

## Regulatory Framework for Consumers of Telecommunication Services in Nigeria

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**Abstract:** *This paper examines the regulatory framework for consumers of telecommunication services in Nigeria. An examination of self-regulatory framework, regulatory institutions, extant law and constitutional provisions is undertaken with a view to determining whether the consumers of telecommunication services are adequately protected from sharp practices by services providers. The industry is, however, not without its challenges. In general, telecommunication industries are regulated by legal and institutional framework with a view to achieving the purposes for establishing the industries. The conclusion drawn from the existing statutes and international best practices is that the NCC has gone a step further by encouraging consumerism and partnering with advocacy groups in the telecom sector. It critically analyse, from both legal and jurisprudential perspectives, the reasons why telecoms consumers who suffers injury as a result of breach of care can maintain a civil action in negligence and where there is poor network coverage by the service providers, the consumer is entitled to repudiate the contract and sue for damages.*

**Key words:** *Regulatory, Framework, Consumers, Telecommunications*

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### 1.0 Introduction

Regulation of relationships is a main pre-occupation of government in virtually all societies. This is necessary because in most relationships, especially of commercial nature, parties or persons involved are not always of equal bargaining status. Some are strong, others are weak. The weak, very often, demand protection as they cannot protect themselves. Regulation is therefore indispensable in ensuring fairness, equity, removal of exploitation, monopoly, unscrupulous advertisement, trade malpractices and so many other vices in the market place. The consumer is,

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in this context, very vulnerable in the hands of the manufacturers, distributors and other senior intermediaries in the chain of distribution of goods and services. Case law<sup>1</sup> and some legislative rules<sup>2</sup> have sought to ameliorate or reduce this vulnerability by providing for protection for the consumer. These have not completely achieved adequate protection for the consumer. This is all the more so in the case of consumers of telecommunication services, a kind of service that are recently being offered to numerous persons within the country.

It is against this background that it becomes apposite to examine the nature of regulatory regime that exists to protect consumers of telecommunication services. This article examines extensively the notion of self-regulation, institutional framework of consumer protection with particular reference to consumer of telecommunication services with a view to assessing the effectiveness of the regulatory regime in the country.

Protecting the consumer from sharp practices by service providers is usually the pre-occupation of regulators of consumer sensitive services. It concludes that the industry is however, not without challenges as enforcing laid down regulations often times lead to long legal battles and frustrating technicalities employed by service providers. Nevertheless, the recent development in consumer advocacy is therefore impressive as it is positive sign of strong consumer protection regime in Nigeria.

### **1.1 Self-Regulatory Framework**

A self-regulatory framework is the initiative taken by an industry, trade or professional associations to improve on the quality of goods and services they provide to the public. This can be achieved through the code of practice regulation of the industry or professional associations in question. There are four elements that safeguard consumer rights: consumer rights law, competition law, telecoms and internet law, and self-regulatory frameworks. Telecoms law usually enables the setting up of a separate regulatory authority and self-regulatory frameworks within the industry<sup>3</sup>. The latter can either be put in place as part of the license conditions for an operator or are self-imposed. Without these four elements, it is difficult for consumer complaints to be dealt with, as there will be no framework for dealing with them and no recourse if operators (or others) fail to do so.

These four elements do not guarantee consumer protection. One major precondition for their effectiveness is political will to do the needful and the regulator's ability to intervene where necessary. Regulators must nevertheless maintain a pragmatic approach. Another precondition is the clear application and transparent functioning of the rule of law precluding the ability of the executive of the Government to dictate the results reached in the Courts or for institutions or individuals to corruptly obtain a particular legal result.

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<sup>1</sup> *Donoghue v. Stevenson*(1932) A.C.560, *Osemobor v. Niger Biscuits Co. Ltd.* (1973) NCLR 382; (1973) CCHCJ 74, *Nigeria Bottling Co. Plc v. Okwejimunor & Anor* (1993) 8 NWLR PT. 295, *Nigeria Bottling Co. Ltd. v. Ngonadi* (1985) 5 S.C. 317; (1985) 1 NWLR (PT. 4) 739, *Okonkwo v. Guinness (Nig.) Ltd & Anor* (1980) 1 PLR 583; *Ogbidi v. Guinness (Nig.) Ltd & Anor* (1983) 1 FNLR 67, *Ebelamu v. Guinness (Nig.) Ltd.* (1983) 1 FNLR 42; *Abouzaid v. Mother Care (U.K) Ltd.* 2000 B3/00/227; *G.K.F Investment Nigeria Limited v. Nigeria Telecommunication PLC* (2009) vol. 174 LRCN P. 1-43, *All Progressive Congress v. NCC & 5 ors Unreported FHC/CS/16/15.*

<sup>2</sup> Consumer Protection Council Act Cap. C25 LFN 2010.

<sup>3</sup> Two UK examples of Codes of Practice: Toucan code of practice <http://www.toucan.com/site/code.aspx> 3G code of practice <http://www.three.co.uk/advice/detail.omp> accessed on 20/3/2011.

In telecommunications industry, the Nigerian Communications Commission has developed and published Customer Code of Practice Regulations<sup>4</sup> in exercise of its powers. The codes so prepared are subject to annual reviews and ratification by the commission<sup>5</sup>. These codes of practice are generally meant to complement existing legal rules and not to supplant the law<sup>6</sup>. The code is a framework for best practice in relation to the provision of information, protection of data and complaints handling for consumers. The code sets out detailed rules covering a range of important matters including procedures to be followed for subscribing to premium short message services (SMS)<sup>7</sup>, strict rules about how advertisement and charges are displayed, and improved complaints handling obligations of companies supplying premium SMS services.

The Communications Commission issued to industry operators the 2442 “Do Not Disturb” (DND) short code, as this will enable subscribers to register their numbers against unsolicited messages. When this short code is activated by subscribers they can opt-in for data base that would enable them register their numbers against unsolicited messages<sup>8</sup>.

Self- regulation can either be put in place as part of the license conditions for an operator or self-imposed<sup>9</sup>. To be meaningful to consumers, codes of practice must exhibit certain features.<sup>10</sup> Mere expressions of good will towards consumers are not sufficient. The duties of the traders as well as the rights of consumers should be clearly spelt out. The code should be designed to encourage higher trading or remove abuses and provide a suitable means of handling consumer complaints.

Self- regulatory codes have a number of advantages.<sup>11</sup> For instance, they may be more flexible than laws in that they can be tailored to the needs of a particular trade, industry or professional association. Secondly, given that the drafters of the codes are more likely to have a close knowledge of the industry, trade or professional association in question, there is the assumption that the codes would more successfully deal with likely consumer problems. Thirdly, they can be costs effective in that, information, rule-making and enforcement costs may be reduced. Sometimes, codes of practice may be embodied in the enabling statutes of trade or professional associations like the Legal Practitioners Act<sup>12</sup> in respect of legal profession. The mechanisms for which complaints are to be made as well as the mechanisms for the discipline of erring members are spelt out, where the codes of practice are embodied in enabling statutes. The

<sup>4</sup> Federal Republic of Nigeria Official Gazette No. 87 Vol. 94, 10<sup>th</sup> July, 2007.

