



Research Report on the State of Consumer Protection

In Nigeria:

A Review of Consumer protection in the Telecommunications sector in Nigeria

In partnership with



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Executive Summary

The purpose of the project is to contribute to the empowerment of individual consumers through the realisation of their consumer rights. Consumer protection laws, relevant regulatory agencies and judicial decisions were reviewed. Focus Group Discussions with urban- and rural-based consumers; and in-depth interviews with two key regulatory agencies in Nigeria were conducted.

Many product liability cases in Nigeria are based on the tort of negligence due to the restrictive principle of privity of contract. For the cases reviewed in this work, all of which were based on negligence, there were no significant differences between the facts of the cases that failed and those that succeeded. The main difference was the ability or inability to discharge the burden of proof. On the whole, the field of product liability in Nigeria remains fluid. There is no judicial authority that can be regarded as a *locus classicus* in the sense that it provides answers to contending issues that often arise in such cases. Issues such as causation, defence of foolproof system, standard of care, burden of proof, mode of establishing the ownership of an offending product etc. are treated piecemeal in a casual manner.

There are numerous laws that protect the interests of consumers in Nigeria. There are, however, some gaps particularly in the areas of competition law, exemption clauses and obsolete nature of some provisions of some of the laws.

Most Nigerian consumers are not aware of relevant laws that protect them in their daily transactions. They are, however, aware of some regulatory agencies but are not comfortable with the fact that most of them are located in the cities making accessibility of their redress mechanisms to consumers rather difficult.

The Focus Group Discussions revealed that consumers are not interested in approaching the courts for redress because of lack of faith in the judicial system as well as high cost of litigation. For similar reasons including sentiment, complaints are not readily lodged with service providers.

The in-depth interviews revealed that regulatory agencies are making appreciable efforts in line with their statutory functions. They handle consumer complaints and perform other functions conferred on them by law. The findings from the focus group discussions are, however, to the

effect that consumers are not utilising the existing processes optimally due to reasons adduced above.

One area that has been rather neglected is that of awareness creation. Almost all the laws in the field of consumer protection are silent on this. The result is that many consumers are neither aware of these laws nor the channels of redress. In the circumstance, consumers are not in a position to make demands on the system and cannot serve as veritable catalysts.

It follows from the research findings that to achieve an appreciable level of consumer protection in Nigeria, the consumer stakeholder group must be taken into account. Awareness creation is a key tool in this regard.

Section A: Laws Creating Regulatory Agencies

1. Introduction

A very difficult task which we had to tackle at the planning stage of this project was the modality of choosing the laws to be reviewed.

A lot of laws in the statute book can be said to affect the wellbeing of the consumer one way or the other. To review all such laws will not only be a Herculean task in terms of time and space, but the emanating document may be so imposing in size as to discourage an average reader. It may also derail from the expectations of people as to what is generally regarded as core consumer issues. In fact, viewed from the perspective of direct or indirect benefit to consumers' welfare and wellbeing, a myriad of laws will qualify for review. For reasons given above, this option was not adopted.

But then the question remains as to what should be reviewed. What method should one use to avoid arbitrariness? Is it to concentrate on laws dealing with quality of products and services? Should the review cover all the agencies performing consumer-related functions? What categories of services should be covered - health, education, financial, legal, ombudsman, etc.?

As regards judicial decisions, the choice was not also easy. What cases can be regarded as consumer law cases? In Nigeria, there exist some specialised law reports in fields such as Commercial Law, Criminal Law and Constitutional Law. Sources that deal with reports of cases in all fields such as the Nigerian Weekly Law Report; Judgments of the Supreme Court; and Law Pavilion adopt classifications such as Appeal, Banking, Carriage of Goods, Constitutional Law, Criminal Procedure, Damages, Evidence, Land Law, Shipping Law, Commercial Law, Practice and Procedure, etc. There is yet no classification as "Consumer Law".

This makes research in this field difficult. The researcher will have to determine the nature of cases that qualify as consumer law cases. Some cases obviously come within the ambit of Consumer Law thus posing no problem of choice. Food and Drug cases, cases pertaining to poor service delivery and all cases involving injury to person or property will readily qualify.

