
Understanding the Basic Problems of Consumers in Automated Teller Machines, Electronic Money Transfer and E-Commerce

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Abstract: *This article discusses the basic problems of consumers in Automated Teller Machines (ATM), Electronic Money Transfer (EMT) and E-Commerce. It critically analysis, from both legal and jurisprudential perspectives, the reasons why ATM and EMT 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. Trading on the internet is through the transmission of electronic data from the sellers or producers of goods and services to the buyer and vice-versa. In view of the openness and accessibility of the internet, the protection of such data has been a constant source of concern for internet users and consequently has remained a threat to e-commerce. It is against this backdrop, that the problems of consumers in ATM, EMT and E-Commerce as discussed in order to show the extent to which both the civil and criminal laws protect their rights.*

Key words: *Problems, ATM, EMT, and E-Commerce*

1.0. Introduction: The impact of digital convergence has fused telecommunications, broadcasting media and information technology (IT) into what is now called communication. The world is gradually turning into a global village. The gradual turning has thrown up quite a novel phenomenon in terms of mode of carrying on financial transactions and trading. Today we have Electronic Money Transfer, E-commerce and Automated Teller Machine (ATM) which cannot be possible without the assistance of telecommunications which could be telephonic, telegraphic, wireless radio messaging or satellite telephony¹. It is against this back drop that this article treats consumer protection in Electronic Money Transfer, E-commerce and Automated Teller Machine and the role of civil and criminal law in protecting the consumer whose right has been breached.

The strength enjoyed by the consumers' poor knowledge of their rights requires that the consumer protection laws and mechanisms be strengthened. In Nigeria there is no civil liability for accurate puff except there was a specific promise². Similarly, when there is unsolicited marketing calls and short message services (SMS), there is no contractual obligation to pay for unsolicited goods and services³. In the same vein, when there is poor network coverage by service providers, the consumer is entitled to

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¹ Akhabue, A.D., Consumer Protection Law: Rights, Complaints and Remedies for Telecoms Consumers in Nigeria, Amfitop Book Company, Lagos, 2018 P. 113.

² Ibid P. 87.

³ Ibid P.88.

repudiate the contract due to breach of conditions of fundamental terms and of course a claim for damages for breach of warranty⁴. In spite of the stupendous advantages of using ATM and EMT, the level of ATM fraud tends to have over shadowed the improvement which it has brought into the delivery system of Nigerian financial institutions. Undoubtedly, Nigeria is experiencing an ATM card fraud because the implementation of the technology in Nigeria is characterised by ineptitude, lack of knowledgeable programmers and security experts that could guide and implement a secure transaction channel regardless of the level of education of the ATM card users. Apart from the simplicity of ATM technology being used in Nigeria, the insincerity of bank staff is another reason that has contributed to widening rate of ATM scam in Nigeria. Consumer sovereignty has four keys elements: protection, information, choice and redress. For E-Commerce to develop, both the consumers and businesses must be confident that their transaction will not be intercepted or modified, that the sellers and the buyers are who they say they are and that transaction mechanisms are available, legal and secure.

1.1. **Consumer protection in ATM.** The converging forces of technology have tremendously uttered manual systems of delivering banking services and have subsequently paved way for electronic delivery plat forms in recent time. The Automated Teller Machines (ATMs) is one of existing replacements of the cascading labour-intensive transaction system affected through what is popularly referred to as paper-based payment instruments. This was confirmed by Heli, when he held that the use of electronic means of payment has increased at the expense of paper-based payment instruments. He further disclosed that in some countries, payment cards have replaced cheques and internet banking has become a popular means of paying invoices⁵.

Nigeria is not an exception; we have had a share of this revolution. The upsurge in the adoption of electronic means of delivering banking services can also be partly attributed to the changes in government policies which have heightened the competitive temple of the Nigerian banking industry. In Nigeria, the development of ATM by banks and its use by bank customers is just gaining ground and has burgeoned in recent times⁶. This has happened especially after the recent consolidation of banks, which has in all probability, made it possible for more banks to afford to deploy ATMs or at least become part of shared networks⁷. The dynamic dictates of technology have equally uttered the tastes and preferences of consumers of financial services in Nigeria substantially. This has compelled banks to seek new procedures of delivering financial services to their customers electronically. This has been on the increase over the years. It therefore follows that the adoption of Automated Teller Machines (ATMs) as one of the electronic means of delivering banking services, was partly occasioned by the need to adjust to the external wind of changes in modern banking operations.