<sup>5</sup> Sections 106 (3), (4) and (6) of the Nigerian communications Act Cap.N97 LFN 2010.

<sup>6</sup> Oughton, D.W., *Consumer Law, Text, Cases and Materials*, Blackstone Press Limited, London 1991, P.93.

<sup>7</sup> Mobile Premium Services or SMS Services are information and entertainment services that deliver various forms of content to a mobile phone. This services are created by a content supplier and delivered over the mobile service providers network. They are called Mobile Premium Services because you buy them using your mobile phone, you receive them on your mobile phone, and you will be charged a premium cost for them.

<sup>8</sup> Emmanuel Elebeke, Activate Do-Not-Disturb facility now or face sanctions, NCC tells telcos. Read more at: <http://www.vanguardngr.com/2016/09/activate-not-disturb-facility-now-face-sanctions-ncc-tells-telcos/>, Vanguard (Mobile Edition) Tuesday 13<sup>th</sup> day of September 2016.

<sup>9</sup> Two UK examples of Codes of Practice: Toucan code of practice <http://www.toucan.com/site/code.aspx> 3G code of practice <http://www.three.co.uk/advice/detail.omp> accessed on 20/3/2011.

<sup>10</sup> Oughton, D.W., op. cit. p. 93.

<sup>11</sup> Ifaturoti, T.O., “The Self Regulatory Role of Professional Associations in Consumer Protection in Nigeria”, a paper presented at the Round table on Consumer Protection Laws in Nigeria held at the Nigerian Institute of Advanced Legal Studies, Lagos, on 3<sup>rd</sup> December, 1996.

<sup>12</sup> Cap. LS11 LFN 2010.

effectiveness of codes that are not embodied in the statutes depends or lies on the compliance level of the members. No doubt, code of practice is tailored to meet the exigencies of the particular trade or profession in question. In this regard, the content of code of practice would differ from one another. Nevertheless, the standard of services expected of members, restrictions on advertising and promotion techniques as well as provisions in respect of receipt of consumer complaints, arbitration, conciliation or mediation, alternative disputes resolution and provision for refunds to be made to aggrieved customers are spelt out in code of practice.

## **1.2 Regulatory Institutions**

A number of regulatory institutions which seek to address the protection of the consumer exist in Nigeria. Those that are relevant to the protection of consumers of telecommunication services such as the Consumer Protection Council and the Nigerian Communications Commission shall be examined.

**(i) Consumer Protection Council (CPC):** The Consumer Protection Council is a statutory agency established by the Consumer Protection Act No. 66 of 1992<sup>13</sup>. The Council is a corporate body which can sue and be sued in its corporate name. The organs set up to carry out functions under the Act are the Consumer Protection Council and the State Committees. The composition of the Council and the State Committees is provided for under section 1 (2) of the Act and comprises *a chairman to be appointed by the President and Commander-in-Chief of the Armed Forces on the recommendation of the Minister; a person to represent each State of the Federation on the recommendation of the Governor of each State; and four persons to represent the following related Federal Ministries; culture and tourism; industry and technology (now industry); health; and petroleum resources (now Department of Petroleum Resources)*. It is doubtful if the composition reflects the interest of the consumers as it did not include any member from Telecoms Consumers Interest Group, as telecommunication complaints are generally at the top of overall consumer complaints, even after sector reforms.

The functions of the Council as provided under section 2 of the Act are as follows; provide speedy redress to consumers' complaint through negotiations, meditation and conciliation; seek ways and means of removing or eliminating from the markets hazardous products and causing offenders to replace such products with safer and more appropriate alternatives; publish from time to time, lists of products whose consumption and sale have been banned, withdrawn, severally restricted or not approved by the Federal Government or foreign governments; cause an offending company, firm, trade association or individual to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects to technologies that are inherently harmful, injurious, violent or highly hazardous; organise and undertake campaigns and other forms of activities as will lead to increased public consumer awareness; encourage trade, industry and professional associations to develop and enforce in their various fields, quality standards, designated to safeguard the interest of consumers; issue guide lines to manufactures, importers, dealers and wholesalers in relation to their obligations under the Act; encourage the formation or voluntary consumer groups or associations for consumer well-being; ensure that consumers' interests receive due consideration at appropriate forum and to provide redress to obnoxious practices or unscrupulous exploitation of consumers by companies, firms, trade associations or individuals; encourage the adoption of appropriate measures to ensure that products are safe for either intended or normal use; and perform such other functions as may be imposed on it pursuant to the Act. Although the functions of the council are elaborate, they are rather general and not specifically targeted at

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<sup>13</sup> Cap. C 25 LFN 2010.

consumers of telecommunications services. As more public services are delivered over the global system of mobile communications and the internet (e-government, e-health, e-education etc.), it becomes increasingly important to ensure that the networks and connections that underlie these applications are secured and reliable.

In the exercise of its functions, the Council has power to, apply to court to prevent the circulation of any product which constitutes an imminent public hazard; compel manufacturers to certify that all safety standards are met by their products; cause as it deems necessary, quality tests to be conducted on consumer products; demand production of label, showing date and place of manufacture of commodity as well as certification of compliance; compel a manufacture, dealer and service company, where appropriate, to give public notice to any health hazards inherent in their products; ban the sale, distribution and advisement of products which do not comply with safety or health regulations.<sup>14</sup> Where regulation is effective, consumers will be net beneficiaries of regulatory intervention. Rather than imposing potentially unnecessary regulation on providers, the better approach is to publish draft Consumer Protection Guidelines for consultation and with reference to consumers of telecommunications services. The guidelines, inter alia, will clarify how licensed operators should behave in order to respect consumers' rights, thereby encouraging best practice and promoting the provision of high quality services. This must be formulated in such a way as to prevent contradiction with guidelines by the Nigerian Communications Commission. The essence is to enhance consumer awareness of their rights. In turn this will equally deter providers from abusing those rights.

