<sup>16</sup> The part for conceptualising consumerism will highlight the limited perspective with which the tem is used.

<sup>17</sup> Fredrik Portin, “Consumerism as a moral Attitude: Defining consumerism through the works of Pope Francis, Cornel West, and William T. Cavanaugh” (2020) 74:1, 4-24, *Studia Theologica – Nordic Journal of Theology*. Available at <<https://www.tandfonline.com/doi/full/10.1080/0039338X.2020.1751278>> accessed 4/12/2023.

<sup>18</sup> A.A. Ijewere, ‘Consumer Activism and its Implications for Consumer Protection in Nigeria’ (2007) 6 (1) *Global Journal of Social Sciences*. 8

<sup>19</sup> Daniel Ogechukwu Ayozie, ‘Consumerism the Shame of Marketing In Nigeria Challenges to Corporate Practices’ (2013) 5 (1) *IPBJ* 1-30

<sup>20</sup> Section 167 of the FCCP Act 2018.

<sup>21</sup> Section 318 of the PIA 2021.

<sup>22</sup> Kotler, P., 2002, “What Consumerism Means for Marketers” (1972) 50 *Harvard Business Review*. Available at <[https://archives.lib.duke.edu/catalog/weiranthony\\_aspace\\_ref102\\_a21](https://archives.lib.duke.edu/catalog/weiranthony_aspace_ref102_a21)>

<sup>23</sup> Fredrik Portin, ‘Consumerism as a moral attitude: Defining Consumerism through the works of Pope Francis, Cornel West, and William T. Cavanaugh’ (2020) 74:1, 4-24. *Studia Theologica – Nordic Journal of Theology*, Available at <<https://www.tandfonline.com/doi/full/10.1080/0039338X.2020.1751278>> accessed 4/12/2023.

unremarkable part of quotidian existence, as a patriotic duty at various moments, as an indicator of social class'.<sup>24</sup> She observed that it is a challenging exercise to differentiate it from capitalism, commodities and circulation, and consumption.<sup>25</sup> Consumerism is said have a strong functional link to capitalism as an economic policy. There is no doubt that it is labelled as a problem.<sup>26</sup> However, for the purpose of this work, consumerism is seen from the perspective of 'the protection of the rights of consumers or customers'. Ijewere while citing Akerele,<sup>27</sup> pointed out an interpretation that favours this view. According to the author, consumerism, apart from being interpreted as the power relationships between consumers and producers, it also concerns itself with the remedies available to the consumers for perceived injustices against them.<sup>28</sup> Therefore, consumerism can be seen as the consumer protection system provided by the law. According to Timothy and Patrick, 'It is an unassailable fact that the protection of the consumers through law and policies is a soothing feature of contemporary commercial transactions.'<sup>29</sup>

### **3. Triangular Consumerism**

Consumerism was earlier defined as the consumer protection system provided by the law. In this work, triangular consumerism can be defined as a three-dimensional consumer protection system or framework provided by law. The Petroleum Industry Act 2021 carved a solid legal and institutional framework for consumer protection.<sup>30</sup> This framework is covered by Section 164 of the PIA 2021, and other relevant sections of the Act.<sup>31</sup> This regulatory framework is arguably three-dimensional in scope. It is about three players functioning in varied capabilities. The legal and institutional framework is timely, considering the many injustices faced by consumers in the petroleum industry. Findings have showed that unethical marketing practices have a positive effect on the emerging consumerism in the downstream sector in Nigeria.<sup>32</sup> Some of these unethical practices include price gouging, pump adjustment, and adulteration of petroleum products.<sup>33</sup> Addressing these concerns, this work argues that the PIA 2021 offers a threefold or triangular consumerism. This argument is built on the analogy of a triangle. It finds that there are three major players that regulate and/or enforce consumer protection measures or protect consumers under the PIA. They are the Authority, the Commission, and the Service Providers. While it is clear that the Service Provider occupies a place less than those occupied by the other institutions, there is the likely debate whether the Authority takes an equal place with the Commission. The next section elaborates how the different angles operate under the consumer protection framework.