The ATM is an innovative service delivery mode that offers diversified financial services like cash withdrawal, cash deposits, payment of utility and credit card bills, check book requests and other financial enquiries⁸. An Automated Teller Machine allows a bank customer to conduct banking transactions from almost every other ATM in the world.

⁴ Ibid.

⁵ Heli, S., "Automated Teller Machine network market structure and cash usage, Scientific Monographs" 2006.

⁶ Wole, M.O., and Louisa, J.I., *The Adoption of Automated Teller Machine in an Application of Theory of Diffusion of Innovation Issues in Informing Science and Information Technology* vol. 6. 2009 P.374-393.

⁷ <http://www.businessdayonline.com>., accessed on 30/6/ 2010.

⁸ Muhammad, A.K., *An empirical study of Automated Teller Machine Service and customer Satisfaction* in Pakistani Banks European Journal of Social Sciences, Vol. 13 No. 3, 2010 P.333-334.

As is often the case with inventions, many inventors contributed to the history of an invention, as is the case with the ATM. In 1939, Luther Simjian patented an early and not so sophisticated prototype of an ATM. However, some experts are of the opinion that James Goodfellow of Scotland holds the earliest patent date of 1966 for a modern ATM and John D. White (also of Docutel) in U.S. is often credited with inventing the first free-standing ATM design. In 1967, John Shepherd-Barron invented and installed ATM in a Barclays Bank in London. Don Wetzel invented an American made ATM in 1968⁹.

In Nigeria, ATM was conventionally introduced as an electronic delivery channel in 1989, and was first installed by National Cash Registers (NCR) for the defunct Society General Bank of Nigeria in the same year. Since its introduction, many Nigeria banks have installed ATM in response to the changing nature of modern banking operations¹⁰. In Nigeria, the deployment of ATM by banks and its use by bank customers is just gaining ground and has burgeoned in recent times, attributable to the advantages offered by ATM as a means of servicing the populace. The introduction of ATM terminals as a banking instrument was lauded by several customers as an alternative to the frustrating queues that characterised the country's banking hall. But today, the situation has changed drastically as ATM is now the root causes of copious challenges facing electronic banking in the country. Instead of being an agent of positive change, as was initially anticipated, the ATM system has engendered a number of problems in the Nigerian banking system. This ranges from profligate or rash spending of most Nigerian citizens to fraudulent practices. In fact, it has become a money wheel for fraudsters who have found new heaven in compromising innocent people's Personal Identification Numbers (PINS). ATM fraud is now a recurrent decimal that speaks ill of the Nigeria financial system which ought to be checkmated. In spite of the stupendous advantages of using ATM, the level of ATM fraud tends to have over shadowed the improvement which it has brought into the service delivery system of Nigerian financial institutions¹¹.

Undoubtedly, Nigeria is experiencing an ATM card fraud because the implementation of the technology in Nigeria is characterised by ineptitude, lack of knowledgeable programmers and security experts that could guide and implement a secure transaction channel regardless of the level of education of the ATM card users. The Nigerian ATM technology is being too simplistic. Simply put, the uncomplicated nature of Nigeria ATM system has widened the latitude for scammers to gain unauthorised access into people's account which in turn lead to ATM fraud.

Apart from the simplicity of ATM technology being used in Nigeria, the insincerity of bank staff is another reason that has contributed to the widening rate of ATM scam in Nigeria. This has aborted virtually all the attempts made by banks to fight the ATM scam improprieties. The banks too, open a window for fraudsters in their indiscriminate issuance of cards to customers without regard to their ability to utilize them. The lack of co-operation among banks in the fight to stem the incidence of ATM frauds plaguing the industry is not helping to abate it¹².