But what about cases involving breach of contract (of diverse nature) sale of goods, negligence, nuisance, environmental degradation, etc.? A divergence of style is noticeable in the scope of areas covered by authors of consumer law books within and outside Nigeria. This divergence buttresses the fluidity of the scope of consumer law. This is reflected in our choice of laws and judicial decisions reviewed in this work. It will not surprise us if a subsequent researcher carrying out a similar work interchanges laws reviewed in this work and those not reviewed but only listed. The same applies to our choice of judicial decisions. We only hope that we have been able to avoid arbitrariness at least to the extent of addressing vital issues of consumer concern.

Appendix A. contains the list of laws directly and remotely related to Consumer Protection in Nigeria. But this review is limited to the laws that directly impact on consumer protection either in terms of provision of rights, redress mechanisms or creation of offences and penalties for breach of statutory enactments aimed at protecting the rights of consumers.

In conducting the review, administrative provisions, composition of governing bodies of regulatory agencies and general provisions of the enactments are omitted since they do not directly affect the rights and interests of consumers.

The enabling laws of the agencies reviewed in this work are available on the website of each agency. Copies of all the laws listed in the appendix (both those reviewed and those not) are also available on the website of the National Assembly of the Federal Republic of Nigeria.

2. Definition of Consumer

It is not intended in this work to go into the intricacies of the definition of the term “consumer” as can be seen from the divergent positions of authors and statutory enactments.¹ While some

¹ See for instance P. A. Aaaka and G. S. Day, *Consumerism Ended*. (New York: Free Press, 1974) p. xvii; Ross Cranston, *Consumer and the Law* (London: Weidenfeld and Nicolson, 1978) p. 7-8; L. G. Schiffman and L. L Kanut, *Consumer Behaviour* (Prentice-Hall, Inc., Englewood Cliffs, 1978) p. 4-5; B.B. Kanyip, “Consumer Protection and Product Liability in Nigeria” *Ahmadu Bello University Journal of Commercial Law* (ABU-JCC) Vol. 1, No. 1, 2001; F. N. Monye, *Law of Consumer Protection*, (Ibadan: Spectrum Book Limited, 2003) p. 19, *Black’s Law Dictionary; Chambers English Dictionary*, the Fair Trading Act 1973 (UK); the Consumer Protection Act 1986 (India); and the Consumer Protection Council Act 1992.

of these legal sources confine the term to contractual relationships, others give extended meanings that encompass non-contractual relationships. Some even extend the concept to inanimate things and corporate organisations. Some use the term in a generic sense. Kanyip's definition comes under the last category and includes the hirer, the buyer, the patient, the client, the sailor, the hotel guest, the bank customer, the insured or policy holder and indeed all end users of goods and service.²

The Consumer Protection Council Act defines the term as an individual who purchases, uses, maintains or disposes of products or services. The use of the word "individual" in this definition does not foreclose action by a group or class of people. In dealing with the right to complain, section 6 of this Act provides that a consumer or community that has suffered a loss, injury or damage as a result of the use or impact of any goods, product or service may make a complaint in writing to or seek redress through a State Committee. This provision extends the redress available to consumers to a "community". This thus envisages a class action.

In simple terms, a consumer can be defined as a person who purchases or uses any product or service or is adversely affected by a product or service. This is the sense in which the term is used in this work.

As regards Sale of Goods, principles of common law are incorporated by many of the local Sale of Goods Laws. For instance, Section 59(2) of the Sale of Goods Law, Lagos State 2003 provides:

The rules of the common law, including the law merchant, save in so far they are inconsistent with the express provision of this law and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, shall continue to apply to contracts for the sale of goods.

² *Op cit.*

3. Constitution of the Federal Republic of Nigeria 1999

The starting point for the review of laws in any field in Nigeria is the Constitution of the Federal Republic of Nigeria. This is because every law derives its legitimacy from the Constitution which is the grundnorm of the country.

Supremacy of the Constitution

The validity of any law and the provisions therein are assessed on the basis of compliance with the Constitution which is the Supreme Law of the Country. Section 1 of the Constitution puts this issue beyond doubt. It provides:

- a. This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria
- b. The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.
- c. If any law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

Scope of the Constitution

The Constitution of the Federal Republic of Nigeria is a very comprehensive document covering issues such as supremacy (as above); powers of the organs of government (the Legislature, the Executive and the Judiciary); fundamental objectives and directive principles of state policy; citizenship, fundamental rights, the Federal Capital Territory, Abuja and general supplementary provisions.

