

PARAMOUNTCY OF CONSUMER WELFARE IN THE RESOLUTION OF CONSUMER CONCERNS AND COMPLAINTS IN THE TELECOMMUNICATIONS INDUSTRY IN NIGERIA: MYTH OR REALITY*

Abstract

Resolution of consumer, concerns and complaints in the telecommunications industry occupies a paramount place both in the provisions of the Nigerian Communications Act and the regulations and codes made pursuant thereto. However, one of the greatest impediments to realizing this objective is non-disclosure of needed information by licensed service providers to consumers. Adherence to the provisions of the regulations is more in the breach, notwithstanding dilatory and circumlocutory provisions contained therein. This paper posits that until these challenges are proactively addressed, the assertion that ‘the consumer is king’ and provisions alluding to paramouncy of consumer welfare in the resolution of consumer concerns and complaints will remain mere slogans and sanctimonious effusions.

Keywords: *Paramouncy of Consumer Welfare, Consumer Concerns and Complaints, Telecommunication Industry, Nigeria*

1. Introduction

Disputes are a common occurrence in the affairs of men. The genesis of disputes in the telecommunications sector broadly lies in the conflict of interests between and among the parties involved in the sector, or in the violation of contractual terms and conditions or regulations in the sector, or in an inadequate appreciation and observation of the business practices and procedure in the sector.¹ Thus, the incidence of disputes in the telecommunications industry become even more accentuated in an environment of rapid competition brought about by liberalization and deregulated as is being witnessed in the sector. A study carried out under the auspices of the International Telecommunications Union (ITU) and the World Bank on dispute resolution in the telecommunications sector identified increasing globalization, fast changing technologies, unleashing of market forces, varying and rapidly growing consumer needs as major factors responsible for transformation in the sector.² This transformation has consequently impacted on the nature and complexity of disputes that arise in the telecommunications sector. These disputes are indeed, diverse and may relate to infrastructure, competition, interconnection, investment regulations, trade, tariffs, jurisdiction, interpretation of policy and license terms and most importantly, consumer concerns and complaints. Our concern here is to examine the consumer concerns and complaints with a view to laying bare the paramouncy or otherwise accorded to consumer welfare in the resolution of these concerns and complaints.

2. Consumer Concerns

The popular saying that ‘the customer is king’ appears to receive statutory approval *vide* the provisions of paragraph (b) of sub-section (1) of section 4 of the Nigerian Communication Act 2003.³ The Nigerian Communications Commission (NCC) shall by the said provision ensure: ‘The protection and promotion of the interests of the consumers against unfair practices including but not limited to matters relating to tariffs and charges for, and the availability and quality of communication services, equipment and facilities’. Similarly, section 104 of the Act provides that all service providers in the telecommunications industry shall, in respect of their specific services, meet minimum standards of quality of service as the NCC may periodically specify and publish; *deal reasonably with consumers of its services; and adequately attend to consumer complaints and concerns*. Section 157 of the Act simply defines ‘consumer’, ‘customer’, or ‘subscriber’ to mean ‘any person who subscribes to and uses a communications service’. Thus, the terms ‘consumer’, ‘customer’, or ‘subscriber’ may be used interchangeably. In

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¹ RUS Prasad, ‘Dispute Resolution Mechanisms in the Telecom Sector: Relating International Practices to Indian Experience’, Stanford Centre for International Development Working Paper No. 372, September 2008, p. 3.

² Dispute Resolution in Telecommunications Sector - Current Practices and Future Directions, ITU – World Bank – Geneva 2004 cited in R U S Prasad, *Ibid*, p.3.

³ Hereinafter, ‘the Act’.

Nigeria, consumers of telecommunications products and services are as varied as their tastes, needs and expectations. They range from corporate, communal, institutional to individual consumers. In terms of social stratification, the telecommunications consumers include the political executive, the civil servant, the university personnel, the youth, captains of industry, the artisans, the military, the intelligence agencies, the farmer, the market women, and so on. It seems that today, consumers of telecommunication services in Nigeria are no longer the few privileged individuals who were endowed with the wherewithal to procure phone lines as was the case in the days gone by, when only a few could afford the limited phone lines that were available. It also appears no longer the case that the reason for inability to own a phone is the inability to afford one due to prohibitive high cost as hitherto, or the unavailability of telephone network service in the *situs* of business or residence as most urban and semi-urban parts of Nigeria are covered by telecommunications network services. Thus, virtually every part of Nigeria is populated by consumers of telecommunication products or services.⁴