Also empirical evidences have justified that network failure is another common cause of ATM fraud. In the view of Ellen, mass compromise of merchant networks and card processors is

⁹ Chinedu N.O. etal, *Analysis of the Negative Effects of the Automated Teller Machine (ATM) as a channel for Delivering Banking Services in Nigeria*, in *International Journal of Business and Management*. Vol 7 No. 7; April 2012 p.181.

¹⁰ Akhabue, A.D., Op.cit. P. 115

¹¹ Ibid P. 116

¹² Chinedu, N.O., etal op.cit.

viewed as the main cause of payment – card fraud¹³. The unemployment crisis in Nigeria tends to have equally contributed to the growing rate of ATM fraud in the country. It goes without saying that an idle mind is the devil's workshop. The government in power should not expect a show down in the temple of ATM fraud if the youth remains perpetually unemployed. More often than not, the bank always disclaims liability each time ATM fraud alarm is raised by the claimant. For it is a defence that the ATM customer has exposed his PIN to a third party thereby leaving the consumers unprotected. To mitigate the hardship, or the injury that is being inflicted on the consumers of ATM, banks should make it their statutory responsibility to provide electronic alert to customer's phones for all transactions carried out on their bank accounts through the ATMs. Electronic alert to customer's phones should be done timeously and not after harm has been done. An ATM service consumer, who suffers injury as a result of a breach of a duty of care by a bank, can maintain a civil action in negligence. Furthermore, where there is a poor network coverage by a service provider/bank, the consumer is entitled to repudiate the contract due to a breach of conditions of fundamental terms and of course a claim for damages.

In *Guaranty Trust Bank Plc v. Aleoghana*¹⁴, the respondent was a customer to the appellant, which said respondent went to England for the purpose of child delivery. The respondent attempted to withdraw 800 pounds using the ATM card. The account of the respondent was debited and cost of the transaction was also debited. The respondent lodged an immediate complaint. The appellant informed the respondent that the issue will be resolved and the account would be funded with 24 hours. Upon the expiration of 24 hours, the appellant sent another email that such complaints could only be addressed after 45 days. Hence the respondent sued for a breach of contract and legitimate expectation, because the respondent had to borrow money from different people for the medical needs as there was no contract between the respondent and the appellant for failed transaction wherein the account was debited and to wait for 45 days while the sum is kept by the appellant. The appellant put up the defence that it was the master card that was liable. The High Court founded in favour of the respondent. On appeal the Court of Appeal rejected the arguments of the appellant in that there was no privity of contract between the respondent and the master card and dismissed the appeal.

1.2. **Consumer Protection in Electronic Money Transfer (EMT).** Electronic money transfer could be defined simply as the transfer or movement of financial values or interest from one point to another through electronic means which could be telephonic, telegraphic, wireless radio messaging or satellite telephony. Electronic money transfer is a growing phenomenon especially in the developing nations of the world of which Nigeria is a prominent member. It involves a customer paying in money at one point with an instruction that such money or a proportion thereof be transferred to another point for onward payment to a named person who may be the same transferor or a third party transferee. No doubt the phenomenon is of great important in any economy.

Electronic money transfer could either be domestic or international. Domestic transfer is quite a familiar phenomenon. It involves payment in the same currency of input. Simply put, any payment made at a bank branch in Benin in a Naira denominated sum would be paid in naira at another branch of the same bank or another bank in another city, town or village in Nigeria. International electronic money transfer on the other hand is unique in a number of ways. For example, in international electronic money transfer, payment may be made in any of several

¹³ <http://pcworld.about.com/od/security2/mass-network-compromise-cause..> accessed on 30/6/2010.

¹⁴ Unreported, appeal No. CA/L/461/16, delivered 1st day of March, 2019.

denominated currencies. A good example is the “Western Money Transfer,” which is a growing trend in Nigeria. The popularity of this payment system could be traced to first Bank of Nigeria Plc. Today the new generation banks had since joined the wagon. We now have other international payment system known as “Money Gram” serviced by United Bank for Africa Plc; “Vigo Transfer” serviced by Union Bank of Nigeria Plc.