Relevance to Consumer Protection

The Constitution governs the relationship between citizens and governments and agencies of government as well as between citizens themselves. It confers rights and obligations some of which are akin to rights advocated by consumer advocates. Two chapters of the Constitution are particularly relevant to consumer protection, namely, chapters two and four dealing with

fundamental objectives and directive principles of state policy and fundamental rights. These are examined below.³

Fundamental Rights

Chapter IV of the Constitution contains the fundamental rights of all citizens and persons in Nigeria.⁴

These are the rights to life; dignity of human person; personal liberty; fair hearing; private and family life; freedom of thought, conscience and religion; freedom of expression and the press; peaceful assembly and association; freedom of movement; freedom from discrimination; and the right to acquire and own immovable property anywhere in Nigeria.

These rights can be said to have some affinities with consumer protection. Some actually have direct bearing on consumer Protection. For instance the right to fair hearing addresses the principle of access to justice which is a cardinal principle of consumer protection. Section 36(1) of the Constitution provides –

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

Section 37 deals with private and family life and provides that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is guaranteed and protected.

Two popular consumer rights namely, the rights to be heard and to be informed are also reflected in the Nigerian Constitution. Section 39 provides that every person shall be entitled to freedom to hold opinions and to receive and impart ideas and information without

³ For a detailed examination of these principles see standard constitutional law books.

⁴ Citizenship of Nigeria can be acquired by birth, registration or naturalization – chapter two of the Constitution

interference. Based on these fundamental rights guaranteed by the Constitution, consumer advocates can engage in any campaign of their choice to raise consumer awareness and the level of consumer protection in Nigeria.

Citizens (for our purpose, consumers of products and services) also enjoy the liberty to form and join associations of their choice. They are free to come together to protect or project their interests in accordance with section 40 of the Constitution.

In addition, on the strength of the Constitution, any citizen whose rights have been violated under any law including consumer protection laws can approach the court or any other appropriate body for redress. The fundamental rights are so important that failure to observe them in any case vitiates the proceedings. They cannot be derogated from except to the extent allowed by law. Describing the primacy of a fundamental right, Eso, J.S.C, in *Ransome-Kuti v. Attorney-General of the Federation*⁵ said:

It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our Constitution, since independence ... is to have these rights enshrined in the Constitution so that the rights could be “immutable” to the extent of “non-
immutability” of the Constitution itself.⁶

In the same vein, Nasir, J.C.A, in *Uzoukwu v. Ezeonu II*⁷ stated that fundamental rights are fundamental because they have been guaranteed by the fundamental law of the country: that is by the Constitution.⁸

⁵ [1985] 2NWLR 9 pt. 6) (211 SC)

⁶ *Ibid*

⁷ [1991] 6 NWLR (pt. 200) 708CA

⁸ *Ibid* p. 761. It is to be noted that the primacy of fundamental rights is as regards other laws but not as regards the country. This was explained by Kutigi, J.S.C., in *Badejo v. Minister of Education* (1996) 9-10 S.C.N.J. 51 where His Lordship said that a fundamental right is certainly a right which stands above the ordinary laws of the land, but no fundamental right should stand above the country, state or the people. For a detailed discussion of this issue see Sebastine Tar. Hon, *Constitutional Law and Jurisprudence in Nigeria* (Port Harcourt: Pearl Publishers, 2004) pp. 79-81

The essence of this incursion into Constitutional Law is to buttress the fact that any person (for our purpose, a consumer) whose rights are violated under any law including Consumer Protection Laws can seek redress before any court of competent jurisdiction as the Constitution guarantees his right to do so.

Fundamental Objectives and Directive Principles of State Policy

Chapter two of the Constitution sets out the fundamental obligations of the Government and the citizens. Section 13 provides that it shall be the duty and responsibility of all organs of government, and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of chapter II of the Constitution. The fundamental objectives and directive principles enshrined in this chapter include the principles of democracy and social justice (including the observance of federal character in the composition of government and its agencies); political objectives; economic objectives; social objectives; educational objectives; environmental objectives and the directive on Nigerian culture.⁹

Detailed provisions are made on each of the above objectives. Some examples will bring out this fact. Under the economic objectives, the State is required to, among others, control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.¹⁰

The social objectives seek to guarantee equality of rights, obligations and opportunities before the law; the sanctity and dignity of the human person; the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment; and adequate medical and health facilities for all persons.¹¹

Under the educational objectives, the government is enjoined to direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels and to strive to eradicate illiteracy and when practicable provide –

