

AN APPRAISAL OF THE PROTECTION OF CONSUMERS' RIGHTS IN THE NIGERIA'S TELECOMMUNICATIONS INDUSTRY

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Abstract

Telecommunication industry is very pertinent for the growth and development of any nation. It involves a long-distance transmission of information via electronic devices such as computers, phones and radios. Telecommunication utilizes various technologies and systems to facilitate communication and/or interaction between individuals or groups spread across various regions or places. In Nigeria, it has made communication easier and clearly quicker. As the telecommunication industry continues to increase and boom in Nigeria, the protection of the rights of people who are obviously the major consumers of the product in the country becomes even more important. This Article critically evaluated the protection of the rights of consumers in the Nigerian telecommunication industry. The researchers employed doctrinal research methodology while data were garnered from both primary and secondary sources. Findings revealed that little or no attention is paid to the protection of the rights of consumers in the Nigerian telecommunication industry as fraud, exploitation, extortion and all manner of abusive practices in the sector hold sway. The study ended with recommendations centred around strengthening the legal and enforcement mechanisms, improving transparency and access to information amongst other things.

Keywords: Consumers, Consumer's Rights, Rights, Telecommunication, Industry.

1. Introduction

The telecommunications industry in Nigeria plays a vital role in economic growth and development of the country. As the industry continues to rapidly evolve, it is essential to protect the rights of consumers who rely on their services. Due to little or no attention paid to the protection of consumer rights in Nigeria, fraudulent and abusive practices by manufacturers and merchants of goods and services are widespread.

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Like other countries around the globe, Nigeria boasts of well-crafted legal framework that guide and guards against abusive business practices and/or infringement upon the rights of consumers by merchants of goods and services. For instance, under the 1999 Constitution of the Federal Republic of Nigeria¹, the rights to liberty and discrimination from abusive practices in any form or manner of rendering of goods and services to consumers are provided for. These rights are also protected by The African Charter on Human and Peoples Rights² which has been ratified in Nigeria by the country's National Assembly.

Consumers rights in the telecommunications industry encompass and bodies various aspects, including the right to quality service, privacy and data protection, fair billing and pricing, access to information, redress and complaints resolution, and consumer education³. The Nigerian telecommunications industry has continued to grow in tremendous and phenomenal proportion following the implementation of market liberalization reforms that were initiated in the 1990s. Consequently, Nigeria has grown from having one of the world's lowest teledensity rates with about 400,000 lines in 2000 to having over 150 million telecommunications subscribers by February 2016.⁴ Recent statistics from the Nigerian Communications Commission (NCC) indicate that Nigeria achieved a tele density of 106.16 percent⁵ by the beginning of 2016 from 0.38 percent in 2000.⁶ The Nigerian Communication Commission arrived at this recent tele density data on the basis of the last national population census of 2006 which placed Nigeria's population at 140 million people.⁷ Currently, Nigeria has the largest population of telecommunications subscribers in Africa⁸, and also one of the largest in the globe. The Nigerian telecommunications industry has made significant strides in protecting consumer rights, but challenges persist. Despite regulatory efforts, operators often fail to comply with consumer protection standards. This study appraised the rights of consumers in Nigeria's telecommunications industry, examining the legal framework, decided cases, and industry practices.

¹ Sections 35 and 49.

² African Charter on Human and Peoples' Rights, ratified by Cap A9, Laws of the Federation of Nigeria, 1990.

³ Nigerian Communications Act, 2003, Section 45.

⁴ Nigerian Communications Commission, *Subscriber Statistics* (22 March, 2016) at <http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=125&itemid=73> accessed on 30 March, 2016.

⁵ NCC, „Subscriber Statistics – February 2016“, (7 March, 2016), <http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=125&itemid=73> accessed on 30 March, 2016.

⁶ ITU Statistics (May 2001), available at <<http://www.itu.int/itudoc/itu-t/com3/focus/72404-fr.html>>. See also E Ndukwe (Executive Vice Chairman, NCC) „Telecommunications as a Vehicle for Socio-Economic Development“, p.3, available at <http://www.ncc.gov.ng/archive/speechs_presentations/EVC's%20presentation/2009/socio.pdf> accessed on 30 March, 2016.

⁷ *Ibid.*

⁸ National Bureau of Statistics, *Nigerian Telecommunications Sector (2010 – 2014) – Summary Report on Telecommunication for National and International Regions* (Abuja: National Bureau of Statistics, February 2015) pp.1 and 11.

2. Meaning of Consumers and their rights

A Consumer has been defined by the Consumer Protection Council Act⁹, as an individual who purchases, uses, maintains or disposes of products or services. It refers to the actions and/or decisions made by individuals and households when they acquire, use, and dispose of goods and services¹⁰.