By section 5, the State Committees shall, subject to the control of the Council; receive inquiry into the causes and circumstances of injury, loss or damage suffered or cause by a company, firm, trade association or individual; negotiate with the parties concerned and endeavour to bring about a settlement; and where appropriate, recommend to the Council the payment of compensation by the offending person to the injured consumer. Though the Consumer Protection Council Act<sup>15</sup> offers protection to the consumers who may have suffered loss from the use of a product, a comparison of the Act with international best practices, reveals that a lot has to be done to modify the Act to meet up with international standards. In the U.K. for example, product liability directive had been transposed into U.K. law<sup>16</sup>. The legislation imposes strict liability on producers/suppliers for harm caused by defective product. The 1999 directive was transposed in England and Wales by the consumer production council Act, 1987 (product liability) (modification order) 2000. This means that people who have suffered loss by defective products can sue for compensation without having to prove the producer negligence provided that they can prove that the product was defective. In view of the above, the need to further modify the Consumer Protection Council Act to align with international best practices cannot be over emphasised at this point. Nigeria being a superfluous emerging market with a large appetite for consumption, needs a lot of protection against substandard goods.

**(ii) Nigerian Communications Commission (NCC):** The leadership of the Nigerian Communications Commission consists of nine Commissioners made up of six Non-executive members including the Chairman- representing each of the six Geopolitical Zones of Nigeria and three Executive Members, including the Executive Vice-Chairman/Chief Executive and two Executive Commissioners. The NCC has had a relatively short history of active regulation in the Nigeria telecommunications industry. Although the NCC was created in 1992, it operated more

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Part 1, Consumer Protection Council Act, C. 43 1987 (UK).

like a department of the Ministry of Communications until April 2000 when the Federal Government inaugurated its first Board of Commissioners. However, the successful execution of the global system for mobile communication (GSM) auctions so soon after the Board's inauguration gave very promising indications of the NCC's determination and ability to meet and surmount its many challenges—the first of which involve the credible licensing of industry operators. The steps taken by the Commission, to protect consumer interest stem from the Act which empowers the regulator to ensure that the interest of consumers is protected.

Consumer protection is an important and recognised function of telecommunications regulatory authorities all over the world, as such countries use several mechanisms to develop consumers' protection framework to protect consumers' rights. These include the recognitions of rights in legislation, recognition of rights in tariffs, the development of industry codes of practice, quality of service parameters and dispute resolution mechanisms<sup>17</sup>. The Nigerian Communications Act (NCA) provides that all service providers shall, in respect of their specific services meet such minimum standards of quality of service as the Commission may from time to time specify; deal reasonably with consumers and adequately address their complaints<sup>18</sup>.

In line with this provision, the Nigerian Communications Commission (NCC) which is the independent National Regulatory Authority for the telecommunications industry in Nigeria released the Quality of Service Regulation in 2009<sup>19</sup>, which aims to identify minimum quality of standards, and associated measurement, reporting and record keeping tasks<sup>20</sup> and has developed the following key performance indicators (KPIs) for the service providers: Call Setup Success Rate (CSSR)  $\geq 98\%$ ; Call Drop Rate (CDR)  $\leq 2\%$ ; Hand over Success Rate (HoSR)  $\geq 98\%$ ; Stand alone Dedicated Control Channel (SDCCH)  $\leq 1\%$ ; Call Completion Rate (CCR)  $\geq 96\%$  and Traffic Congestion ratings (TCH CoNG)  $\leq 2\%$ <sup>21</sup>. The failure of the operators<sup>22</sup> to meet these targets leads to consumer dissatisfaction. For instance, between January and November 2011, none of the operators met the SDCCH Cong Target, but the other key indicators were met to a less or higher degree by the different service providers.

Regulators can impose a code of conduct or suggest that operators abide by it on a voluntary basis. Typically regulators have made operators provide a code of conduct as a condition of licence: as in the UK with the Toucan and 3G codes of practice<sup>23</sup>. However, where either licence conditions or a code of conduct exist, they are no guarantee that the consumer interest in relation to the key issues of prices or quality of services will be addressed. Few regulators have taken on the task of improving quality of service from mobile operators either because they lack the will or the capacity to do so. Quality of service issues are often complex and the regulators may lack the resources to challenge a much better resourced mobile operator. The number of regulators imposing sanctions in the form of fines on issues relating directly to

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<sup>17</sup> Section 4(1) Nigerian Communications Act.

<sup>18</sup> Ibid. Section 104.

<sup>19</sup> This regulation is made pursuant to sections 70 and 104 (a) of the Nigerian Communication Act.

<sup>20</sup> See the Preamble to Quality of Services Regulation 2009.

<sup>21</sup> Guardian, "ALTON tasks NCC on Sector's Teething Issues," (2012), [http://www.ncc.gov.ng/index.php?option=com\\_content&view=article&id=776%3Aguardian-23rd-May-2012-alton-tasks-ncc-on-sectors-teething-issues-&catid=86%3Acat-mediapr-headlines&Itemid=107](http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=776%3Aguardian-23rd-May-2012-alton-tasks-ncc-on-sectors-teething-issues-&catid=86%3Acat-mediapr-headlines&Itemid=107). accessed on 10/5/2011.

<sup>22</sup> The main operators currently operating in the GSM market are MTN, Globacom, Etisalat, and Airtel.

<sup>23</sup> Two UK examples of codes of practice: Toucan code of practice: <http://www.toucan.com/site/code/.aspx> 3G Code of practice that mentions Otelio <http://www.three.co.uk/advice/detail.omp> accessed on 20/3/2011.

consumer interconnection and whilst this arguably has a consumer impact, the sanction is rarely driven directly by a consumer – interest motive. However, whatever assessment is made of the success or not of licence condition compliance and codes of conduct by operators, there are still countries where consumers are not covered by any code of conduct, self – imposed or otherwise.

In exercise of its powers, the Commission has developed and published Customer Code of Practice Regulations (CCPR) in 2007, whose specific objectives are; to confirm and clarify the procedures to be followed by licensees in preparing approved Customer Codes of Practice in accordance with section 106 of the Nigerian Communications Act and to determine and describe the required contents and features of any Consumer Codes prepared by, or otherwise applicable to licensees.<sup>24</sup> Codes so prepared are subject to annual reviews and ratification by the Commission.<sup>25</sup> Consumer Codes are necessary for handling of customer complaints; inexpensive arbitration processes other than a court and procedures for the compensation of customers in case of a breach of a code; and the protection of consumer information. The Commission has also in exercise of its power developed quality of service Regulations (QoS) 2013 to prescribe the minimum standards and parameter for the quality of telecommunications services in Nigeria. Put simply, the Regulations identified the minimum quality of service standards in telecommunications industry. The objectives of the QoS Regulations 2013 are; improving the quality of service by identifying service deficiencies and encouraging appropriate changes; maintaining service quality while recognising environmental and operating conditions; making information available to help customers make informed choice of service and licensees; improving the operation and performance of interconnected networks; and assisting the development of related telecommunications market.<sup>26</sup>

Furthermore, the Commission has established an Industry Consumer Advisory Forum (ICAF)<sup>27</sup> in collaboration with other industry stakeholders such as the Consumer Protection Council, the National Lottery Regulatory Commission, the Nigeria Bar Association, telecom advocacy bodies as well as other key consumer advocacy representatives in the country. The objective of Industry Consumer Advisory Forum (ICAF) is to Act in advisory capacity and make recommendations to the telecoms regulator regarding the interest and concerns of consumers of information and communication technology products and services including persons with disability and elderly.