The telecommunications consumer wants good quality services to be available at all time, at all places and most importantly, at affordable rate. The consumer demands prompt response from the service provider whenever he or she needs attention and to provide explanations whenever anything goes wrong in the quality of service. Invariably, the consumer wants protection at all times from exploitation and being taken undue advantage of, by service providers. The consumer of telecommunications services expects and indeed, wants to be well treated just like the consumer of any other type of services.⁵ When these expectations are not met, frustration sets in, and disputes follow. These disputes range from concerns for

tariffs and charges imposed by service providers on consumers; poor quality of services resulting in drop calls; access difficulties most often arising from the challenges of interconnectivity among service providers; promotional floats by which service providers induce massive patronage from consumers sometimes in excess of their roll out capacities without fulfillment of their promotional promises. A case in point could be the pending case of *Oshinubi v Globacom and Nigerian Communications Commission*⁶ wherein the Plaintiff alleges that based on representations made by the 1st defendant, he subscribed to its services. However, when he wanted to migrate to another tariff package, the 1st defendant refused to migrate him contrary to what was contained in the user guide. The plaintiff claims that the refusal of the 1st defendant to migrate him amounts to misrepresentation and fraud, and that the NCC in not protecting him from such unfair practice, had failed in its statutory duty. The suit is yet to be concluded.

Perhaps, the most critical of consumer concerns is the health concern of telecommunications consumers. The health implications of radioactive emissions from base stations and phones have posed serious concern to telecommunications consumers in Nigeria. It appears that snippets of evidence have started to emerge in some parts of the world suggesting that there could be some very serious health implications, notably, increasing incidence of cancer for people working or residing in the vicinity of mobile phone base stations and transmitter masts.⁷ Gamble who worked in Scotland, United Kingdom, found that this ill health is caused by the displacement of electrolytes/ions within the body and thus, interfering with the body's natural communications system (neurological system) and found that reproductive cancers are increased by exposure to electromagnetic radiation.⁸ However, telecommunications operators and manufacturers have contended to the contrary, that radioactive emissions from mobile phones and telecommunication masts are harmless to human beings. They rely on favourable research

⁴E. Ndukwe, 'The Place of the Consumer in the Nigerian Telecoms Industry', Being a keynote Address presented at the Third Stakeholders Forum Organised by IT and TELECOMS Digest held at Golden Gate Restaurant, Ikoyi, Lagos, on Monday, 9th June, 2008, p.1; E Ndukwe, 'Effective Stakeholder Communication in Telecom Regulation', Being a Paper presented at the 2009 Timex Communication Summit on Legislative Communication held at the Transcorp Hilton Hotel, Abuja, on Tuesday March 24, 2009, p.5.; E Ndukwe, 'Regulating to Meet Stakeholder Expectations in IT and Telecoms Sector', Being a paper presented at the IOD Meeting of 27th August, 2008, p.5.

⁵*Ibid*, pp. 1; 7; and 6 of the papers respectively.

⁶ Suit No. FHC/IB/CS/104/2010.

⁷ S. Gamble, *Brief Synopsis of the Dangers of EMF's and Mobile Phone Mast and How They Can Affect Our Health*, (Copenhagen: Equilibrate, 2005) pp.1-8; E. Ijezie, 'Health Implications of GSM Mast', Being a Paper presented at a One-Day Stakeholders Workshop on GSM held at Hotel Presidential, Enugu, on 16/03/2005, p.2.

⁸S Gamble, *Ibid*.

findings and statements from the World Health Organization (WHO) as well as the International Commission on Non-Ionizing Radiation Protection (ICNRP). It may be of interest to note that the Orange Mobile Phone Company in London agreed to remove its cell phone mast notoriously styled ‘the Tower of Doom’ from the top of a five storey London apartment after seven of the apartment’s residents got cancer. The cancer rate among those living on the top floor of the said apartment was twenty percent which was ten times the national average at the time.⁹ Despite these contentious views however, telecommunications operators have been busy in a rat race erecting and installing communications masts even at hallowed locations such as churches and school premises. Residential areas, markets, police barracks and other places of public resort are not spared in the ‘new sensation’.