- a. free, compulsory and universal primary education;

⁹ Section 14-21

¹⁰ Section 16

¹¹ Section 17

- b. free secondary education;
- c. free university education; and
- d. free adult literacy programme.¹²

The environmental objectives require the State to protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.¹³

The national ethics of the country are clearly stated as “discipline, integrity, dignity of labour, social justice, religious tolerance, self-reliance and patriotism”.¹⁴

The Constitution enjoins the mass media to feel free at all times to uphold the fundamental objectives contained therein and the responsibility and accountability of the government to the people.¹⁵

In a reciprocal manner, the Constitution imposes on every citizen, the duty, among others, to abide by the Constitution, respect its ideals and its institutions, the National Flag, the National Anthem, the National Pledge, and legitimate authorities; render assistance to appropriate and lawful agencies in the maintenance of law and order, and declare his income honestly to appropriate and lawful agencies and pay his tax promptly.

It is to be noted that these objectives and directive principles of state policy are not justifiable. Section 6(6)(c) of the Constitution provides that the judicial powers of the courts shall not, except as otherwise provided by the Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter II of the Constitution.

¹² Section 18

¹³ Section 20

¹⁴ Section 23

¹⁵ Section 23

This provision in effect, wanes the significance of these provisions. But this does not mean that the provisions are without any significance. In *Attorney-General of Ondo State v. Attorney-General of the Federation & 35 Ors.*¹⁶ the Supreme Court held that section 13 imposes a solemn duty on all organs of government and all authorities and persons performing legislature, executive powers to observe chapter II of the Constitution.

Another milestone was the domestication of the African Charter on Human and People's Rights by the Federal Government on 17 March 1983. This was done through the enactment of the African Charter on Human and People's Rights (Ratification and Enforcement) Act 1983.

Many of the provisions contained in chapter II of the Constitution are also contained in the Charter. Such provisions include the rights to receive information; participate freely in the government of the country; work under equitable and satisfactory conditions and receive equal pay for equal work; medical attention, education, participation in cultural life; and economic, social and cultural development.

The result is that for the provisions of chapter two of the Constitution which also appear in the African Charter on Human and People's Rights, any aggrieved person can sue basing his claim on the latter document.¹⁷

4. Consumer Protection Council Act 1992

The Consumer Protection Council Act, enacted in 1992 is the first consumer protection law that specifically deals with the practical enforcement of consumer rights. Unlike other laws discussed below which are producer-focussed, the Consumer Protection Council Act is consumer-focussed. It gives direct protection to consumers by providing avenues for them to

¹⁶ (2002) 9NWLR (pt. 772) 222SC

¹⁷ See for instance *the Social and Economic Rights Action Centre & Anor v. Federal Republic of Nigeria* (2002) 2 CHR 537, which involved a petition by a Nigerian and a US-based non-governmental Organisation against the Federal Government of Nigeria over alleged government backed environmental and social degradation of Ogoni land. The petition was brought before the African Commission on Human and Peoples' Rights, Banjul, Gambia which resolved the matter in favour of the petitioners. The petition which was based on Article 16 of the African Charter on Human and People's Rights touches on the environmental objectives of the Federal Republic of Nigeria as contained in section 20, chapter two of the Constitution.

seek redress. The Act established the Consumer Protection Council (CPC) which is a body corporate with perpetual succession and the power to sue and be sued in its corporate name.

Functions of the Council

The functions of the Council as conferred by section 2 of the Act are to –

- a. provide speedy redress to consumers' complaints through negotiation, mediation and reconciliation;
- b. seek ways and means of removing or eliminating from the market hazardous products and causing offenders to replace such products with safer and more appropriate alternatives;
- c. publish, from time to time, the list of products the consumption and sale of which have been banned, withdrawn, severally restricted or not approved by the Federal Government or foreign governments;
- d. cause an offending company, firm, trade, association or individual to protect, compensate, and provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous;
- e. organise and undertake campaigns and other forms of activities as will lead to increased public consumer awareness;
- f. encourage trade, industry and professional associations to develop and enforce in their various fields quality standards designed to safeguard the interest of consumers;
- g. issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligations under the Act;
- h. encourage the formation of voluntary consumer groups or associations for consumers' wellbeing;

- i. ensure that consumers' interests receive due consideration at appropriate forums and provide redress for obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade, associations or individuals;
- j. encourage the adoption of appropriate measures to ensure that products are safe for either intended or normally safe use; and
- k. perform such other functions as may be imposed on the Council pursuant to the Act.