### **4. The Authority**

The Nigerian Midstream and Downstream Petroleum Regulatory Authority otherwise known as 'The Authority', is established by Section 29 of the PIA Act 2021.<sup>34</sup> The Authority is basically responsible for the technical and commercial regulation of the midstream and downstream petroleum operations in the petroleum industry. This responsibility is very broad, as it covers all objectives and functions of the Authority.<sup>35</sup> It is the objective of the Authority, to amongst other things 'promote a competitive market for midstream and downstream petroleum operations'.<sup>36</sup> Another relevant objective is to develop a framework for pricing of petroleum products, as well as, to promote a positive environment for international and domestic players to invest in the Midstream and Downstream petroleum operations.<sup>37</sup> Promotion of competitive markets is a consumer protection strategy; this is clearly because monopoly affects consumer's liberty of choices and thus works injustice against the consumers or customers. The Authority is a specific agency established by the PIA 2021. This does not automatically translate to it sitting at the top of the consumer protection triangle in the

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<sup>24</sup> Anne Meneley, 'Consumerism' (2018) 47:117-32. *Annual Review of Anthropology*. Available at <<https://www.annualreviews.org/doi/abs/10.1146/annurev-anthro-102116-041518>> accessed 4/12/2023.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Akerele Bayo, "The Relevance of Consumerism for a Developing Economy," (1980) *Nigerian Journal of Marketing*.

<sup>28</sup> A.A. Ijewere, 'Consumer Activism and its Implications for Consumer Protection in Nigeria' (2007) 6 (1) *Global Journal of Social Sciences*. 7

<sup>29</sup> Timothy Ifedayo Akomolede & Patrick Olajide Oladele, 'Consumer Protection in a Deregulated Economy: The Nigerian Experience' 2006 (14) 1 *European Journal of Scientific Research*, Available at <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiY\\_Kbw0\\_WCAxWVQkEAHQsSAHUQFnoECBEQAQ&url=https%3A%2F%2Fwww.researchgate.net%2Fpublication%2F292567370\\_Consumer\\_protection\\_in\\_a\\_deregulated\\_economy\\_The\\_Nigerian\\_experience&usg=AOvVaw2jgWu-bzVPeABj8vh3\\_\\_80&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiY_Kbw0_WCAxWVQkEAHQsSAHUQFnoECBEQAQ&url=https%3A%2F%2Fwww.researchgate.net%2Fpublication%2F292567370_Consumer_protection_in_a_deregulated_economy_The_Nigerian_experience&usg=AOvVaw2jgWu-bzVPeABj8vh3__80&opi=89978449)> accessed 4/12/2023

<sup>30</sup> Section 164 of the PIA.

<sup>31</sup> See generally Section 31 and 33 of the PIA 2021.

<sup>32</sup> Oluwasanmi, Oluwaseun O. & Ogunro, Victor O., 'Unethical Marketing Practices and Emerging Consumerism in the Downstream Sector of the Nigerian Petroleum Industry (A Study of Bovas & Company Limited)' (2021) 10 (2) *Journal of Management and Social Sciences*. Available at <<https://doi.org/10.53704/jmss.v10i2.355>> accessed 4/12/2023.

<sup>33</sup> Udeagbara, S.G., 'The petroleum product adulteration and its effect in Nigeria' (2014)8(5) *Advances in Environmental Biology*. Available at <<http://www.aensiweb.com/old/aeb/2014/1212-1217.pdf?>> accessed 4/12/2023

<sup>34</sup> Section 29 of the PIA Act, 2021.

<sup>35</sup> See Section 31 & 32 of the PIA Act, 2021.

<sup>36</sup> Section 31 (d) of the PIA Act, 2021

<sup>37</sup> Section 31 (j) (i) of the PIA Act, 2021.

Petroleum industry.<sup>38</sup> However, it is statutorily certain that the Authority plays the role of a regulator, an enforcer, or investigator.