Unavailability or poor quality of service reception in rural and unserved remote parts of Nigeria has remained another area of dispute between service providers in the industry and consumers. Equally of grave concern is the tendentious imposition of unsolicited calls, messages, songs, etc which not only invade the privacy of the consumer but also insult the sensibilities of many a consumer. Most often than not, consumer complaints in this regard are ignored by the licensee. Much less are the licensees disposed to escalate the impasse to the regulator, the NCC, for resolution.

3. Consumer Complaints Procedure

The Act makes provisions for consumer concerns and consumer protection. Thus, the NCC shall commit itself to ‘examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such dispute resolution methods as the Commission may determine from time to time including mediation and arbitration’.¹⁰ The Act also mandatorily enjoins all service providers to, in respect of their specific services, meet such minimum standards of quality of service as the Commission may periodically specify and publish, and more importantly, deal reasonably with consumers as well as adequately address consumer complaints and concerns.¹¹ Furthermore, under sub-section (1) of section 105 of the Act, the NCC may employ any of its powers under the Act in the resolution of consumer complaints bordering on matters of consumer services and protection including quality of service or failure of a licensee to comply with consumer code prepared under the Act.¹² The General Code contains Complaints Handling Instructions. Under its provisions, all licensed telecommunications operators must provide information about their compliant process howsoever, including any specific directions in that behalf by the NCC, in such a manner as would be easily comprehended. Similarly, licensees shall ensure that consumers can easily identify how a complaint may be lodged, either at the Licensee’s premises or by using any identified form of communications. Complaints handling processes shall contain information on consumers’ right to complain; procedure of contacting licensees in order to lodge a complaint; types of supporting information including documents which a complainant is to supply when making a complaint. All complaints will be recorded by licensees and duly processed.¹³

Licensed operators are also encouraged to make ‘adequate provisions’ to assist physically challenged person or persons with other special needs to access their complaint handling processes, including authorized representatives of such persons in that behalf. Licensees are similarly encouraged to provide ‘reasonable assistance’ in cases where consumers specifically request assistance in lodging complaints.¹⁴ What constitutes ‘adequate provisions’ or ‘reasonable assistance’ as used in the Regulation are not defined. They are fluid and are supposedly left at the discretion of the individual licensee to define. However credit must be given to the NCC for taking cognizance of the special needs of physically challenged persons as captured in regulation 40. The big question still remains to what extent these “special needs” of the physically challenged are in reality being addressed by the licensed operators. However, all written complaints shall be acknowledged by the licensee. The acknowledgement or otherwise initial response to consumer complaint can be either verbal or in writing. Non-written complaints shall be deemed

⁹ See further materials on <<http://www.libliotechcaplydate.net>>.

¹⁰S. 4 (1) (p) of the Act.

¹¹*Ibid*, s. 104.

¹²A General Consumer Code of Practice Regulations 2007, hereinafter, ‘the General Code’, was made by the NCC with respect to consumer concerns including complaints handling

¹³*Ibid*, part VII, regulation 39.

¹⁴*Ibid*, regulation 40(1) and (2).

acknowledged by the licensee at the time the complaint was made to the licensee. In any event, no consumer complaint shall remain unresolved for a period exceeding three months.¹⁵

According to sub-regulation (5) of regulation 41 of the General Code, ‘consumers shall be *advised* of the outcome of the investigation of their complaint, and any resulting decision by the Licensee’. It appears quite unclear why the word ‘advised’ should be used in the regulation with the mandatory word ‘shall’ in the same provision. If by the regulation, the licensed operator is mandatorily required to hand down a decision based on its findings upon due investigation of a consumer complaint, then it need not come by way of an ‘advice’ which by its nature is subject to acceptance or rejection. However, if the word ‘advised’ is used to convey the options available to a consumer complainant in the event of his rejection of the decision of the licensee, then it becomes more appreciable. In any event, the combined employment of mandatory and permissive words conjunctively as used in the regulation appears quite inelegant.