The functions of the Commission targeted at consumer protection are; the protection and promotion of the interests of consumers against unfair practices including but not limited to matters relating to tariffs and charges and the availability and quality of communications services, equipment and facilities<sup>28</sup>; ensuring that licensees implement and operate at all times the most efficient and accurate billing system<sup>29</sup>; the development and monitoring of performance standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria having regard to the best international performance indicators<sup>30</sup>; proposing, adopting, publishing and enforcing technical specifications and standards for the importation and use of communications equipment in Nigeria and for connecting or interconnecting communications equipment and system<sup>31</sup>; examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person

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<sup>24</sup> See Regulations 2 of the Customer Code of Practice 2007.

<sup>25</sup> See Section 106 (3), (4) and (6) of the Act.

<sup>26</sup> See Quality of Service Regulation 2013. Available at, <http://bit.ly/2i9gXub>, accessed on 10/5/2016.

<sup>27</sup> The inaugural session of the open forum was held on the 21<sup>st</sup> day of December 2011 in Lagos.

<sup>28</sup> Section 4 (1), Nigerian Communications Act.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

involved in the communications industry, using such disputes-resolution methods as the Commission may determine from time to time including mediation and arbitration<sup>32</sup>

The Nigerian Communications Act (NCA) has also taken similar steps to protect the consumer from sharp practices by service operators. The Act provides that, all service providers shall, in respect of their specific services meet such minimum standards of quality of service as the commission may from time to time specify and publish; deal reasonably with consumers; and adequately address consumer complaints.<sup>33</sup>

While the success of the GSM auctions will always remain a significant milestone in the nation's telecommunication history, the NCC must now look beyond the successful licensing of operators to the successful regulation of licensees in the provision of their products and services. The Nigeria telecommunication industry is set to become one of the most complex and dynamic in Africa, and the NCC must urgently begin to create a solid foundation for responsible and efficient market conduct within the industry. International experience teaches us that markets must never be liberalised to the detriment of the public interest, and it is a fundamental objective of regulators the world over to protect the public interest against every foreseeable, negative consequence of market liberalisation-including the insidious effects of imperfect competition. The NCC must therefore take its place amongst the forward thinking regulators of the world by ensuring that the Nigerian public is adequately protected against the present and foreseeable consequences of imperfect competition, particularly the high end-user tariffs currently being suffered by the subscribing public. Further delay in establishing the much-needed tariff regulation regime will only make it more difficult for the NCC to do so later, because operators will be sure to argue with each passing day that the industry is moving beyond that early stage of market liberalisation. Against this back drop, the Commission has helped in lowering and improving tariffs by setting a new tariff rate of ₦4 per short message service for all domestic off-net SMS with effect from the 5<sup>th</sup> day of February 2013, though the Commission does not fix retail prices<sup>34</sup>.

The Commission had in recent times been inundated with several complaints from consumers and stakeholders against the various promotion offers by the operators. The Commission had evaluated the complaints received against the backdrop of sustaining the integrity of the networks and the general interest of the consumers. The Commission was mindful of one of its statutory responsibilities, to protect and promote the interest of consumers against unfair practices. The promotion had increased the number of minutes available to subscribers for use within a limited period of time, thereby, creating congestion in the networks. Night calls were now being offered by operators at tariffs well below the prevailing inter-connects rates, thereby introducing anti-competitive practices and behaviour. The determination of calls was becoming difficult between networks, making it extremely hard for subscribers to make calls successfully<sup>35</sup>.

The lotteries and promotional activities by service providers were fraught abuses and the Nigerian Communications Commission reacted promptly. In ensuring compliance with regulatory rules, the Nigerian Communications Commission (NCC) on the 12<sup>th</sup> day of November, 2012 warned telecommunications operators against running lotteries and promotions.

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> The Citizen, NCC pegs all SMS at N4 effective Feb 5, Available at <http://bit.ly/2x7226w>, accessed on 2/3/2016.

<sup>35</sup> NCC bans telecommunication operators from lotteries. Read more at: <http://bit.ly/2uTcL3O>

The ban covered approved promotions and lotteries in which the NCC signed a Memorandum of Understanding with the National Lottery Regulatory Commission. The ban would be in place until such a time as might be determined by the Commission. The telecom operators affected by the ban then were GLOBACOM, MTN, INTERCELLULAR, VISAFONE, ETISALAT, AIRTEL and MULTILINKS<sup>36</sup>.

For contravening the ban on promotions and lotteries on their respective networks, the telecoms regulatory agency, the Nigerian Communications Commission (NCC) slammed a total of ₦22 million fines on the four GSM operators including MTN, GLOBACOM, ETISALAT and AIRTEL. The ban covered proposed and approved promotions and lotteries after the Commission was inundated with several complaints from consumers and stake holders against various promotions in the various networks. Accordingly, MTN Nigeria Communications Ltd was directed to pay ₦10million on account of five promotions at ₦2million for each promotion while ETISALAT was directed to pay ₦6million for three promotions in its network. Similarly, AIRTEL was directed to pay ₦4million for running two promotions against the ban while GLOBACOM was directed to pay ₦2million for one promotion. The notice of the sanction stated that in the refusal to pay the sanction amount within the stipulated time, the Commission shall have no other option than to impose stiffer penalties in accordance with the powers of the Commission including but not limited to payment of ₦1million for each day that the contravention persists. The operators were given seven days to pay their respective sanctions amount from the date of receipt of the sanction notice on February 22<sup>nd</sup>, 2013 adding that the operators were liable for payment of the sum of ₦1million for any day that the contravention persists<sup>37</sup>. Regrettably, the money was paid to the NCC and not the consumers that suffers from the hands of the service providers.

In ensuring compliance with regulatory rules the Nigerian Communications Commission (NCC) sanctioned mobile network operators who fail to improve on their services and lower their tariffs. In a telephone survey of 758 phone users aged 18+, which was conducted by NOI/GALLUP POOL, subscribers said NCC should mandate network operators to improve on their service or else sanction them, in line with the complaints of consumer advocacy groups and subscribers of global system for mobile communication. The results which were based on perception or quality of service (best and worse) and what measures to be taken to deter mobile network operators from rendering poor quality services revealed that 45% of respondents are using dual lines, while another 19% use three lines in order to circumvent the network failure that usually cripples Nigeria's networks. The pool further revealed that most Nigerians would rather that the mobile network operators make concerted efforts to improve their service quality than the promo offers they make to their subscribers. Of this respondent (26%) using only one line, the pool found out that, MTN was the favourite with 89% percent being subscribers to the network, with AIRTEL (5%), GLO (4%) while ETISALAT trail behind with 2%<sup>38</sup>.