### ***The Authority as a Regulator***

The regulatory responsibility of the Authority is the focal point of its establishment.<sup>39</sup> According to Section 29 (3) of the PIA Act, 2021, it is the responsibility of the Authority to regulate the technical and commercial midstream and downstream petroleum operations in the petroleum industry.<sup>40</sup> The Authority's functions as stipulated in the PIA 2021, spells out elaborately the powers of the Authority as a Regulator. Section 32 of the PIA 2021 gives power to the Authority to regulate amongst other things the determination of appropriate tariff methodology,<sup>41</sup> the setting of cost benchmark for the petroleum operations of the relevant streams,<sup>42</sup> the provision of pricing and tariff frameworks,<sup>43</sup> market competition,<sup>44</sup> the establishment of consumer protection measures in line with the Act,<sup>45</sup> the promotion of consumers interests, etc. The power to regulate as conferred on the Authority by the PIA 2021 also extends to their implied function as a 'delegate legislator' or 'sub-legislator'.<sup>46</sup> The legal and constitutional operation of delegated legislation is such that the legislative (body) or bodies can delegate (it) or their power to make laws or regulations to a body or office designate, which then will be responsible for the making of such laws.<sup>47</sup> Laws made by such delegated authorities, where not inconsistent with the Principal Act, becomes law and has the force of law as the Principal Act itself.

The PIA 2021 empowers the Authority to make regulations on many things, amongst which includes regulations, 'ensuring the continuity and security of the supply of natural gas, crude oil, and petroleum products to customers',<sup>48</sup> concerning alternative dispute resolutions and customer protection,<sup>49</sup> concerning pricing regimes,<sup>50</sup> concerning competition and anti-competition behaviour, etc.<sup>51</sup> The power to make regulations is however subject to Section 216 of the PIA 2021 which provides for consultation for regulation, and the procedure for regulation.<sup>52</sup>

While the general regulatory power of the Authority is covered by Section 33 of the PIA 2021, Section 164 of the PIA 2021 specifically covers the regulation for the customer protection framework. The Act provides that to protect customer's interests, the Authority can make regulations that would require gas and petroleum distributors or suppliers to undertake certain responsibilities.<sup>53</sup> These responsibilities include: the publication of their terms of supply or distribution including includes tariffs,<sup>54</sup> formulate and adhere to standards of performance necessary to ensure the safety, reliability and quality of supply and distribution services to customers as well as set penalties for failure to comply<sup>55</sup> and the establishment of a customer's forum where customers can register their views and concerns.<sup>56</sup> They are expected to also adhere to customer service codes, provide relevant information to customers, and their use and protection; as well as provide special services for customers who are economically and socially disadvantaged. The Act also provides for services to customers,<sup>57</sup> and transfer of customers.<sup>58</sup>

### ***The Authority as Investigator and Enforcer (Investigator)***

Apart from the regulatory powers of the Authority, the Authority is also given investigative powers. For instance, Section 32 of the PIA 2021 empowers the Authority to enquire, test, audit, investigate, and take steps to monitor the petroleum operations in the streams. The Act also empowers the Authority to ensure the implementation and enforcement of compliance with laws, policies, and regulations that relate to the operations of the streams.<sup>59</sup> Section 32 (l) of the PIA on

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<sup>38</sup> This argument will be elaborated extensively in a later part of the work.

<sup>39</sup> See Section 29 of the PIA Act, 2021.

<sup>40</sup> See also Section 31 of the PIA Act, 2021

<sup>41</sup> See 32 (c) of the PIA 2021.

<sup>42</sup> Section 32 (d) of the PIA 2021.

<sup>43</sup> The Frameworks are connected to natural gas and petroleum products based on what is described as "fair market value".

<sup>44</sup> Section 32 (n) & (u) of the PIA 2021.

<sup>45</sup> Section 32 (s) of the PIA 2021

<sup>46</sup> By 'Sub-legislator', I refer to the power given to the Authority by the Principal Act (PIA 2021) to make regulations which will then have the force of law as the Principal Act itself.

<sup>47</sup> Deakin University Library, 'Delegated Legislation' Available at <<https://deakin.libguides.com/c.php?g=558264&p=3839368>> accessed 4/12/2023

<sup>48</sup> Section 33 (q) of the PIA 2021.

<sup>49</sup> Section 33 (t) of the PIA 2021.

<sup>50</sup> Section 33 (u) of the PIA 2021

<sup>51</sup> Section 33 (w) of the PIA 2021.

<sup>52</sup> Section 216 of the PIA 2021.

<sup>53</sup> Section 164 (1) of the PIA 2021.

<sup>54</sup> The Act says that this is other than negotiated tariffs under Section 122 (4) of the PIA 2021.

<sup>55</sup> Section 164 (1)(a) of the PIA 2021.

<sup>56</sup> Section 164 (1)(b) of the PIA 2021

<sup>57</sup> Section 165 of the PIA 2021.