Section 3 gives additional powers to the Council. By this section, in the exercise of its functions under the Act, the Council shall have power to –

- a. apply to court to prevent the circulation of any product which constitutes an imminent public hazard;
- b. compel a manufacturer to certify that all safety standards are met in their products;
- c. cause, as it deems necessary, quality tests to be conducted on a consumer product;
- d. demand production of labels showing date and place of manufacture of a commodity as well as certification of compliance;
- e. compel manufacturers, dealers and service companies, where appropriate, to give public notice of any health hazards inherent in their products;
- f. ban the sale, distribution, advertisement of products which do not comply with safety or health regulations.

State Committees

In addition to the Consumer Protection Council which is at the Federal level, section 4 provides for the establishment of State Committees to assist the Council in each state of the Federation.

Subject to the control of the Council, the State committees are empowered to –

- a. receive complaints and enquiries into the causes and circumstances of injury, loss or damage suffered or caused by a company, firm, trade, association or individual;
- b. negotiate with the parties concerned and endeavour to bring about a settlement; and
- c. where appropriate, recommend to the Council the payment of compensation by the offending person to the injured consumer.

Consumer Complaints

Section 6 gives a consumer or community that has suffered a loss, injury or damage as a result of the use or impact of any product or service the right to make a complaint in writing or to seek redress through a State Committee. The Committee is empowered to take any such action as it deems reasonable and just in the circumstance.¹⁸

Consumer Redress

As can be seen from sections 2 and 3 reproduced above, one of the functions of the Council and the State Committees is to provide speedy redress to consumers' complaints through negotiation, mediation and conciliation.

Section 8 provides what may be regarded as civil rights for consumers. It provides that whereupon an investigation by the Council or State Committee of a complaint by a consumer it is proved that –

- a. the consumer's right has been violated; or
- b. that a wrong has been committed by way of trade, provision of services, supply of information or advertisement, thereby causing injury or loss to the consumer, the consumer shall in addition to the redress which the State Committee, subject to the approval of the Council, may impose, have a right of civil action for compensation or restitution in any competent court.

¹⁸ Section 7

In *Nigerian Breweries PLC v. David Audu*,¹⁹ the Court of Appeal referred to the Consumer Protection Act as an Act which seeks not only **to preserve the consumer's civil right of action for compensation**²⁰ but also empowers the Council to apply to the Court to prevent the circulation of any product which constitutes an imminent public hazard.

Compensation Order

Section 13 provides that a court by or before which a person is convicted of an offence may, in addition to dealing with such person in any other way, make an order, known as "Compensation 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 as assessed by a competent professional authority.

This is another novel provision contained in the Consumer Protection Council Act. It gives a victim who cannot pursue his civil claim the opportunity to be awarded compensation by the court which tries an offender under the Act.

Offences and Penalties

Withdrawal of hazardous products

The Act imposes a duty on the manufacturer or distributor of a product, on 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 cause to be withdrawn from the market such product. Penalty for this offence is a fine of N50,000.00 or imprisonment for a term of five years or both such fine and imprisonment.

The purpose of this provision is to enable manufacturers and distributors to recall products which are discovered to pose a danger to the public.

Nigeria has recorded some cases of product recall. Examples are as follows:

¹⁹ (2009) LPELR-8863 (CA)

²⁰ Emphasis supplied.

- The recall in 2008 of the acetaminophen-based teething medication (*My Pikin*), containing diethylene glycol (DEG), a toxic alcohol used in brake fluid, paint, and household cleaning products.
- The withdrawal of Gentamycin 280mg Injection from circulation in 2010.
- Recall of contaminated batches of Nelfinavir (Viracept®) in 2007.
- Voluntary withdrawal of Chlorproguanil-Dapsone (Lapdap®) by NAFDAC in 2005.

Wrong Advertisement

Another offence is the issuance of a wrong advertisement about a consumer item. A person who issues any such advertisement is guilty of an offence and liable on conviction to a fine of N50,000.00 or to imprisonment for a term of five years or to both such fine and imprisonment.

Sale of hazardous products

Sale or offer for sale of any unsafe or hazardous product or service is equally an offence²¹ attracting a penalty of N50,000.00 or imprisonment for a term of five years.