In Federal Competition and Consumer Protection Act¹¹ which is the primary legislation that governs and protects the rights of consumers in Nigeria, consumer is defined to include any person:

1. Who purchases or offers to purchase goods other 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
2. To whom a service is rendered.

A consumer, being the last link in the production chain, has vested legal rights from producers of the goods and services being offered in the market. These rights are as follows:

- a. A consumer has the right to safety and protection from hazardous goods and fraudulent services or business practices in Nigeria.
- b. A consumer has absolute right to information, education of products and awareness to the processes, uses and guidelines to the products and services he is being rendered by manufacturers. The Nigerian Communication Act¹² requires operators to provide information to consumers. *In Airtel v NCC*¹³, the court in this case clearly emphasized the importance of providing information to consumers about services and tariffs. More so, in *MTN v NCC*¹⁴ the court of law emphasized on and highlighted the importance of consumer education, stating in clear terms that operators should always educate consumers about their rights.
- c. A consumer has a right of choice. The right of choice is key to a consumer of product to enable such consumer to make the right choice from a competitive and predatory market with beaming adverts and prices from a number of products in circulation;
- d. A consumer has the right to be satisfied that the product is of standard quality and also will be of benefit to his basic needs. He has right to reliable, efficient and responsive telecommunication services. The Nigerian Communication Act¹⁵

⁹ Consumer Protection Council Act, Cap C25, Laws of the Federation of Nigeria, 2004.

¹⁰ Available at <http://www.global.com/dictionary/consumer-behaviour/5486:-:text=consumer%20behavior%20refers%20the-dispose%20of%20goods%20and>

¹¹ Federal Competition and Consumer Protection Act, 2018, section 167(1).

¹² Nigeria Communication Act, 2003 section 45.

¹³ [2015] 15 NWLR (Pt. 1481) 211.

¹⁴ [2011] 12 NWLR (Pt 1261) 362.

¹⁵ Nigerian Communication Act, 2003, section 45,

mandates NCC to ensure operators provide quality services. *In NCC v MTN Nigeria*¹⁶, the court upheld the power of NCC to regulate service quality, pointing out its importance.

- e. A consumer has the fundamental right of being heard as contained in the Constitution as well as redress and compensation whenever his rights are being infringed upon by a manufacturer or merchant. He has right to redress and complaint resolution.

The case of *Globacom v NCC*¹⁷ demonstrated the need for operators to establish effective complaints resolution mechanisms, ensuring consumers grievances are addressed promptly.

- f. A consumer has a right to safe and secure environment from noxious and harmful industrial chemicals, pollutants and toxic wastes from manufacturing plants.
- g. A consumer also has right to privacy and data protection: Operators must at all times safeguard consumers' data. *In Eaglaton v Abuja Disco*¹⁸, the court ruled that operators must protect consumers data.
- h. A consumer has right to fair billing and pricing: The Nigerian Communication Act¹⁹, prohibits unfair billing practices. Operators must provide clear billing information to the consumers at all-time material.

3. The Protection of Consumers' Rights in the Nigerian Telecommunication Industry

Consumers in Nigeria have the fundamental right to be protected from unfair and abusive business practices of manufacturers and merchants. The 1999 Constitution of the Federal Republic of Nigeria, and the Federal Competition and Consumer Protection Act²⁰ are the primary legislations that govern and protect the rights of consumers in Nigeria. These laws are designed and crafted to ensure that the rights of consumers are protected and as well ensure that fair trade competition and the free flow of truthful information in the market place are achieved through the instrumentality and mechanisms of these laws.

The Federal Competition and Consumer Protection Act (FCCPA) established the Federal Competition and Consumer Protection Commission (FCCPC) to, among other things:

1. Protect and promote consumers' interest and welfare by providing consumers with a wider variety of quality products at competitive price: and
2. Prohibit restrictive or unfair business practices that prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria.

¹⁶(2014)1NWL(R)(PT.1385)392.

¹⁷ [2013] 14 NWLR (Pt. 1372) 1.

¹⁸ [2016] 10 NWLR (pt. 1522) 241.

¹⁹ Nigerian Communication Act, 2003, section 83.

²⁰ Federal Competition and Consumer Protection Act, 2018.

Before the enactment of the FCCPA, the principal legislation that protected the rights of consumers in Nigeria was the Consumer Protection Council Act (CPCA) which established the Consumer Protection Council (CPC) and the FCCPC assumed all rights, interests, obligations, assets and liabilities of the CPC.

In the Nigerian telecommunication industry, the legal framework for the protection of consumers is the Nigerian Communications Act ²¹ which establishes the Nigeria Communications Commission (NCC) and sets out its powers and responsibilities, including consumer protection.