<sup>58</sup> Section 166 of the PIA 2021.

<sup>59</sup> Section 32 (jj) of the PIA 2021.

the other hand provides thus: ‘...to set, define, enforce approved standards and regulations for design, construction, fabrication, operation and maintenance of plants, installations and facilities used or be used in midstream and downstream petroleum operations.’<sup>60</sup> The PIA 2021 further provides for the Special Investigation Unit (SIU) that is saddled with the responsibility of exercising the special powers of the Authority.<sup>61</sup> Apart from the general investigative powers conferred on the SIU, the unit also has the power to arrest violators. The power to arrest is to be exercised in conjunction with the Nigeria Police or other law enforcement agencies.<sup>62</sup>

### **5. Customer Service Code Developers**

The PIA 2021 provides for the development of customer service codes. The customer service codes are one of the many innovations of the PIA 2021, as it is expected to set out practises and procedures to be adhered to in conducting some licensed activities. These licensed activities are not limited to, ‘the installation, testing, maintenance and reading of meters; fault repairs and response to customer emergencies; the connection and disconnection of customers; responding to customer complaints and complaint resolution billing and invoicing, the extension of payment and credit facilities...’<sup>63</sup> Other relevant information include the provision of information to customers and the use and protection of customer’s information.<sup>64</sup> Also, included is the establishment of services for customers who are disadvantaged.<sup>65</sup> The essentiality of the development of customer service codes is not in doubt, considering its obvious importance to the functionality of the consumer protection framework. However, the responsibility to develop these codes is left in the hands of gas and petroleum distributors or suppliers.<sup>66</sup> The codes when developed are subject to the approval of the Authority.<sup>67</sup> According to the PIA 2021, the approval is to be done before publication,<sup>68</sup> and they shall be made available to customers upon request, and must be published on the Authority’s website. The Authority has the power to perfect the review of the codes at intervals where they deem it so necessary. The power given to the distributors or suppliers has also placed them on the triangle of protecting the consumers. This is because the codes as they were are aimed at protecting consumers and healthy consumption.

### **6. The Federal Competition and Consumer Protection Commission**

The Federal Competition and Consumer Protection Commission, (FCCPC) was established by the Federal Competition and Consumer Protection Act, 2018.<sup>69</sup> The objectives of the Act include, but are not limited to the promotion of a competitive market, and the protection and promotion of customer’s welfare.<sup>70</sup> It is also the function of the Commission to administer and enforce the provisions of the Act,<sup>71</sup> and promote and protect consumer’s interest,<sup>72</sup> etc. Like the Authority under the PIA 2021, the Commission acts as a regulator of consumer protection activities.<sup>73</sup> The Commission, however, exists as a quasi-judicial body which can issue summons, and hear complaints before it.<sup>74</sup> However, decisions by the Commission can be appealed to the Competition and Consumer Protection Tribunal.<sup>75</sup> The scope of the applicability of the FCCP Act 2018 is so broad that it applies to all undertakings and all commercial activities in Nigeria.<sup>76</sup> It is also binding on all commercial activities that are profit making.<sup>77</sup> This invariably, should include the supply, and distribution of petroleum and natural gas products. But the inclusion is disputable, considering the fact that the FCCP Act 2018 was earlier than that the passage of the PIA 2018. It calls to wonder whether the PIA 2021 and other later-laws were contemplated at the passage of the FCCP Act 2018, or whether commercial (petroleum or gas related) activities captured under the PIA 2021 can be interpreted into the applicability section of the FCCP Act 2018. This is in the face of the fact that the FCCP Act 2018 also wears a supremacy status over other laws.<sup>78</sup> Arguably, the Authority is the specific regulator under the PIA 2021. However, the PIA 2021 seemed to have subjected the passage of regulation by the Authority, into taking cognizance of practices and standards and procedures of the Commission. According to Section 164 (5) of the PIA 2021, ‘the Authority shall, in developing customer protection regulations, take in account existing

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<sup>60</sup> (Section 32 (l) & (ee) of the PIA 2021.

<sup>61</sup> See Section 49 & 50 of the PIA 2021.

<sup>62</sup> See Section 49 (1) (i) of the PIA 2021.

<sup>63</sup> Section 164 (1) (e) (i)-(vi) of the PIA 2021.