Western Union money transfer is an electronic money transfer operated by Western Union; a financial institution in Atlanta, Georgia, United States of America. The currencies of transaction and the parties involved are the unique features of international electronic money transfer. More often than not, the currency of input is different from the currency of payment. For example, where a consumer deposits \$200 at a point in Atlanta with a standing instruction that the value of the money be paid to a named consumer in Benin City, the consumer in Benin City could be paid either in naira or in dollars at a Bank in Benin City. It is rather unfortunate that many consumers are not aware that they have unconditional right to demand to be paid in dollars.

There is no doubt that electronic money transfer presents the safest means of executing transactions being it domestic or international transactions, more so that the incidence of armed robbery in Nigeria and general insecurity has reached an alarming stage. Furthermore, electronic money transfers saves time and allays the problem of distance. Out of a total US \$16 trillion payments made in 387 billion transactions in the United States in 1993, US \$2 trillion were made with currency and coins in 300 billion transactions; US \$43 trillion was paid out with cheques in 62 billion transactions, while a whopping US \$200 trillion and US \$446 trillion payments were made with cards and electronic payments in 22 billion and three billion transactions respectively¹⁵. Where a customer demanded to be paid in dollars and the bank refuses, the customer can repudiate the contract due to a breach of conditions of fundamental terms and claim for damages.

The Problems Militating against Consumer’s Right in EMT. It may sound shocking to say that it is most likely that over 95% of the recipients of foreign denominated electronic money transfer are unaware that they have the right to be paid in the United States dollars. It is their right to be so paid¹⁶. The few people that are aware of this right suffer frustration from the Bank whenever they demand to be paid in dollars through procrastinations and delay and false claim of unavailability of hard currency. While it can be said that the existing laws relating to electronic money transfer were made with the objective of regulating transactions in an effective way, it cannot be rightly asserted that the financial institutions are being effectively regulated or monitored. No doubt, a situation such as has been described above leaves the consumer helpless and his right completely denied him. Better put, he is left completely in the lurch, unprotected. In fact, the Bankers Tariff¹⁷ has been rendered a mere paper tiger and a toothless bull dog. Virtually, all the sections of the instrument are not complied with. This may not be unconnected with the fact that the banks are comfortable in the fact that their flouting of the regulation will attract very low penalties or may even be ignored due to the indolence of the Central Bank of Nigeria.

¹⁵ Ayorinde, D., *Enhancing Electronic Payments*, the News 06 October 2003 P. 33.

¹⁶ Foreign Exchange (Monitoring and Miscellaneous Provisions) Act Cap. F34 LFN 2010.

¹⁷ This is a comprehensive regulatory instrument published annually by the Central Bank of Nigeria to regulate and monitor charges by banks and other financial institutions.

Another problem facing or militating against consumer rights in financial transactions as it relates to electronic money transfer in Nigeria has to do with epileptic power supply and lack of technological development. Electronic money transfer depends principally on electronic technology. With the epileptic power supply, the electronic equipment involved in the transfer cannot function effectively. The computers, the satellite telephones, and the fax machines all depend on regular and stable power supply. It is a common thing hearing the cashiers in the Bank saying, the system is not functioning as there is no network thereby frustrating and discouraging the consumers of financial services. The funds are not readily available when needed attributable to the problem highlighted above. There is no doubt that this procrastination and delay contributes in denying the consumers his right to his money as and when needed. Changing the name of National Electrical Power Authority (NEPA) to Power Holding Company of Nigeria Plc (PHCN) and eventually to BEDC did not help issues. On the 25th day of August 2010, the PHCN Plc went on national strike thereby putting all their consumers in total darkness.

Allied to the foregoing problems militating against consumer's rights in electronic money transfer is the fact that information on electronic transfers are not always presented in direct hard copies and made available to the recipient thereby leading to wrong charging of the customers because he is not supplied with adequate information to enable him analyse the transaction. This of course put the consumer in a great disadvantage in assessing and/or asserting his rights.