With regard to those who are using two lines, the favourite combinations are MTN/ETISALAT 34%, MTN/GLO 31%, and MTN/AIRTEL 29%. When it came to the use of main line, used by dual line owners, MTN led the pack with 78% AIRTEL followed at 9% while

<sup>36</sup> Ibid.

<sup>37</sup> Emeka Aginam, NCC sanctions mobile operators with N22m fine. Vanguard Thursday 28<sup>th</sup> day of February 2013. Read more at:  
<http://www.vanguardngr.com/2013/02/ncc-sanctions-mobile-operators-with-n22m-fine/>

<sup>38</sup> Franklin Alli, Subscribers push NCC to sanction operators for poor network. Vanguard Saturday 17th day of November 2012. Read more at:  
<http://www.vanguardngr.com/2012/11/subscribers-push-ncc-to-sanction-operators-for-poor-network/>

GLO and ETISALAT were tied at 6%. On the matter of rating by subscribers, ETISALAT emerged the clear leader with 31% of its subscribers rating it very good followed by AIRTEL 19% and GLO 17%. MTN brought up the rare with only 11% respondent rating it very good. And on the reversed side of the ratings question MTN was rated very bad by 7% of its subscribers while ETISALAT and AIRTEL were given a rather clean bill with none of their subscribers rating them very bad. Similarly, when subscribers were asked if they were getting value from their main network provider, ETISALAT subscribers were happiest with their network at 76% followed by AIRTEL at 62% and GLO at 55%. MTN subscribers expressed the list satisfaction (53%).

It is on record that by the middle of 2012, the four top telecoms firm, were fined a total of ₦1.17billion by the industry regulator for not meeting stipulated quality of service bench marks called key performance indicators<sup>39</sup>. Furthermore, the Nigerian Communications Commission, the country's telecoms watch dog imposed a fine of ₦1.04 trillion on MTN for its failure to deactivate over five million improperly registered subscribers after series of warning were issued by the regulator to terminate them, which was later reduced to N674billion after series of meeting thronging officials from South Africa to negotiate the fine. Apparently still dissatisfied by the MTN not mindful of the reduction of the original fine by 25%, the MTN went to court. Subsequently, MTN withdrew the case against NCC and made a down payment of N50billion towards an amicable resolution of the fine imposed on the telecoms giant.<sup>40</sup> The Telecom giant was fined that amount for missing the deadline to disconnect 5.1million unregistered SIM cards, a legal requirement aimed at hampering the militant Islamists. The MTN was very slow in cutting off the lines as the unregistered lines were used by the terrorists and thereby contributing to the casualties on the Nigerian side in their fight against Boko Haram<sup>41</sup>.

Moment later, MTN paid ₦80 billion of the ₦330 billion fine imposed on it for failing to deactivate more than five million unregistered SIM Cards. The company paid the sum as the first installment out of the three years given for the completion of the payment. MTN was initially fine 5.2 billion dollars (₦1.04 trillion) but the fine was further reduced to ₦330 billion. The fine, according to the law is ₦200, 000 and the law never anticipated that one company will be in violation to the tune of 5million lines. It was inconceivable, so when the thing was added 200,000 times 5.2 million lines, it came to a trillion plus<sup>42</sup>. When it happened, the MTN did four things; one, they accepted that they were in default, two, they apologised for that, three, they committed themselves never to allow such a thing to happen and number four, they asked for remission<sup>43</sup>.

### **1.3 Innovative Strategies of the Commission:**

The consumer is regarded as the most important stake holder in the regulatory process of the Nigerian Communications Commission. The consumer is the main purpose, the focus and rationale for its being, which makes the slogan, “the consumer is the king” sacrosanct. To ensure an effective consumer protection regime in the industry, NCC has developed numerous

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<sup>39</sup> Ibid

<sup>40</sup> Emmanuel Elebeke, MTN withdraws suit against NCC, pays N50bn ‘in good faith’ Vanguard Thursday 25th February 2016. Read more at:

<http://www.vanguardngr.com/2016/02/mtn-withdraws-suit-against-ncc-pays-n50bn-in-good-faith/>

<sup>41</sup> Ibid.

<sup>42</sup> MTN paid N80b fine – Adebayo Shittu. Vanguard Monday December 26 2016. Read more at:

<http://www.vanguardngr.com/2016/12/mtn-paid-n80b-fine-adebayo-shittu/>

<sup>43</sup> Ibid.

innovative strategies. These include, Consumer Affairs Bureau, Consumer Protection and Advocacy Unit, Contact Centers, and Consumer Fora.

**(i) Consumer Affairs Bureau:** The Consumer Affairs Bureau (CAB) was established in 2001 by the Nigerian Communications Commission to protect, inform and educate consumers of telecoms services in Nigeria. The objectives of the Consumer Affairs Bureau are to create a visible and credible Bureau that would serve as a one-stop shop which stakeholders can rely upon for information on the telecommunications industry in Nigeria; to generate an unmatched awareness of consumer rights in Nigeria by establishing a strong Bureau that would monitor and control telecommunications operators in Nigeria in order to protect consumers from unscrupulous practices in the industry; and to innovatively exploit all channels of communication in offering education to the subscribers on a continuous basis.

In order to achieve its objectives the Consumer Affairs Bureau employs the following strategies: producing brochures and fact-sheets; organising public and community out-reach programmed to help consumers make informed decisions from the various services available in the Nigerian telecom market; establishing a Call Centre (Help-desk) to courteously respond to inquiries, investigate and solve complaints in a professional and efficient manner, where the Call Centre Specialists are unable to solve the complaint, the consumer may be requested to make a formal complaint in writing which would then be assigned to an officer of the Bureau who would contact the service provider and resolve the problem; and by mediating and resolving disputes between consumers and service providers.<sup>44</sup> The services of Consumer Affairs Bureau are rendered free of charge. Consumers are always advised to first contact their service providers when they have problems. The Consumer Affairs Bureau should be contacted only when all attempts to solve the problem with the service provider fails.

In a bid to comply with international best practices, the Consumer Affairs Bureau of the Commission has launched several initiatives aimed at protecting consumers. These include resolution of consumer disputes in line with S.105(1) of the Act; inauguration of the consumer forum in line with S.106(1) of the Act; preparation and administration of the consumer code of practice in line with S.106 (1) of the Act; monitoring the establishment of customer care centre; monitoring the establishment of consumer help lines of service providers or operators; monitoring of implementation of an approved reward schemes and promotion, creation of a consumer web portal and issuing of directions and intervening on the following per second billing, increase in validity period, toll free on access to customer care centre and help lines of service provider, toll free on access to contact centre of NCC for complaints and enquiries, misleading advertising and promotion, direction on unsolicited telemarketing to operating companies; removal of validity period on recharge cards, lowering interconnect rates for voice/SMS services, direction to service providers on the nonexistence of customer care centre in most of the state capitals, SIM swap, sell and shell and disappearance of credit balances.