<sup>64</sup> Section 164 (1) (vii) of the PIA 2021.

<sup>65</sup> Section 164 (1) (viii) of the PIA 2021.

<sup>66</sup> Section 164 (1) of the PIA 2021.

<sup>67</sup> Section 164 (2) of the PIA 2021.

<sup>68</sup> *Ibid.*

<sup>69</sup> Section 3 of the FCCPA 2018.

<sup>70</sup> Section 1 of the FCCPA 2018.

<sup>71</sup> Section 17 (a) of the FCCPA 2018.

<sup>72</sup> Section 17 (l) of the FCCPA 2018.

<sup>73</sup> See Section 17 (m) & (h) of the FCCPA 2018.

<sup>74</sup> See generally Section 33 of the FCCPA 2018.

<sup>75</sup> Section 38 of the FCCPA 2018.

<sup>76</sup> Section 2 (1) of the FCCPA 2018.

<sup>77</sup> Section 2 (2) (c) of the FCCPA 2018.

<sup>78</sup> This is elaborately discussed in a later part of this paper.

procedures, practices, and standards issued by the Federal Competition and Consumer Protection Commission'.<sup>79</sup> Also, the competition and market regulation power of the Authority,<sup>80</sup> as well as the Authority's power to prevent anti-competition behaviour is subject to the provisions of the FCCP Act 2018.<sup>81</sup>

## **7. Challenges**

The triangular consumerism protection framework provided in the PIA 2021 are some challenges identified in this work. These challenges are not treated as problems that run across all angles, but as items peculiar to individual angle; or as items that may be related to other angles, as the case may be. Some of the challenges identified in this work are discussed hereunder.

### ***Consumer inclusivity***

Customer inclusivity, in the making of policies and laws on customer protection, is very important for the success story of consumerism. As earlier stated, the Authority is empowered under the PIA 2021 to make regulations for consumer or customer protection.<sup>82</sup> The PIA 2021 also laid down a condition precedent of 'consultation' for the effective operation of any regulation. According to the PIA 2021, the Authority shall consult with gas and petroleum distributors or suppliers, and interest stakeholders in the making or development of regulations.<sup>83</sup> The PIA also contains a section for consultation for regulations.<sup>84</sup> According to section 216 of the PIA 2021, the Authority must consult with stakeholders before any regulation is finalized or amended. The PIA 2021, which though, stated that the Authority should consult with gas and petroleum suppliers, did not expressly include 'customers' in the list of those to be consulted. Stakeholders listed in the PIA 2021 include licensees, lessees, and permit holders. The PIA 2021, however, stated that persons that may be interested in the subject matter of the proposed regulations shall be consulted. Yet, the PIA 2021 is also silent on who qualifies as 'persons that may be interested'. This is because 'persons that may be interested' is not defined. Nonetheless, this can be interpreted as just anyone, anywhere, who shows interest. And though 'customers' or 'consumers' may be impliedly interpreted in the clause, the omission of the victims of the breach of consumer's laws, in the express mentioning of the list of those to be consulted is a challenge. However, customers who may be interested in the passage of regulations can show such interest by responding to invitations made by the Authority to contribute in the hearing process.

### ***Regulation versus Customer service's code***

Earlier, it was argued that gas or petroleum products distributors or suppliers are tasked with the responsibility to develop customer codes. While this accommodates the involvement of the service providers in the consumerism triangle, it attracts some genuine concern such as: whether there may be some form of duplication, or, whether there is any need at all. In other words, there is the question whether consumer service codes would duplicate or replicate some prototype occasioned by an already made regulation. Or whether, the already made regulation would only direct the service providers to develop service codes and nothing more. The PIA 2021 provides to the effect that the Authority is to make regulations that require the distributors or suppliers to develop and adhere to customer service codes which will set out the practices and procedures to be followed in conducting licensed activities. The PIA 2021 then provides that the customer service codes are to be approved by the Authority and can be reviewed in intervals. Though a laudable innovation, repeatedly, there raises the question whether the regulation that requires the service providers to make these codes, would only give a direction to perform their responsibility, or whether the regulation will provide a prototype that should be replicated by the service providers. This is a challenge that must be addressed. What will be the legal weight of such codes? Do they take the form of subsidiary legislations as per having some force of law, or they could operate as some form of policy direction only? It is argued that such codes should be developed by the Authority and passed as a Regulation which will be binding on service providers rather than leave their development in the hands of the service providers. This is necessary and apt, considering the fact that service providers are included in the consultation process of making regulations.