Where a consumer complainant is dissatisfied with a decision reached on his complaint, then it becomes mandatory for the licensee to extend to the consumer the option of pursuing an ‘identified escalation process’ by which the decision may be examined by a suitably qualified person in the licensee’s organization. If at the end of the process, a complaint has not been resolved to the consumer’s satisfaction, then within sixty days of communication thereof to the licensee, the licensee shall inform the consumer of the option to refer the complaint to the NCC.¹⁶

The problem with the foregoing provision is that it is too doctrinae, circumlocutory and dilatory. What is the purport of a so called ‘identified escalatory process’ which aims at merely referring the decision on a complainant reached by the self-same licensee to ‘a suitably qualified person in the licensee’s organisation’ for examination? What is expected as the outcome of such reference? Can the so called ‘suitably qualified person’ in the same licensee’s organization hand down a decision that is radically different from that of the licensee? Can justice in the circumstance be said to have been done or manifestly seen to be done as envisaged by Lord Hewart CJ in *R v Sussex Justices Ex parte McCarthy*?¹⁷ We think not. Besides, why must a dissatisfied consumer complainant wait for a period within sixty days of communication of the decision in question before the licensee informs the consumer complainant of the available option to refer the complaint to the regulator, the NCC for possible resolution. This procedure is needlessly dilatory and certainly not consumer friendly. The truth of the matter is that licensed telecommunications providers do not disclose the options available, to the consumer.

A similar provision to the foregoing is repeated *mutatis mutandis* in sub-regulation (1) of Regulation 43 of the General Code, to wit: licensees shall advise consumers that in the event they remain dissatisfied with the outcome of a complaint, they may refer the complaint to identified persons or departments within the Commission.¹⁸ Ordinarily, complaint handling process are to be provided free of charge. This is however, subject to a condition whereby a licensee may impose a reasonable charge for the process, if investigation of the complaint requires the retrieval of records which are more than one year old; or where the retrieval occasions incurring incremental expense or significant inconvenience to the licensee. In any event, it is mandatory that any such charges shall be identified and agreed to by the consumer complainant before being incurred.¹⁹ What constitutes ‘a reasonable charge’ or ‘significant inconvenience’ as used in the particular regulation under the General Code, are not defined. Definition of such fluid concepts appears to be left to the discretion of the licensees to the total exclusion of the consumer. It seems that in

¹⁵ *Ibid*, regulation 41(1) (2) and (3).

¹⁶ *Ibid*, regulation 41(6) and (7).

¹⁷ (1924) IKB 256.

¹⁸ This provision is *mutatis mutandis* similar to the provisions of regulation 41(7). Both provisions border on reference of unresolved complaints to the NCC. The specificity of ‘identified persons or departments within the Commission’ introduced by regulation 43(1) adds nothing substantially new to the earlier provision. This is so because by internal administrative mechanism, a complaint referred to the NCC could, and indeed should be directed to appropriate persons or departments for attention. The latter provision being a mere surplusage, should therefore be expunged from the General Code.

¹⁹ Regulation 42 of the General Code

order to ensure that justice is even handed and must be seen to be manifestly done, there is need for regulator intervention to address the imbalance.

It is a mandatory requirement of the General Code on complaint handling that a licensee must not impose any disconnection or credit management action with respect to any service to which a complaint or billing dispute relates during the pendency or investigation of such complaint or dispute. The licensee is however, duty bound to inform the consumer that during the period of investigation of the complaint or disputes, he is obliged to make payment of any outstanding amounts of money other than that which is specifically in dispute and, subject of complaint.²⁰ By the provisions of sub-regulation (2) of regulation 44 of the General Code.

Where [however] a licensee intends to take disconnection or credit management action against a consumer regarding any amount that has been the subject of a complaint or dispute, the licensee will specifically notify the consumer before taking the intended action.

The foregoing provision appears to be a derogation of sub-regulation (1) of regulation 44 of the General Code, notwithstanding that the said sub-regulation (1) is mandatory. It also appears that under sub-regulation (2) of regulation 44, it is not mandatory that the licensee notifies the consumer before taking the intended action since the provision uses the word ‘will’ instead of ‘shall’. Thus, the provisions of sub-regulations (1) and (2) of regulation 44 appear to be at cross-purposes and seemingly contradictory. They are not complementary as sub-regulation (2) does not flow from the necessary intendment of sub-regulation (1) before it, *unless* the ‘intended action’ shall be carried out at the conclusion of investigation into the complaint or dispute, in which case the licensee ought to notify the consumer about the outcome. This will more readily meet the ends of justice. There is also need for regulator intervention here, to bring the said provisions in line with the imperatives of transparent justice.