Refusal to testify, supply of false information, etc.

Other offences include refusal without cause to attend and testify before the Council or a State Committee or to answer any lawful enquiry or to produce any document as may be required; making of false entry or statement; and violation of an order of the Council or a State Committee. Each of these offences attracts a penalty of N10,000 or the specified term of imprisonment.

Observations

Even though the Consumer Protection Council Act can be said to be a right step in the right direction given the consumer-oriented provisions discussed above, there are some obvious gaps which impede the practical implementation of the provisions of the Act. For instance, the CPC is required to go through the Attorney-General of the Federation to enforce its orders. Section 16 provides that the Attorney-General of the Federation may, at the request of the Council, apply to a court for an order commanding any person, partnership, company, trade association

²¹ S. 12

etc., to comply with the provisions of the Act or an order of the Council in pursuance thereof. This administrative bottleneck is unnecessary. A direct power of prosecution in all cases falling within the Council's scope of functions is necessary.

The funding provisions are also liable to criticisms in that they are silent on the funding of the State Committees. Although the Act maintains a close link between the Council and the State Committees with the Council enjoying a supervisory role, nothing is said about financial support to the State Committees. In practice, the establishment and funding of State Committees rest with each state thus leaving the decision to establish at the discretion of each state.

The Consumer Protection Bill 2010 pending before the National Assembly seeks to take care of this normally by replacing the State Committees with State Offices members of staff of which are appointed and maintained by the Council.

Another remarkable matter about the Consumer Protection Council Act is that it is the only law that makes specific provisions on voluntary consumer associations. As part of its functions, the Council is enjoined to encourage the formation of voluntary consumer groups or associations for consumers' wellbeing. In pursuance of this mandate, the Council has issued the Guidelines for Registration and Affiliation of Consumer NGOs with the Council. So far, 28 NGOs have been registered by the council.

These positive instances notwithstanding, the CPC Act has proved grossly inadequate to address the basic needs of consumers. The observed deficiencies have necessitated calls from various quarters for the amendment of the Act to give it a wider scope that can serve the needs of consumers. One major step in this direction was the workshop on the reform of the Consumer Protection Council Act organised by the Nigerian Law Reform Commission in conjunction with the Consumer Protection Council (CPC).

The product of this workshop; some provisions of the existing Act, that is, the CPC Act 1992; as well as the input of the Consumer Protection Council; some law makers and consumer

advocates; are reflected in the Consumer Protection Bill 2010 pending before the National Assembly for the repeal and replacement of the Consumer Protection Council Act.²²

The Bill is quite ambitious both in terms of scope of subject matter and redress mechanisms. Apart from fine administrative and financial provisions, the scope of the proposed Act includes fundamental consumer rights, duties of suppliers of products and services, enforcement of consumers' rights, offences and penalties, institutions for the protection of rights, and miscellaneous provisions.

The creation of institutions for the protection of consumer rights is laudable. Three institutions are sought to be created by the Bill, namely, the Negotiation, Mediation and Conciliation Tribunal, the Mobile Courts and the Small Claims Courts. These institutions, no doubt, will lessen the burden currently borne by consumers seeking to enforce their rights in the formal courts.

Subsidiary Legislation

In exercise of the powers conferred on it by section 31 of its enabling Act, the Consumer Protection Council with the approval of the Honourable Minister of Commerce made the following Regulations –

- a. *The Consumer Protection Council (1992 No. 66) Consumer Protection (Sales Promotion) Regulations 2005.*
- b. *The Consumer Protection Council Act (1992 No. 66) Consumer Protection (Products and Services Monitoring and Registration) Regulation 2005*

The provisions of these Regulations are summarised below:

- a. *The Consumer Protection Council (1992 No. 66) Consumer Protection (Sales Promotion) Regulations 2005*

²² The bill seeks to repeal the Consumer Protection Council Act 1992 and to make comprehensive provisions for Consumer Protection in Nigeria, the establishment of Negotiation, Mediation and Conciliation Tribunal and for Related Matters

Regulation 1 adopts the provisions of the Nigerian Code of Advertising Practice made pursuant to the Advertising Practitioners (Registration, etc.) Act as amended by providing that all sales promotions shall comply with part 5 of the said Code. This is a laudable provision which obviates role conflicts and duplicity of regulatory framework. The Regulations provide that all sales promotions shall be conducted under the supervision of the Council. The Council is mandated to verify the genuineness of all sales promotions and ensure that they are –