1.3. The Rights of the Consumers/Customers in ATM Unauthorised Withdrawals and EMT Wrongly Charged Under the Consumer Protection Council. There are a large number of unauthorised ATM withdrawals in Nigeria. In the light of this, the Central Bank of Nigeria gave a directive to all the banks in Nigeria to refrain from issuing customers debit cards without the chip and PIN technology. However, millions of Nigerians still retain the use of their debit cards amidst the hazardous nature of such usage. The question that readily comes to mind here is what happens to those persons who have lost money and also those who would lose money as they continue to use the cards? The position of the banks in the country leaves much to be desired as they always maintain even without undertaking any investigation that the customer contributed to the loss and would not refund any part of or all the sums lost through the unauthorised withdrawal. Most victims of ATM withdrawal never consider seeking legal redress because of the cost implication in relation to paying lawyers or are ignorant to what seems to be their right under the law especially when they are told by the banks that the only way an account could be attacked and money withdrawn illegally through ATM, is when the customer has compromised his Personal Identification Number which is indeed a blatant fallacy.

A victim of ATM unauthorised withdrawal or a person wrongly charged in EMT is a consumer within the purview of the Consumer Protection Council Act¹⁸ and is protected by the said Act. Consumer protection laws are designed to ensure fair competition and to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and provide additional protection for the weak that are unable to take care of themselves. Section 2a of the Act provides for speedy redress to consumer's complaints through negotiation, mediation and conciliation.

Under section 6 of the Act, a consumer or community that has suffered loss, injury or damage as a result of the use or impact of any goods, products or service may make a complaint

¹⁸ Cap. C25LFN, 2010.

in writing to or seek redress through a state committee established by the council in each state of the federation to hear such complaints.

In the light of the above, a customer of a bank who has lost money through ATM unauthorised withdrawal or wrongly charged through EMT can make a complaint in writing to any state committee where the act was perpetrated. The state committee has powers under section 4 (1) of the Act to receive, investigate and act on complaints from consumers and recommend to the council the payment of compensation by the offending person to the injured customer. If after a customer lays a complaint, it is proved that the customer's right had been violated or that a wrong had been committed by way of trade, provision of services, supply of information or advertisement, thereby causing injury or loss to the customer, the customer shall in addition to the redress which the state committee may impose have a right of civil action for compensation or restitution in any competent court¹⁹.

Section 9 of the Act provides to the effect that it shall be the duty of the manufacturer or distributor of a product, of becoming aware after such a product has been placed on the market, of an unforeseen hazard arising from the use of such product, to notify immediately the general public of such risk or danger and caused to be withdrawn from the market such product. Furthermore, the section also provides to the effect that any person who violates the provision of sub section 1 of this section is guilty of an offence and liable on conviction to a fine of N50,000 or imprisonment for a term of 5years or both such fine and imprisonment. The provision of section 9 of the Act, should have operated as a deterrent to the banks in continuously issuing out debit cards to their customers after being aware that ATM fraud is becoming an unbecoming. Furthermore, it is criminal for a bank to continually issue out cards even when the banks had become aware of the unforeseen hazards arising out of the usage of the cards in this case a situation where the bank is no more in control of customer's funds with the customer deposits standing at the risk of dissipation through ATM scams. Though a customer can maintain a civil action against the bank over unauthorised withdrawal, a customer may rely on section 9 of the Act as a statutory base for bringing an action. The customers in order to prove the guilt of the bank under section 9 of this Act may have to state that unauthorised ATM withdrawals are as old as the first issue of the debit cards by the bank and will need evidence to that fact. It would go to say that, if unauthorised withdrawals were as old as the issue of the cards, then the banks ought to have known the hazardous nature of issuing those cards. The court may in addition to convicting a person of an offence under section 9 of the Act, make an order requiring the person to pay compensation for any personal injury, loss or damage resulting from that offence of such amount as it may deem fit or assessed by a competent professional authority.

1.4. **Consumer Protection in E-Commerce.** Electronic commerce is the buying and selling of goods and service through internet²⁰. A very useful definition is the one of Lodder²¹. He defines e-commerce as "commercial activities concerning goods and services as well as any business transaction, where participants are not necessarily at the same physical location and therefore do apply telecommunication means."