Some challenges confronted the Consumer Affairs Bureau in carrying out these initiatives. First, there is the inadequacy of the existing customer care centre; second, there is the inadequacy for geographically call agents; third, there is the need to modify the Act and the Code to meet with international best practices in telecoms industry.

**(ii) Customer Care Centre:** The Consumer Affairs Bureau has ensured the establishment of customer care centres by licensees to address customer issues. Consumer Affairs Bureau also monitors the establishment of consumer help lines. Consumers are encouraged to approach the

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<sup>44</sup> NCC Consumer Affairs Bureau. Available at <http://consumer.ncc.gov.ng/>, accessed 10/5/ 2011.

Commission only when the operators or service providers are unable or unwilling to solve their problems. Many consumers had their complaints resolved through this medium.

**(iii) Contact Centre:** In order to have unhindered accessibility to telecoms networks by consumers that want to lodge complaints against the service providers, the Commission has acquired two toll free lines 0-800 CALL NCC and 0-800 MY NUMBER for its contact centre. The call here is rendered free of charge. This is an additional channel for lodging consumer complaints and providing easy access for unsatisfied consumers in Abuja and Lagos.

**(iv) The Consumer Protection and Advocacy Unit:** This is a unit established to handle complaints or enquiries from customers of telecoms products and services. Consumers are encouraged to download complaints form from NCC website, complete the form and send it through formal letter, e-mail, telephones and fax to the unit. When received, the complaints are documented, read, analysed and acknowledgment is sent to the complainant by letter or e-mail assuring him that the complaint is being handled. Thereafter, the complaint is forwarded to the service provider concerned with a definite time frame within which to respond to the issues raised and or resolve the complaints.<sup>45</sup> If the response is satisfactory, it is forwarded to the consumer and tracked down as resolved but where the response is not satisfactory, follow-up actions is made through phone calls to the contact person within the service provider to respond. Where the service provider is not willing to co-operate, the matter is escalated first to the Director Consumer Affairs (DCA) who may in turn escalate it to the enforcement team. Where there is persistent non co-operation from the service providers the matter is escalated to the Executive Commissioner of Stakeholders Management for management decision.

**(v) Consumer Fora of the Commission:** In addition to the above, the Commission has developed fora such as telecom consumer parliament, consumer outreach programme and town hall meeting.

**(a) Telecoms Consumer Parliament (TCP):** This is a platform created by the Commission to bring together stakeholders in the industry (i.e. the Telecom Regulator, Operators and consumers) to openly discuss problems affecting the consumers of telecommunications services. The programme is usually recorded and broadcast on national television. This novel approach in dealing with consumer issues has been acknowledged by the International Telecommunications Union (ITU) as an innovative and effective mechanism for resolving the complaints of consumers. It is held every month across the six (6) geopolitical zones of the country.

**(b) Consumer Outreach Programme (COP):** In this forum, the Commission addresses specific consumer issues, provide vital information and education to the consumers, creates awareness of its services and the consumers' right to complain, as well as bring operators face to face with consumers to deal with their needs, questions and concerns. This is a commendable initiative for educating consumers of telecommunications services. At the forum, the NCC would be expected to be inundated with various complaints from the consuming public concerning the current state of telecommunications services in the country, particularly the frustrating problems of low service quality and excessive end – user prices.

**(c) Town Hall Meetings:** These are organised around the country monthly to educate consumers and resolve minor complaints from unsatisfied consumers. Decisions taken by the Commission in any of these fora are enforceable by the court.<sup>46</sup>

#### **1.4 Synergy Between NCC AND CPC**

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<sup>45</sup> Ibid

<sup>46</sup> Section 78 (2) Nigerian Communications Act.

In order to avoid regulatory overlaps and create regulatory certainty for the benefit of all stakeholders in the telecommunications sector, the Commission and the Consumer Protection Council entered into a Memorandum of Understanding (MoU) on the 19<sup>th</sup> day of December 2005, to the effect that; the Commission is the Sector Specific Regulator in the telecommunications industry with a statutory mandate to protect consumers as well as operators in that sector; the council is the apex agency of the federal government with a statutory mandate to seek redress for and protect consumers in all sectors of the economy including the telecommunications industry; and to avoid regulatory overlaps and create regulatory certainty for the benefit of all stakeholders in the telecommunications sector, the parties hereto recognise a need for collaboration in the discharge of their functions as it relates to consumer protection in the aforesaid telecommunications sector; the parties agree to fully cooperate and collaborate with each other in the discharge of their functions as it relates to the protection of consumers of products and services in the telecommunications sector in accordance with the terms of the Memorandum of Understanding; the Commission shall reserve the right to grant approvals for sales promotions in the telecommunications industry; the council shall be responsible for registering and monitoring sales promotions in the telecommunications industry where such sales promotions are targeted at consumers and involve providing a range of direct or indirect additional benefits usually on a temporary basis, designed to make goods, products or services more attractive to consumers.

Furthermore, the parties agree that there is administrative necessity for the Council to charge a nonrefundable fee of one percent of the aggregate benefits of sales promotion, which in any case shall not exceed one million, five hundred thousand naira for the registration and supervision of sales promotions provided that any review of fees by Council beyond the aforementioned threshold shall be in consultation with the Commission. The parties also agreed that telecommunications products and services be exempted from payment of registrations fees under section 1(2) of the Consumer Protection (Products and Services, Monitoring and Registration) Regulation 2005 since they are performing similar functions in regard to registration of products and services. However, in the discharge of its statutory functions, the Council shall register telecommunications products and services at a filing fee of two thousand naira provided that any increase of the said filing fee shall be in consultation with the Commission. The Commission is enjoined at the request of the Council to provide information for the Council, which information may include but not limited to information necessary to set standards for quality and grade of services, set standards on telecommunications products and telecommunications equipments that are manufactured, imported or sold in Nigeria and periodic updates on the approved tariffs and discount for each category of telecommunication services. The MOU provides for the establishment of a Joint Implementation Committee which is made up of officers of the Commission and the Council to review the implementation of the MoU and such other matters that would promote co-operation and collaboration between the parties in the discharge of their duties to protect the consumers.

### **1.5 Telecoms Consumer Interest Groups**

Consumer interest groups are advocacy groups that seek to protect people from corporate abuses like unsafe products, misleading advertising, lending, astroturfing and pollution. They can also engage in single advocacy. They operate through protests, lobbying or campaigning. Generally, the aim of consumer organisation includes consumer information, consumer education and advocacy.