- i. legal, decent, honest and faithful;
- ii. conducted equitably, promptly and efficiently to the extent that consumers are dealt with fairly and honourably;
- iii. not designed to abuse consumers' trust or exploit their lack of knowledge or experience or mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Regulation 8 specifies the steps to be taken by the Council in carrying out the supervision of sales promotion. Thus the Council may –

- i. participate in the meeting of the planning implementation committee of the promoters;
- ii. check, inspect or test products, that is, the subject of the promotion;
- iii. assist in the verification of claims or prizes won by consumers or participants;
- iv. ensure that such claims or prizes won are delivered or presented promptly to the winners;
- v. investigate complaints arising from such sales promotions and generally ensure that the interests of consumers are protected.

It is an offence to contravene the provisions of the Regulations. By Regulation 11, any person who contravenes the provisions of the Regulations shall be precluded by the Council from

carrying on or conducting the sales promotion either absolutely or for such period of time as the Council may prescribe depending on the aggregate or total benefits and prizes offered.

The Regulations apply where the aggregate or total benefits or prizes offered are worth more than N250,000.00 (two hundred and fifty thousand naira).

Promoters are required to enter an undertaking to conduct the sales promotion honestly, decently, equitably, promptly, efficiently and in a manner as not to mislead consumers by inaccuracies, ambiguities, exaggerations, omissions or otherwise and not to lower the quality of the product during the period of the said promotion.

“Sales Promotion” in the context of the Regulations means a promotion marketing technique, which generally involves providing a range of direct or indirect additional benefits usually on a temporary basis, designed to make goods, products or services more attractive to purchasers.

b. The Consumer Protection Council (Products and Services Monitoring and Registration) Regulations 2005.

These Regulations create a regime for the registration of products and services with the Consumer Protection Council so as to enable the Council to monitor the movement of products and provision of services in Nigeria.

Regulation 1 provides that every product manufactured, imported, advertised, sold or distributed in Nigeria shall be registered with the Council in accordance with the provisions of the Regulations.²³

²³ A similar provision is contained in the Food, Drugs and Related Products (Registration etc.) Act 1993 which makes it mandatory for every food item, drug and related products to be registered with the National Agency for Food and Drug Administration and Control (NAFDAC). Given this state of affairs, some product and service providers have argued that the instant Regulations are capable of creating duplicity of obligations. But, Regulation 2 takes care of the anxiety as regards double payment. It provides that products registered by or subject to registration by the National Agency for Food and Drug Administration and Control or any other regulatory agency of the Federal Government of Nigeria may be exempted from fees or may attract such reduced registration fees as the Council may determine.

The Regulations enjoin providers of products and services to promote consumers' interest by undertaking to respond to consumers' complaints not later than two weeks from the date of receipt of such complaints²⁴

A certificate of registration issued by the Council is valid and operative for a period of five years or such other period as the Council may from time to time prescribe.²⁵

The Council reserves the right to suspend, withdraw or cancel a certificate of registration at any time if –

- a. the grounds on which the product was registered were false or incomplete;
- b. the circumstance under which the product was registered no longer exists;
- c. any conditions or undertaking under which the product was registered have been contravened; or
- d. the standard of quality, safety or efficacy as prescribed in the documentation for registration are not being complied with.

In the event of contravention of any provision of the Regulations, the Council is empowered to prohibit the offender from carrying on the manufacture, distribution, sale, advertisement or importation of the product(s) absolutely or for such period of time as the Council may declare in addition to the payment of a fine of N50,000.00²⁶

5. The Nigerian Communications Act 2003

This Nigerian Communications Act 2003 established the Nigerian Communications Commission (NCC) as a body corporate with power to sue and be sued. The Act is very comprehensive in scope and covers subjects such as formulation of national policy on frequency management; requirements for and class of licences; powers and procedures of the

²⁴ Regulation 3(2) and second schedule)

²⁵ Regulation 5

²⁶ Regulation 7

Commission; investigations for the purpose of administration of the Act; information gathering; regulations and guidelines, competition practices; interconnection; consumer protection and quality of service; universal access fund; spectrum assignment; technical standards; installation of network facilities, jurisdiction; and actions against the Commission. As with the laws discussed above, only the provisions that have direct relevance to consumer protection and redress are discussed.