¹⁹ Ibid.

²⁰ Chaffey, D; *E-Business and E-Commerce Management* 2nd ed. (Prentice Hall Harlow 2003) P. 7.

²¹ Lodder, A.R., "*Legal Aspects of Electronic Commerce*" P. 4 available at <http://www.rechten.Vu.nl/~lodder/enlist/ec.pdf>, accessed on 17/8/2011.

The United Kingdom cabinet office defines it as the exchange of information across electronic networks at any stage in the supply chain, whether within an organisation, between businesses, between businesses and consumers or between the public and private sectors whether paid or unpaid²².

Thus e-commerce could be defined as the conduct of commerce in goods and services with the assistance of telecommunications and telecommunications- based tools where the sellers and buyers need not necessarily be in the same physical location. The objectives of e-commerce are many. It include, the facilitation of international co-operation through trade, making goods and services available to consumers all over the world irrespective of distance, the expansion of the consumer base for manufacturers or producers of goods and services, and a reduction in the costs of service delivery by delivering these electronically²³. Today consumers are able to have access to goods and services in the remotest parts of the world without having to see the sellers. The traditional buying and selling process is being gradually replaced by internet trading, especially in more advanced countries²⁴.

It is evident that the problems facing consumers on-line are not much different from transactions concluded off-line, but it cannot be denied that on-line e-consumers have special needs. The issue of privacy poses a greater risk in cyberspace. Unlike the off-line environment where consumers get an opportunity to inspect potential purchases and to judge for themselves the trustworthiness of a seller, in the on-line world, consumers are forced to proceed on faith, knowing very little about the seller, to whom they are entrusting a variety of information, including credit card information. The major significance of e-commerce lies in the fact that it encourages a single world trading system which is facilitated by access through electronic means to goods and services from different parts of the world. This has led to the emergence of uniform regulatory rules on internet governance to ensure the homogeneity of the conditions under which transactions are made to sellers and consumers of goods and services through the internet²⁵.

Consumers in e-commerce are faced with a number of risks arising from the general lack of understanding of the operations of the internet. This has been compounded by a number of legal issues which have been largely taken care of in more advanced and sophisticated countries, but which issues are still being grappled with in developing countries such as Nigeria where internet trading is something fairly new. These issues include the extent to which the communication between the parties is protected (data protection), the formation of a contract on the internet, the legal means of effecting payment in e-commerce, which court will assume jurisdiction in the event of a dispute between parties to an internet contract and what law or laws will govern the transactions. Is it the law of the seller or that of the buyer or consumer? Other issues relate to cybercrimes that are threatening e-commerce and also the mode of proving internet-related transactions²⁶.

²² United Kingdom Cabinet Office, 1999.

²³ Chaffey, D., Op. Cit.

²⁴ Bali, O., *Information Technology and the law* (Legal Digest Publishing Lagos 2002) P. 53

²⁵ Examples of such organisations that were established to achieve uniformity of terms and conditions on the internet are; the internet corporation, the internet society, the internet Engineering Task force and the worldwide web consortium.

²⁶ Akomolede, T.I., *Contemporary Legal Issues in Electronic Commerce in Nigeria*, Potchefstroom Electronic Law Journal 2008 available at <http://www.scielo.br/scielo.php>, accessed on 17/8/2011.

(a) Data protection in e-commerce. Trading on the internet is through the transmission of electronic data from the sellers or producers of goods and services to the buyer and vice versa. In view of the openness and accessibility of the internet, the protection of such data has been a constant source of concern for internet users and consequently has remained a threat to e-commerce²⁷. In the English case of *R. v. Brown*²⁸ Lord Hoffman lucidly captured the thrust of the problems associated with data protection in e-commerce as follows:

Vast amount of information about everyone are stored on computers, capable of instant transmission anywhere in the world and accessible at the touch of keyboard. The right to keep oneself to oneself, to tell other people that certain things are none of their business is under technological threat.