### ***Lack of clarity of the quasi-judicial nature of the Authority***

The Authority plays the role of a regulator, and enforcer (investigator) in the consumer protection framework. This places the Authority as the specific body responsible for the enforcement of consumer's rights under the PIA 2021. However, it is not so clear whether the Authority would play some form of quasi-judicial role in protecting consumer's rights. This is because unlike the FCCP Act 2018 which clearly spells out the quasi-judicial function of the Commission, and the processes and procedures to be followed in seeking redress before the Commission, the Authority is silent on such function. Although the PIA 2021 provides that the Authority must take into account the existing procedures, practices, and standards, of the Commission while making consumer protection regulations, the law is not so clear in establishing

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<sup>79</sup> Section 164 (5) of the PIA 2018.

<sup>80</sup> Section 210 of the PIA 2021

<sup>81</sup> Section 211 of the PIA 2021.

<sup>82</sup> Section 164 of the PIA 2021.

<sup>83</sup> Section 164 (5) of the PIA 2021.

<sup>84</sup> Section 216 of the PIA 2021.

the Authority as a quasi-judicial body, just as it is established expressly as a regulator. The PIA 2021 also states that the Authority should publish its decisions, determinations, or directions that impact on the customers and industry participants, as well as the reason behind the decisions, determinations, and directions.<sup>85</sup> This function should somewhat glorify the Authority as a quasi-judicial body, but the very nature of the Authority as a quasi-judicial body is not expressly spelled out in the Act. This is another challenge.

### ***A quagmire on the place of FCCPC***

The PIA 2021 though contained a consumer protection framework, did not expressly state the place of the Commission in enforcing consumer's right under the PIA 2021 regime. The PIA seemed to have given a great place to the Authority, and remained somehow silent on the place of the Commission. While it may be argued that the Commission still functions as the general quasi-judicial body for the protection of consumer's rights in all sectors of the economy, the clothing given to the Authority as a body capable of giving decisions and determinations with reasons; and the fact that the Authority should consider the practices and procedures of the Commission, leaves one with the impression that the Authority was established with a kind of quasi-judicial system, and as the specific quasi-judicial body for the protection of consumer's rights. This argument can, however, be debunked on the ground that if this was the intendment of the PIA 2021, then an appeal process would have been provided in the PIA 2021 to bridge the gap. Leave of reasoning may nonetheless be taken on the functionality of the defunct DPR which is now infused into the establishment of the Authority. But then, Peter Oniemola had stated that the Commission exercises jurisdiction over the sectors and industries that have regulatory agencies.<sup>86</sup> This is further enforced by Section 104 and 105 of the FCCP Act 2018. The said Section 104 grants the FCCP Act 2018 supremacy over other laws on consumer protection, subject only to the 1999 Constitution of the Federal Republic of Niger (as amended). Section 105 on the other hand spells out the concurrent jurisdiction that may arise between the Commission and other regulatory agencies, and the place of agreements between the Commission and Government agencies in harmonising the exercise of jurisdiction between the Commission and such regulatory agencies.<sup>87</sup> This may further strengthen the conflict in the event that there is no agreement. What becomes of a matter where one party goes before the Commission, and another before the Authority?

### **8. Implications for Consumer Protection under the PIA**

The PIA empowers the Authority to make regulations for the purpose of customer protection. However, the language of the law is framed in discretionary terms. This implies that the Authority may choose to make regulations for consumer protection in the petroleum industry or not. In either case, there are implications for consumer protection in the industry. Where the Authority fails to issue any regulation in relation to customer protection the provisions of section 164 are moribund, inactive and of no effect to the protection of the customer. Given that the provisions of the section constitute the consumer protection measures or requirements that should form the basis for the regulation. It is argued that prior to the issuance of any consumer protection regulation by the Authority, consumer protection is at abeyance in the petroleum industry in Nigeria. As such, without any relevant regulation, it cannot assume the place of the dominant body for consumer protection in the industry.