Licensees shall maintain appropriate recording systems for consumer complaints and their outcomes as well as categorise and analyse the complaints data with a view to identifying and possibly addressing recurrent problems. In all these circumstances, the licensee must inform the consumer accordingly. Furthermore, licensees are mandatorily enjoined to review their complaint handling processes with a view to improving on their efficiency and effectiveness. They shall forward a report of same to the NCC and reflect any changes to the process as may be identified by the Commission. Information collected and recorded as part of the licensees complaint handling processes shall be retained by the licensees for a period of at least twelve calendar months from the date of the resolution of a complaint or dispute.²¹ Information is emphasized to be key in the foregoing provision. Information flow from the licensee to the consumer still constitutes a daunting challenge. Information is scarcely made available to the consumer nor are many a consumer complaint committed in any recording system or written form and categorized or analyzed howsoever. Thus, the possible advantage of such analysis as a veritable data bank for identifying and possibly addressing recurrent problems, concerns and complaints are regrettably lost.

4 Paramountcy of Consumer Welfare

The NCC in apparent recognition of the place of the consumer in the telecommunications industry and the need to avert or minimize potential dispute areas, has put in place special structures to address the needs and desires of the consumer as manifested in two major programmes – the Telecom Consumer Parliament and the Consumer Outreach Programme. The former engages the consumer in an interactive session whereby consumers of the telecommunications products and services are afforded the opportunity of freely expressing their views and concerns about the quality of services right in the presence of the service providers, the regulator and the media. Monthly sessions of the Consumer Parliament which are rotated from one part of the country to another, are also televised on major television network’s such that other consumers who are unable to attend any particular session can readily view and share not only the experience of other consumers but also the input of both the service providers and the regulator. The Telcoms Consumer Parliament is a novel regulatory initiative which earned the NCC and Nigeria, commendations from the International Telecommunications Union (ITU) and Information Communication Technology (ICT) professionals and groups worldwide. The Consumer Parliament has contributed immensely in creating awareness of the rights of consumers and the obligations of service providers in the resolution of problems and concerns *inter se*. The parliament has created a platform for operators to clarify issues related to service delivery for the benefit of their subscribers and also to publicly render account of their stewardship. Consequently, useful feedbacks from the Consumer Parliament programme have apparently culminated in regulatory interventions by the

²⁰*Ibid*, regulation 44(1).

²¹*Ibid*, regulations 45, 46 and 48.

NCC. The latter outreach programme of the NCC takes a cue from the former but moves the interactive sessions closer to the communities.

The foregoing interactive currents have as it were, prompted the NCC to put in place proactive policies and programmes that serve the interest of consumers through the introduction of 'price caps'. Within the confines of the 'price caps', telecommunications operators were allowed to charge consumers for services provided in accordance with international best practices. Competition was introduced in all segments of the telecommunication service portfolio so as to ensure that consumers have a wide spectrum of products and services to choose from without impediments. Similarly, the NCC intervened decisively to stop the charging of consumers for calls made to customer care lines to lodge consumer complaints.²²

Unavailability or poor quality of service reception in rural and remote parts of Nigeria has remained a daunting challenge in the telecommunications industry. In recognition of the apparent unwillingness of service operators to provide telecommunications services in such areas ostensibly due to their unviability against the compelling need to do so, and pursuant to the aims of achieving universal access to telecommunications services, the NCC established the Universal Service Provision Fund (USPF). The Fund is to provide incentives to operators to extend services to such remote unserved and underserved areas. The NCC has similarly defined acceptable benchmark of quality of service which operators in the industry are expected to meet, as well as the sanction to be imposed on defaulters for failure to meet the said standard. To ensure compliance, regular monitoring of the operations of the licensees across Nigeria by the NCC teams comprising members drawn from the public and private sectors of the Nigerian economy are undertaken, while periodic reports of their monitoring activities are published in the print and electronic media.²³

Considering the diversity and geographical vastness of Nigeria, the NCC deemed it appropriate to promote and nurture *consumerism* by identifying and collaborating with credible consumer advocacy groups. The effort appears to be with a view to furthering the ends of consumer protection and empowerment in the country as a precondition for orderly and sustainable growth and development of the telecommunications industry. Consumerism is conceived as a social movement aimed at enhancing the position of the consumer. The primary objective is to ensure that the consumer obtains value for money expended on goods and services. The movement could be championed by an individual, a group of individuals, business concerns or by the government. This movement which is a product of consumer discontent has assumed a greater significance today. A prominent prompting factor is the spate of the industrialization with its attendant side effects. The essence of consumerism is to maximize consumer satisfaction. Satisfaction in this sense cuts across a diversity of issues including product quality, price, relevant information, metrology and environmental protection.²⁴

It is thus, imperative that operating telecommunications companies should ensure that their consumers are provided acceptable quality of service in addition to promptly and professionally addressing their grievances and complaints. Ndukwe aptly captures and conveys the positions of the consumer *vis-à-vis* the expectation from operating telecommunications companies. In his words.