To this end, a number of jurisdictions such as U.K and U.S.A. have therefore come up with protective legislation²⁹. It is expected that Nigeria will borrow a leaf from the United Kingdom and the United States of America where there are principles that govern the protection of the data or communication of the parties in all internet transactions.

(b) Formation of contract on the internet. One of the vexed issues in e-commerce is the determination of the moment when a contract can be said to have come into existence on the internet, giving rise to the existence of right and duties as between parties. But traditional commercial transactions do not pose any significant problem because there are elaborate common law and statutory rules that govern such transactions. Most of the common law rules that are applicable to the commercial contract are inapplicable in internet contract because of the special nature of the contract. For example, the seller or website normally design the web page in such a way that it must clearly indicate that the information contained on the web in respect of a particular product or service constitute an invitation to make an offer and is not itself an offer.

Digital products supplied on the internet are infinite in supply because a website is not offering physical goods for sale. Offers in e-commerce are made electronically. E-mails are not as instantaneous as faxes and telephone calls. For example, an e-mail message is sent to a services provider who in turn delivers it to the box of the receiver. E-mail can be misaddressed or delayed by any server on the way and might not even be collected or read until sometime after their delivery. Thus, it may be difficult to know when an e-mail was actually read, to determine when an offer was made or acceptance communicated. Legally the best practice is to make any offer by e-mail subject to a date on which the offer will lapse³⁰. An objective date and time must be specified. If no intention is shown as to the lifespan of the offer, the courts would imply that the offer lapses after a reasonable time³¹.

(c) Payment system in e-commerce. Making payment for goods and services bought through the internet poses unique problems because of the fact that the parties may be thousands of kilometres apart. The problems associated with internet payment are in relation to the inability

²⁷ Gringas, C., and Nabarro, N., *the Law of the Internet* (Butterworth London) 1977. P. 249

²⁸ (1996) 1 All ER 545, 556.

²⁹ The Data Protection Act 1984 was enacted in the U.K. and it harmonised earlier legislation, policies and directives meant to protect communication through the internet. The electronic communications privacy Act 1988 was enacted in the United States of America.

³⁰ Gringas, C., and Nabarro, N., Op. Cit.

³¹ *Chanco Leasing SPA v. Rediffusion* (1987) 1 FTLR 207; *Quenerdine v. Cole* (188) 32 WL 185

of the internet to guarantee the safety of such payments and the possibility of duplicating payment, since a computer could potentially become a forger of digital banknotes³².

Goods and services bought or supplied through the internet can be paid for through the internet in the same way that the internet can be used to make offers and accept offers³³. Vendors or sellers often insist on receiving and validating payments before providing services or releasing goods to customers, and in such a situation, terms to this effect should be incorporated as part of the standard form agreement in e-commerce.

Popular methods of effecting payments for goods bought through the internet include the use of credit cards, smart cards, digital or electronic cheques or cash and debit cards. The use of credit cards is still not very popular in developing countries because e-commerce itself is still at its infancy and the practice is therefore for the sellers to obtain bank guarantees in such transactions³⁴. If the goods are supplied and payment is not forthcoming through the bank's guarantee, the seller has a right of action against the issuing bank that has guaranteed payments.

(d) Jurisdiction and choice of law issues The issue of jurisdiction is a crucial one in e-commerce. The question has always been which court assumes jurisdiction in resolving a dispute arising from a contract between the parties, in view of the fact that the parties may be residing in different jurisdictions with different legal systems. The issue basically is one of Private International Law and the relevant convention on jurisdiction and enforcement of judgment in civil and commercial matters³⁵. The convention is applicable to those countries that have ratified it and incorporated its provisions into their municipal laws.

(e) Need for consumer protection in e-commerce. For e-commerce to develop, both consumers and businesses must be confident that their transaction will not be intercepted or modified, that the sellers and the buyers are who they say they are and that transaction mechanisms are available, legal and secure. Building such trust and confidence is the prerequisite to win over businesses and consumers to e-commerce³⁶. Consumer sovereignty has four key elements, i.e. protection, information, choice and redress. Consumers would like to be confident that the goods and services offered online are fairly represented, that the merchants with whom they are dealing will deliver goods on time, and that they are not engaged in illegal practices. Consumers should further be protected against unsolicited communication; illegal or harmful goods, services and content; insufficient information about goods or their suppliers; the accessibility of websites; invasion of privacy; lack of protection through unfamiliar, inadequate or conflicting laws of a foreign country being applicable to the contract and cyber fraud.