All over the world including the United States and Germany, there are number of voluntary consumer interest associations. In Nigeria, there are Consumer Protection Organisation of Nigeria (CPON); the Consumer Rights Association of Nigeria (CRAN); the Consumer Awareness Organisation (CAO); among others. These interest groups in Nigeria are as recent as 1970.

In Nigeria, currently, telecommunications products and services are varied as well as the demands and expectations of consumers. With a teledensity of 68.49 as at December 2011, and the coverage of the thirty-six states of the Federal Republic of Nigeria and the Federal Capital Territory, consumers are more sentient of the usefulness and potentials of telecommunications services. This awareness, no doubt, heightened the demand for good services and responsive service providers or operators. Consequently, several advocacy groups have sprung up and are quite active in the industry. These advocacy groups include the National Association of Telecommunications Consumers and Consumer Rights Project (NATCCRP). The groups' main objective is to ensure that the interest of consumers is taken care of.

### **1.6 Nigerian Communications Commission and Consumer Advocacy Groups**

In the period before the telecoms market was liberalised, Nigerian Telecommunications Limited (NITEL) hardly had a sales/marketing department. It was a seller's market and little attention was paid to consumer complaints. Today it is a buyer's market with plenty of choices. Even in such a scenario, there is still need for consumer protection. The Commission is collaborating with several consumer advocacy groups in Nigeria to further expand the avenues for consumer protection in relation to telecoms services delivery. In the light of the foregoing, the NCC, on a number of occasions, has had cause to give orders and directions to operating companies on behalf of consumers. The Commission at various times stopped the service providers from engaging in professional campaigns that led to increase in the volume of traffic and inducing network congestion, until such a time as there were substantial improvements in the quality of services provided by the networks. The NCC has also directed that service providers were not to place any restrictions or time limitation on validity of airtime so that subscribers were not compelled to utilise their call minutes within restricted time frames.

It is true to state that the major contributor to the quality of service challenges has always been network capacity constraints. Due to the rapidity of uptake of telephones lines since 2001, the operating companies have not been able to expand their networks fast enough to meet the over growing demands by subscribers for voice and data services. This was further aggravated in the earlier days by the total collapse of NITEL long distance transmission infrastructure which a number of service providers depended on for their interstate links initially. With the fall of NITEL also came the collapse of MTEL and therefore the subscribers to the MTEL services migrated to the other networks with its attendant effect of Network congestion.

Other issues such as major deterioration in the public power supply; delay in securing approval for sites for new base stations; harassment by some government agencies especially at state level had also contributed in various degrees to the problem. Shortly after arresting a young woman, Tope Sani, 28, in Enugu and three other men in Awka for allegedly selling pre-registered Subscriber Identification Module (SIM) cards to end users without capturing their true bio-data as prescribed by law, the NCC said it is investigating the level of collusion with relevant service providers<sup>47</sup>. MTN Nigeria communications limited paid a fine of ₦90 million for poor

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<sup>47</sup> Fraudulent SIM Cards. Nigeria Daily News, 22/03/2013. Read more at <http://bit.ly/2uXB2ps>

quality of service for the period of July to December 2012<sup>48</sup>. Regrettably, the money was paid to the NCC and not the consumers that suffer from the poor quality of services.

### **1.7 Judiciary**

Nigerian economy is based on laissez-faire principles of the 18<sup>th</sup> and 19<sup>th</sup> centuries of her colonial legacy. Going by the individualism ideology (*caveat emptor*) a consumer is his best protector since exchanges which have capacity to boost production output as well as increase consumption are voluntary and unhindered. The fact of existence of real and perceived imbalance of power relations between the producers and consumers of goods and services is globally recognised. Such imbalance is obviously to the advantage of the producers who find strength in the legal maxim '*caveat emptor*'. Besides, free market economy seems to have put producers at liberty to operate in whatever manner they deem fit, without prejudice to the rights of consumers to make their choice which is restricted in most cases. That being the case, consumer sovereignty seems to have little meaning thus making consumer to perpetually complain and express one form of discontent or the other against the activities of the organisations, with which they engage in trade relationships. The English Court of Appeal did rule for the first time on the terms of the Consumer Protection Act going against the trend of judgments in lower courts that the product supplier though not negligent, the claimant was entitled to damages under the Act<sup>49</sup>.

Though the strict liability provisions have not been encapsulated in the Consumer Protection Council Act, a customer who institutes an action under the Act can rely on this case as a *locus classicus* in the apparent absence of such decisions on product liability in Nigeria. However, reliance can only be persuasive as the judges are not bound to follow. The advantage of relying on the *locus classicus* is that the claimant does not go as far as proving negligence; all the court expects is to prove that the actual product itself is indeed defective. In *G.K.F Investment Nigeria Limited v. Nigeria Telecommunication PLC*,<sup>50</sup> the appellant as a plaintiff entered into an agreement for the supply of uninterrupted telephone services with the respondent who was the defendant in the High Court. The telephone services were for commercial, business and profit purposes. Sometime in September 1996, the telephone services were withdrawn by the respondent. The appellant sued. The learned trial Judge awarded the appellant two hundred thousand naira as damages. The appellant regarded the award as paltry. The Court of Appeal allowed the appeal only to the extent of the appellant's claim for seven and half percent on the judgement sum of two hundred thousand naira. Still dissatisfied, the appellant appeal to the Supreme Court wherein the appeal was dismissed on the ground that the thirty million that the appellant was asking for was gold digging. As in the words of Fabiyi JSC,<sup>51</sup> "prospective gold diggers should have no place in courts of law as well as that of equity. A Judge should be wary of them. A party who is ordinary entitle to a pound of flesh should not run after one hundred of same. The award of two hundred thousand naira as damages to the appellant by the trial Judge at his discretion, affirmed by the court below is in order. I endorsed same".

In *All Progressive Congress v.NCC & 5 Ors.*<sup>52</sup>, the APC filed a fundamental rights enforcement suits against NCC, Etisalat, MTN Nigeria Limited, Globacom Limited, Airtel

<sup>48</sup> NCC fines MTN N90M for Poor Services, This Day News Saturday 23<sup>rd</sup> 2013. Read more at <http://www.thisdaylive.com/articles/ncc-fines-mtn-n90m-for-poor-service/142929/>

<sup>49</sup> *Abouzaid V. Mother Care (U.K) Ltd.* 2000 B3/00/227.

<sup>50</sup> (2009) vol. 174 LRCN P. 1-43.

<sup>51</sup> Ibid, P.41-44.