Since the consumer is KING, operating companies should strive to anticipate consumer needs, expectations and preferences and work diligently to meet them. They should be transparent, fair and reasonable in their dealings with consumers by eschewing sharp practices, incorrect billing, untrue and deceptive advertisements, non-disclosure of vital products or service information, false promises, reluctance or apathy towards consumer grievance handling and respect for the feeling of the average consumer.²⁵

The NCC in 2007 put in place a model Consumer Code of Practice Regulations as reference document for both consumers and licensed telecommunications operators in Nigeria. Each licensee is required to produce its adaptation of the code and submit same to the NCC for review and approval. The model code stipulates service level agreements, the rights and responsibilities of each party, as well as the procedure for resolution of disagreements whenever they arise *inter partes*. The NCC recognises that in developing individual licensee adaptation of consumer code, there may be differentials occasioned by diversity of service platforms used, or types of services provided such as wireless, as against fixed line, or telephony versus data services. These notwithstanding, the model code remains a minimum

²²E. Ndukwe, 'The Place of the Consumer in the Nigerian telecoms Industry', *op cit*, p.5.

²³*Ibid.*

²⁴See Felicia N. Monye, *The Consumer and Consumer Protection in Nigeria: Struggles, Burdens and Hopes*, An Inaugural Lecture of the University of Nigeria delivered on May 26, 2011, (Nsukka: University of Nigeria Press Ltd, 2011) p. 6.

²⁵E. Ndukwe, 'The Place of the Consumer in the Nigerian Telecom Industry', *op cit*, p.6.

set of requirements and the minimum standard for the provision of services and related consumer practices applicable to licensees.²⁶

Generally, a Consumer Code however prepared, shall include model procedures for:

- (a) reasonably meeting consumer requirements;
- (b) the handling of consumer complaints and disputes including an inexpensive arbitration process other than a court, and procedures for the compensation of consumers in case of a breach of a consumer code; and
- (c) the protection of consumer information.²⁷

Other matters to be embodied in the Code include:

- (a) further recourse available to a consumer who is dissatisfied with the licensee's complaint-handling procedures together with specific details of compensation and refund schemes offered by licensees to its consumers;
- (b) the provision of information to consumers regarding services, rates and performance;
- (c) the provisioning and fault repair of services;
- (d) the advertising or representation of services;
- (e) consumer charging, billing, collection and credit practices; and
- (f) any other matter which in the opinion of the Commission may be of concern to consumers.²⁸

According to the Consumer Code, the NCC shall within thirty days of submission of individual licensee adaptation consumer code, approve or alter, or refuse the said code with accompanying directions on areas of alteration or improvement as the case may be. Pending approval of individual licensee Consumer Code by the NCC, the model code shall continue to govern the provision of services and related consumer practices applicable to such individual licensee. Upon approval however, the individual licensee Consumer Code shall not only be published but shall govern the said provision of services and related consumer practices applicable with effect from the date of its publication. Penalties, fines or sanctions are imposed on licensees for non-compliance with the Consumer Codes as may be determined by the NCC from time to time. Besides, additional rules, directions or guidelines on any aspect or aspects of the Consumer Code including amendments thereto may periodically be issued or made by the NCC.²⁹ The General Consumer Code of Practice otherwise referred to as the 'General Code' is to be read in conjunction with the Consumer Code.³⁰ The General Code applies to all licensees in regard to all telecommunications services offered to the public, taking cognizance of certain peculiarities of service platforms or types of services provided.³¹ The NCC has indeed, imposed varying sums of money as fines on licensed service providers for various breaches of the codes. It is very doubtful whether these fines have adequately deterred the licensees from further breaches.