As with any consumer market, things can go wrong in global commerce and consumers are usually confronted with the following consumer type protection issues, information deficiencies (inability of consumer to find out basic information about the trader, product or service, on which to make informed choices); after sales difficulties (such as failure to supply the

³² Gringas, C., and Nabarro, N., Op. Cit.

³³ Lynch, D.C., and Lundquist, L; *Digital Money* (Wiley New York 1996) P. 38.

³⁴ Value cards are however widely used in Nigeria for local purchases in supermarkets, petrol Stations etc.

³⁵ See Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1958.

³⁶ Commission of the European Communities, a European Initiative in Electronic Commerce (COM (97) 157 final, April 16th 1997) available at <http://www.cordis.lu/esprit/src/ecomcom.html>., accessed on 28/01/2004.

goods or services after payment has been made, problems with the delivery of the goods, unsatisfactory goods or services, or goods or services that present health and safety risks); fraud and unethical conduct (such as identity deception, false advertising, receiving payment without intending to supply, and scams like pyramid selling schemes, and some work from home or investment schemes); making payment over the interest (such as loss, errors and unauthorised transactions as well as the security of payment details such as credit card numbers and bank account details). Furthermore, it has to be considered, that e-commerce often crosses borders. All e-commerce is potentially international and not all countries subscribe to the same consumer protection standards. Legislation about consumer protection is the best way to harmonise standards.

1.5. **Criminal Liability.** In course of this work, it is necessary to look at the role of criminal law with regard to protection of consumers of ATM, EMT, and E-Commerce whose rights have been breached either by network providers or fraudsters. Many laws are in place to regulation crime in Nigeria. The primordial law in this area is the criminal code and penal code. The criminal code like the penal code did not adequately addressed the criminal conduct arising from modern digital communication system, this is because the criminal code and penal code where promulgated decades ago when the knowledge, used and potentials of digital communication was at its infancy³⁷. Hence the Cyber Crime Act³⁸ addresses the criminal conduct arising from modern network electronic communications. Part III of the act which deals with offences and penalties stated that, a person who, with intent commits any offence punishable under this Act against any critical nation information infrastructure designated under section 3 of this Act, is liable on conviction to imprisonment for a terms of not more than ten years without the option of fine³⁹.

1.6. **Conclusion:** The central theme of this article is understanding the basic problems of consumers in ATM, EMT and E-Commerce. In discussing it was discovered that the impact of digital convergence has fused telecommunications, broadcasting, media, and information technology (IT) into what is now called communication. It was further discovered that the criminal code like the penal code did not adequately addressed the criminal conduct arising from modern digital communication system, this is because the criminal code and penal code where promulgated decades ago when the knowledge, used and potentials of digital communication was at its infancy. Hence the Cyber Crime Act of 2010. It was also noted that, attempt to report a master card fraud complaint to the Consumer Protection Department of the Central Bank of Nigeria (CBN) has never yielded the desire result. In the light of the above, the Consumer Protection Department of CBN should endeavour to be carrying out independent investigation of any complaint received from a consumer against any Commercial Bank with regard to master card fraud complaint, rather than its attitude of referring such complaint back to the Managing Director of the Commercial Bank who had earlier denied liability. Without prejudice to the foregoing, it is a settled law that an ATM service consumer and EMT consumer who suffers injury as a result of a 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

³⁷ Akhabue, A.D., Consumer Protection Law: Rights, Complaints and Remedies for Telecoms Consumers in Nigeria, Amfitop Book Company, Lagos, 2018 Pgs. 104-108.

³⁸ Cyber Crime Act, 2015.

³⁹ Ibid.

contract and sue for damages. The urgent issues and areas for regulatory intervention are the anti-competition law, increase in tele density, the accessibility of website, invasion of privacy and cyber fraud.