<sup>52</sup> *Unreported FHC/CS/16/15.*

Nigeria Limited and Visafone Communications Limited demanding twenty five billion Naira as damages for allegedly banning its presidential campaign fund-raising platform wherein the APC initiated the participatory fund-raising platforms as a way of getting members of the general public to contribute one hundred naira to its presidential campaign fund each time they send 'APC' as SMS to 35350. By its claim, NCC by a letter dated the 19<sup>th</sup> day of January 2015 instructed the other respondents to shut down the platform, warning them to avoid running political advertisement and promotions that will portray them as being partisan. The Commission has also threatened to sanction any of the telecommunications service providers which failed to comply with the order. The APC considered the NCC's instruction and consequent shutting down of its fund raising platform as both discriminatory and infringement on its fundamental right<sup>53</sup>. It argued that the NCC did not give the same instruction to the other respondents when Peoples Democratic Party set up the short codes designated 6661, 6662, 6663, and 6664 being managed by one Wagitel Communications Limited to raise funds for the campaign of President Goodluck Jonathan and his vice Namadi Sambo in 2010. Delivering his judgment on the above suit, Justice Ibrahim Buba of the Federal High Court awarded five hundred million in favour of the APC against NCC and five other services providers for unlawfully shutting down the party's Presidential Campaign fund-raising platform.

### **1.8 Freedom of Information Act**

Freedom of information Act came into existence in Nigeria in 2011. The Act was born out of the necessity to make public records and information more freely available to the public and to protect public records and information. Sections 1, 3, and 4 of the Act, permit any person to apply for or have public access to public records and information that are not exempted. With the coming into force of the Act, the question is whether the service providers are now under obligation to make available the call history of a particular consumer of telecommunication service on request particularly in this era where criminality, kidnapping, hired assassin is now the order of the day and the insurgence of Boko haram had threatened the unity of the nation. It is doubted whether service providers are under such an obligation because only public institutions are so obligated under the Act.

An applicant under this act need not demonstrate any specific interest in the information being applied for<sup>54</sup>. Any person entitled to the right to information under this Act, shall have the right to institute proceedings in the Federal High Court or State High Court to compel any public institution to comply with the provisions of this Act<sup>55</sup>.

### **1.9 Assessment of the Regulatory Framework**

The statutory enactment or provisions for protecting the consumer are laudable, but their implementation leaves much to be desired. Though the Consumer Protection Council Act<sup>56</sup> offers protection to the consumers who may have suffered loss from the use of a product, a comparison of the Act with international best practices reveals that a lot has to be done to modify the Act to meet up with international standards, especially the standard as seen in U.K. where a consumer who suffered loss by defective products can sue for compensation without having to prove the producer's negligence provided that they can prove that the product was defective. In view of the above, the need to further modify the Consumer Protection Council Act to align with international best practices cannot be over emphasised. Nigeria being a superfluous market with a large appetite for telecommunication services, there is a need for protection of consumers of

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<sup>53</sup> Section 39 of the 1999 Constitution of Nigeria as amended and Article 9(1) (2) and 19 of the Africa Charter on Human and People's Right (Ratification and Enforcement) Act Cap. A 9 LFN 2010.

<sup>54</sup> Section 1 (2) Freedom of Information Act 2011.

<sup>55</sup> Ibid section 1 (3).

<sup>56</sup> Cap. C 25 LFN 2010.

telecommunication services against substandard goods, misleading advertising, cloning, slamming, cramming, unwarranted short code calls and lots more.

In spite of the limitations observed in the regulatory framework, it offers a measure of protection to consumers of telecommunication services as evidence in the various sanctions often imposed by the regulatory authorities on the service providers. The Nigerian Communications Commission has taken the consumer a step further than the Consumer Protection Council. There is no doubt that, Nigeria as a society, is not as litigious as the Western World. As a result of ignorance of legal rights, poverty, and relatively close-knit nature of the Nigeria society, many otherwise volatile issues are settled by compromise or are simply allowed blowing over. These factors may account for the reason many consumers are not willing to go to court to recover damages for injuries arising from the breach of right of privacy over unsolicited text messages, annoying mobile adverts and unwarranted short code calls.

### **1.10 Conclusion**

Key issues in the telecommunication industry have been discussed in this article. These are self-regulatory framework, Consumer Protection Council, Nigerian Communications Commission, synergy between Consumer Protection Council and the Nigerian Communications Commission as well as the Consumer Advocacy Group. It was noted that protecting the consumer from sharp practices by service providers is usually the pre-occupation of both service providers through self-regulatory mechanisms and regulators of communication services. The NCC has gone a step further by encouraging consumerism and partnering with advocacy groups in the telecom sector<sup>57</sup>. The industry is, however, not without its challenges<sup>58</sup>. With unlimited access to all the numbers on their various networks, Nigerians are at their mercy with incessant unsolicited text messages, annoying mobile advert and unwarranted short code calls that liken a subscriber to a lady force to listen to a suitor's advances<sup>59</sup>. This accentuates the service providers group over the consumers group. Nevertheless, the recent development in consumer advocacy is therefore impressive as it is positive sign of a strong consumer protection regime in Nigeria<sup>60</sup>. The equivalent of the Nigerian Communications Act in India is the Telecom Regulatory Authority of India (TRAI) Act of 1997. The Act made provision for the setting up of a body known and called Telecom Regulatory Authority of India (TRAI). The Act also empowers the TRAI to set the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of each service provided by the service providers so as to protect interest of the consumers of telecommunication service.<sup>61</sup> In 2007, the authority introduced unsolicited commercial communications regulations which aimed at creating a mechanism for registering a request of subscribers who do not wish to receive unsolicited commercial communications. Telemarketers who initiate unsolicited commercial communication with a person, who has opted not to receive such communications, face a fine of Rs. 500 per call/sms as well as disconnection of telephone services<sup>62</sup>. The provision is

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<sup>57</sup> Akhabue, A.D., *Consumer Protection Law: Rights, Complaints and Remedies for Telecoms Consumers in Nigeria*, Amfitop Book Company, Lagos, 2018 Pgs. 162-163.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Section 11b Telecom Regulatory Authority of India Act, 1997.

See also [http://www.tdsat.nic.in/New%20Compendium19.11.2008/roman\\_V\\_1/Ramji\\_31-40.pdf](http://www.tdsat.nic.in/New%20Compendium19.11.2008/roman_V_1/Ramji_31-40.pdf) accessed on 10/12/2010.

<sup>62</sup> Elonnai Hickok, *Privacy and Telecommunications: Do We Have the Safeguards?* Available at

distinguishable from the position of the Nigerian Communications Act that did not expressly capture unsolicited text messages. The TRAI empowers the Central Government to establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) to adjudicate any dispute between a service provider and a group of consumers.<sup>63</sup> In the light of the above, the NCC is enjoined to borrow a leaf from TRAI.

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<sup>63</sup> <https://cis-india.org/internet-governance/blog/privacy/privacy-telecommunications> accessed 3/07/17  
Section 14 Telecom Regulatory Authority of India Act, 1997.