Prior to entering into a contract for any service, consumers must be given a complete description of the service in plain and unambiguous language devoid of unnecessary technical terms; and where applicable, consumers must be adequately informed of other services required to effectively utilise the service intended and the extent of such requirement or service dependencies. The licensee must also provide information on the service quality level offered, the waiting time for initial connection plus any service areas and covering maps where applicable. Also, specific information about any compensation, refund or other arrangements which may apply in default of meeting contracted quality service levels as well as the procedure and methods for resolution of contract service disputes must be provided by the licensee. Where services are coupled with one or more other services, the licensee shall provide a description of each component service or product and if applicable, their respective prices on stand-alone basis. Where services are bundled with those from third parties, the licensee shall be fully responsible for the effective performance of the entire package including service support maintenance, complaints handling and dispute resolution. Where services are subject to upgrade or migration option, consumers shall be so informed, including any changes in service performance and approved fees or charges resulting from the upgrade or migration.³²

²⁶The provisions of ss. 4(1) (b) and (p), 70 and 106 of the Act enable the NCC to make the Consumer Code of Practice Regulations 2007, hereinafter, 'the Consumer Code'.

²⁷S. 106(3) (a) (b) and (c) of the Act.

²⁸*Ibid*, s. 106(4) (a) – (f).

²⁹See generally, regulations 6,7,8,9,10 and 11 of the Consumer Code.

³⁰Regulation 1(1) and (2) of the General Code.

³¹*Ibid*, regulation 3.

³² *Ibid*, regulations 8(1) – (5).

It must similarly be noted, that before a contract for service is entered into, the licensee shall inform the consumer about the applicable rates or charges, the charges content and each part thereof including the method of its calculation; frequency of, or circumstance that give rise to the charge; whether the charges or parts thereof are subject to periodic change, the circumstance of such change, and how the consumer is to be so informed. The contract itself shall contain the commencement date; the minimum contract term; the minimum contract period as well as the manner and consequences of termination; situations warranting termination; the quantum and method of calculating termination; the quantum and method of calculating any charges payable upon early termination. The contract shall also state the terms and conditions of contract renewal if applicable, disconnection and reconnection and fees chargeable therefor as well as refund of any deposit including timing and charge deductions. It shall also outline situations that may give rise to the interruption, withdrawal or discontinuation of the service; as well as delivery, installation or activation of service. The licensee shall provide information to the consumer on contractual warranty and maintenance for services offered.³³ Similarly, the licensee must endeavour to give advance warning of anticipated service disruption or planned outages, including details thereof, the services and service areas affected plus any applicable compensation or other remedies; and in the event of *force majeure*, the licensee must endeavour to rectify the fault within a 'reasonable time' in the circumstance.³⁴ What constitutes 'reasonable time' is not defined and is apparently left to the judgment of the parties. This omission is likely to create room for disputes and complaints. Under regulation 16, licensees are to provide emergency services including location identification information, special numbers and routing to emergency services locations. Calls to emergency services shall be free of charge.

It is important to underscore however, that information is key in virtually all, if not all dealings between the customer and licensee. Thus, even where a customer defaults in paying all or part of a bill to the licensee for services provided, any measures taken by the latter to effect payment or disconnection shall be proportionate and not unduly discriminatory. Thus, any contemplated action must be preceded by appropriate warning to the consumer of consequent service interruption or discontinuation. Any service interruption or disconnection in this regard must be confined as far as is technically feasible.³⁵ This apparent caveat of 'technical feasibility' seems to provide a veritable escape route for many a licensee intent on interruption or disconnection of service. It is advised that this and similar amorphous provisions be checked by the NCC, to avoid abuse.

For the rights of the consumers embodied in the General Code, there are corresponding obligations. Accordingly, consumers shall be bound by a licensee's terms of service on return of a signed service agreement. Besides, consumers shall be deemed to accept a licensee's service terms at the commencement of use of any service provided by the licensee. Also, the consumer shall grant access to a licensee or its authorized agents without charge, to premises, equipment or facility as reasonably required for purposes of maintenance of service equipment or facility. The consumer shall not unauthorisedly tamper with a licensee's service equipment or facility, nor re-sell any service provided by a licensee, save as permitted by the service agreement of the licensee subject however, to any licensing or authorisation of the NCC pursuant to the Act. The consumer shall not misuse public telecommunications services by dishonestly obtaining same; or dishonestly or fraudulently possessing or applying equipment that may be used to obtain same; or using same to send messages which are obscene, threatening or otherwise contrary to law, policy or regulation.³⁶

It is also worthy, of note that in a competitive market environment such as obtains in Nigeria, a consumer may be tempted to accumulate debts with one licensee for services used, and then 'switch' services to another licensee without settling the accumulated debts with the previous licensee. This act of 'dishonest churning' by consumers constitute an abuse of the market. Thus, to check such antics, consumers shall be bound to all accumulated debts with a particular licensee before switching over to another licensed service provider. Accordingly, licensees are permitted to investigate if a person seeking its services had settled with his or her previous supplier, before assuming any

³³ *Ibid*, regulations, 9, 10 and 11. See also regulations 21, 22 and 23(3) on bills and billings.