The rights of consumers are very fundamental and their protection is very crucial. In the case of *Ransome-Kuti v. Attorney General of the Federation*²², the court emphasized that: "A fundamental right is a right which stands above the ordinary laws of the land and which is antecedent to the political society. It is a precondition to a civilized existence..., the entrenchment of a right in the constitution does not create rights where none existed before; rather it is merely intended to protect existing rights from subsequent legislative interference and to enable their assertion against arbitrary, oppressive and illegal executive action".

A consumer whose rights have been infringed upon by manufacturers, is entitled under the Nigerian laws to seek redress in the appropriate court of law for possible compensation and punishment of errant manufacturers and merchants. In the case of *Nwosu v. Nwosu*,²³ the court pointed out that: "A legal right is a right cognizable in law. It means a right recognized by law and capable of being enforced by the plaintiff. It is the right of a party recognized and protected by a rule of law, the violation of which would be a legal wrong done to the interest of the plaintiff, even though no action is taken."

A consumer can seek protection and/or redress in the appropriate court of law in Nigeria either through individual law suit or class action.

The celebrated case of *Donoghue v. Stevenson*²⁴ otherwise called "the snail in the bottle case" which established the first three basic legal principles of "negligence", "duty of care" and "neighbourhood principle", was a classical example that an individual can institute a civil action against a manufacturer or service provider if the respondent's negligence caused the plaintiff some injury or loss of property.

Legal action under consumer protection rights laws can be instituted at the Federal as well as State High courts in all states across Nigeria. Where a victim files a complaint

²¹ Nigeria Communications Act, 2003.

²² [1985] 2 NWLR (Pt.6) 211

²³ [2012] 8 NWLR (Pt.1301) 5

²⁴ [1932] AC 562

against any company for unfair business practice, such actions can also be enforced by government agencies and offices of Attorney General.

A class action suit on the other hand, involves a group of affected individuals or consumers whose rights have been infringed upon by a manufacturer, company or merchant of products, goods and services. A familiar case in this type of action is the 1996 Kano trovafloxacin trial litigation involving *Abdullahi v. Pfizer* and *Adamu v. Pfizer* where five children given trovafloxacin died as well as six of those given ceftriaxone. On February 23, 2011, pfizer announced an out of Court settlement of the sum of \$75 million to affected families.

4. Challenges to the Protection of Rights of Consumers in the Nigerian Telecommunication Sector

- a. Inadequate enforcement: Despite regulatory efforts, operators often fail to comply with consumer protection standards, as evident in *Etisalat v. NCC* supra.
- b. Limited access to information: Consumers often lack access to clear information about services and tariffs, as highlighted in *Airtel v. NCC* supra.
- c. Illiteracy: Most of the consumers in Nigeria don't even know their rights not to talk of protecting or fighting for the said rights. This is a very big problem bedeviling consumers of telecommunication services in Nigeria.
- d. Lack of Awareness is also another challenge to the protection of the rights of consumers. Most consumers are not aware of the fact that they have rights and do not know that such are protected under the law.

5. Conclusion and Recommendations.

In conclusion, this study has clearly examined not just the rights of consumers in Nigeria but also the protection of such rights in the Nigeria's telecommunications industry. It also examined the legal framework, decided cases, and industry practices in Nigeria as they relate to consumers and their rights in Nigeria. While it is abundantly clear that serious progress has been made in the protection of the rights of consumers in Nigeria, challenges still persist. To enhance consumers' right protection in Nigeria, we recommend the following:

1. Strengthen Enforcement Mechanisms: The NCC and Consumer Protection Council should enhance their enforcement powers to ensure operators comply with consumer protection regulations.
2. Improve Transparency and Access to Information: Operators should provide clear, accurate, and accessible information about services, tariffs, and consumer rights.
3. Enhance Consumer Education Initiatives: The NCC, operators, and consumer advocacy groups should collaborate to educate consumers about their rights and responsibilities.
4. Review and Update Regulations: The NCC and relevant authorities should periodically review and update regulations to address emerging issues and technologies.

5. Encourage Consumer Feedback and Participation: Operators and regulators should establish channels for consumers to provide feedback and participate in decision-making processes.
6. Foster Collaboration and Industry Best Practices: Operators should share best practices and collaborate to address common consumer protection challenges.
7. Develop a Consumer Protection Framework: The NCC and Consumer Protection Council should develop a comprehensive framework outlining consumer protection standards and guidelines.
8. Provide Incentives for Compliance: Regulators could offer incentives for operators that demonstrate excellent consumer protection practices.
9. Establish a Consumer Complaints Database: The NCC and Consumer Protection Council should create a database to track consumer complaints and monitor operator performance.
10. Continuously Monitor and Evaluate: Regulators and operators should regularly assess the effectiveness of consumer protection measures and make improvements as needed.

It is our firm belief that by implementing these recommendations, Nigeria's telecommunications industry can better protect consumer rights, enhance customer satisfaction, and promote a fair and competitive market.