However, where the Authority exercises its discretion to make a regulation for the protection of customers, the law mandates that it shall consult with relevant stakeholders including the service providers. It is also mandated to take into consideration the existing procedures, practices and standards issued by the FCCPC. By virtue of the mention in section 164(5) the existing procedures, practices and standards issued by FCCPC under the FCCPA has been incorporated into the PIA in relation to consumer protection. The question then is what these practices, procedures and standards are?

The relevant provisions based on FCCPA should include part IX: the abuse of dominant position, part X: rules against monopoly, part XI price regulation, enforcement procedures such as Part VI enforcement warrants and request for information, part XVIII on enforcement of consumer rights, part XV on consumer rights. The law also provides for regulated industries in part XIII. However, the discourse will focus on the latter part XIII on regulated industries. Section 104 states, 'notwithstanding, the provisions of any other law but subject to the provisions of competition and consumer protection, the provisions of this Act shall override the provisions of any other law'.

105 (2) of the FCCPA contemplates a situation where there could be other industry specific regulators relating to competition and/or consumer protection. Thus it provided that: 'In so far as this Act applies to an industry or sector of an industry that is subject to the jurisdiction of another government agency by the provisions of any other law, in matters or conducts which affect competition and consumer protection, this Act shall be construed as establishing a concurrent jurisdiction between the Commission and the relevant government agency, with the Commission having precedence over and above the relevant government agency'.

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<sup>85</sup> Section 32 (r) of the PIA 2021.

<sup>86</sup> Peter Kayode Oniemola, 'Protection of Consumers of Petroleum Products: Compendium of Consumer Protection Law in Nigeria' (1<sup>st</sup> Edn, Princeton & Associates Publishing Co. Ltd, 2022). 199

<sup>87</sup> Section 105 (5) of the FCCP Act 2018.

The FCCPA not only recognizes the concurrent jurisdiction between FCCPC and any other government agency, but it contemplates potential conflict between such agencies. However, it provides a supremacy clause, which places the FCCPC above other industry agencies.<sup>88</sup> In the event of such concurrent jurisdiction with agencies whose mandate includes enforcement of competition and consumer protection, the act provides some procedures. The commission shall enter into negotiation with such agency for the purpose of coordinating and harmonising the exercise of jurisdiction over the matters in question within the relevant industry or sector<sup>89</sup> and such negotiations shall be concluded within a one-year period.<sup>90</sup> Such agreements shall cover issues around the establishment of procedure for the management of areas of concurrent jurisdiction, promote cooperation between the regulatory agencies and preserve the coordinating and leadership role of the FCCPC in the exercise of concurrent jurisdiction.<sup>91</sup> However, where the negotiations are inconclusive, the areas of disagreement are to be referred to the Attorney-General and Minister of Justice.<sup>92</sup>

Consequently, where the discretion to establish a customer protection regulation is exercised by the Authority, it is subject to the procedures and practices laid out in the FCCPA or at best, has concurrent jurisdiction over consumer related issues. This requires synergy with the between the Nigerian Midstream and Downstream Petroleum Regulatory Authority and the Federal competition and consumer protection agency in accordance with the procedures laid out in the PIA 2021 and the FCCPA. In the absence of any customer service regulation, consumer protection within the petroleum industry remains at abeyance and the service providers are not under any obligation to develop customer service codes. Therefore, it is arguable that the FCCPA seems to be the dominant agency for consumer protection, howbeit; this power may be concurrently exercised alongside industry regulators.

## **9. Conclusion**

Consumerism is now taking stronger root in the Nigerian legal system. The passage of the FCCP Act 2018 was a legislative milestone. The PIA 2021 however introduced a specific legal framework for consumer protection within the petroleum industry. Additionally, it offered what is described as triangular consumerism—firstly, as an idea, and then as an institutionalisation of consumerism itself. This work identified some of the likely challenges that may affect consumerism under the PIA 2021. The work concludes that addressing some of these challenges will contribute to a better consumer protection framework under the petroleum industry.

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<sup>88</sup> Section 105 (1)(2)(3) of the PIA 2021 Act.

<sup>89</sup> Section 105 (4) of the PIA 2021 Act.

<sup>90</sup> Section 105 (5) of the PIA 2021 Act.

<sup>91</sup> Section 105 (6)(a)(b)(c) of the PIA 2021 Act.

<sup>92</sup> Section 105 (7) of the PIA 2021 Act.