³⁴ *Ibid*, regulation 13(3) and (4).

³⁵ *Ibid*, regulation 27.

³⁶ *Ibid*, part v, regulations 28 – 32.

obligation to supply services to that person.³⁷ It seems that this provision may not be applicable to consumers of prepaid services such as GSM subscribers. This is because the prepaid subscriber is cut off immediately the value of the recharge in his telephone expires. The issue of settling outstanding debt in this regard may not arise.

Part VII of the General Code contains provisions relating to complaints handling. Thereunder, licensees are to provide easily conveyed information about consumer complaint handling processes in various media, including formats as otherwise directed periodically by the NCC.

The telecommunications regulator in Nigeria, the NCC has put in place regulations aimed at creating a conducive competitive environment where the interests of the consumers, the licensed telecommunications operators and the government, all being stakeholders in the industry, can be mutually protected in a beneficial manner. However, as Ndukwe admitted, the NCC ‘must always strive to strike a balance in meeting the expectations of the many stakeholders even when the interests of these stakeholders conflict with each other’.³⁸ In Ndukwe’s graphic example, the average consumer would want the regulator to withdraw the license of a telecommunication operator because of failure to deliver a text message to his intended recipient. However, the regulator is well aware that such a withdrawal would adversely affect millions of Nigerians and lead to loss of huge investment in the economy and loss of lots of jobs of gainfully employed Nigerians amidst its consequent adverse multiplier effect. According to him:

In a fully liberalised market such as what we have in Nigeria today, the future of each and every service provider would be bright or³⁸ bleak depending on how it manages its consumers and assures consumer satisfaction. As we introduce number portability and other such measures, the ability to delight and retain the consumer would be determined on the basis of how fair and transparent service providers are in their dealings with their consumers.³⁹

5. Conclusion

There is scarcely any doubt that the telecommunications regulator, the NCC has made, and is still making commendable efforts to ensure efficient service delivery in the industry. It has put in place various regulations and introduced programmes such as consumer parliament and outreaches for the good of the consumer and to ensure consumer welfare. However, these seemingly lofty regulations have remained excellent provisions on paper and have not practically moved telecommunications service providers to deliver as envisaged. It is sad to note that adequate information are not made available to consumers nor are clarifications made about geographical and group limitations of certain services rendered by service providers. Even consumer codes of individual licensed telephone operators are neither readily available to consumers nor are they published in at least one national daily newspaper as required by law.⁴⁰ Subsequent annual reviews thereof are similarly not readily ascertainable. It is still seemingly a ‘huge mirage’ to expect compensation from service providers for infraction of the rights of the consumer. Thus, drop calls, undelivered messages, unsolicited calls and messages, including unwanted songs and promotions which are imposed on consumers etc are not readily redressed. Nor do service providers bother to give prior notice of service disruption howsoever, to the consumer. Indiscriminate erection of telecommunication masts and base stations amidst all the health concerns is still not abated. It appears quite evident that imposition of fines on telecommunications providers has not deterred them from observing the NCC regulations more in the breach. It is also true that a more punitive punishment such as revocation of licenses would be quite extreme and may lead to loss of investment and jobs. However, there is need for more rapid involvement of the regulator in resolving consumer concerns and complaints without allowing the dilatory prior intervention of the service provider. This will ensure that justice is not only done, but is delivered on real time bases. And until this more proactive measure is adopted by the telecommunications industry regulator, then all assertions about ‘the consumer being the king’ or indeed, paramountcy of consumer welfare in the resolution of consumer concerns and complaints will remain mere slogans and myths.

³⁷ *Ibid*, regulation 33(1) and (2).

³⁸ E Ndukwe, ‘The Place of the Consumer in the Nigerian Telecoms Industry’, *op cit*, p.3.

³⁹ *Ibid*, p.7.

⁴⁰ s. 106(5) and (6) of the Act.