Objectives of the Act

The primary objective of the Act is to create and provide a regulatory framework for the Nigerian Communications Industry and all matters related thereto and specifically to –

- a. promote the implementation of the national communications or, telecommunications policy as may from time to time be modified and amended;
- b. establish a regulatory framework for the Nigerian communications industry and for this purpose to create an effective, impartial and independent regulatory authority;
- c. promote the provision of modern, universal, efficient, reliable, affordable and easily accessible communications services and the widest range thereof throughout Nigeria;
- d. encourage local and foreign investments in the Nigerian communications industry and the introduction of innovative services and practices in the industry in accordance with international best practices and trends;
- e. ensure fair competition in all sectors of the Nigerian communications industry and also encourage participation of Nigerians in the ownership, control and management of communications companies and organisations;
- f. encourage the development of a communications manufacturing and supply sector within the Nigerian economy and also encourage effective research and development efforts by all communications industry practitioners;
- g. protect the rights and interests of service providers and consumers within Nigeria;

- h. ensure that the needs of the disabled and elderly persons are taken into consideration in the provision of communications services; and
- i. ensure an efficient management including planning, coordination, allocation, assignment, registration, monitoring and use of scarce national resources in the communications sub-sector, including but not limited to frequency spectrum, numbers and electronic addresses, and also promote and safeguard national interests, safety and security in the use of the said scarce national resources.

Functions of the Commission

Almost every function conferred on the Commission is relevant, one way or the other, to consumer protection. In view of this, most of the functions as stated in section 4 of the Act are reproduced below –

- a. the facilitation of investments in any and entry into the Nigerian market for provision and supply of communications services, equipment and facilities ;
- b. the protection and promotion of the interests of consumers against unfair practices including but not limited to matters relating to tariffs and charges for and the availability and quality of communications services, equipment and facilities;
- c. ensuring that licensees implement and operate at all times the most efficient and accurate billing system ;
- d. the promotion of fair competition in the communications industry and protection of communications services and facilities providers from misuse of market power or anti-competitive and unfair practices by other service or facilities providers or equipment suppliers ;
- e. granting and renewing communications licences whether or not the licences themselves provide for renewal in accordance with the provisions of the Act and monitoring and enforcing compliance with licence terms and conditions by licensees ;

- f. proposing and effecting amendments to licence conditions in accordance with the objectives and provisions of the Act ;
- g. fixing and collecting fees for grant of communications licences and other regulatory services provided by the Commission ;
- h. 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 ;
- i. making and enforcement of such regulations as may be necessary under the Act to give full force and effect to the provisions of the Act ;
- j. management and administration of frequency spectrum for the communications sector and assisting the National Frequency Management (NFM) Council in developing a national frequency plan ;
- k. development, management and administration of a national numbering plan and electronic addresses plan and the assignment of numbers and electronic addresses therefrom to licensees ;
- l. 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 systems ;
- m. the formulation and management of Nigeria's inputs into the setting of international technical standards for communications services and equipment ;
- n. carrying out type approval tests on communications equipment and issuing certificates therefor on the basis of technical specifications and standards prescribed from time to time by the Commission ;
- o. encouraging and promoting infrastructure sharing amongst licensees and providing regulatory guidelines thereon ;

- p. examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration ;
- q. preparation and implementation of programmes and plans that promote and ensure the development of the communications industry and the provision of communications services in Nigeria ;
- r. designing, managing and implementing Universal Access Strategy and programme in accordance with Federal Government's general policy and objectives thereon ;
- s. advising the Minister on the formulation of the general policies for the communications industry and generally on matters relating to the communications industry in the exercise of the Minister's functions and responsibilities under the Act;
- t. implementation of the Government's general policies on the communications industry and the execution of all such other functions and responsibilities as are given to the Commission under this Act or are incidental or related thereto ;
- u. generally advising and assisting communications industry stakeholders and practitioners with a view to developing of the industry and attaining the objectives of the Act and its subsidiary legislation;
- v. representation of Nigeria at proceedings of international organisations and fora on matters relating to regulation of communications and matters ancillary and connected thereto ; and
- w. general responsibility for economic and technical regulation of the communications industry.

Licences

The Act gives the Commission the power to grant licences to prospective operators. Requirements for licences, classes of licences, licence conditions and renewal procedures are clearly stated.

The Commission is also empowered to suspend or revoke a licence under stated circumstances including the contravention of any of the provisions of the Act or its subsidiary legislation or the terms or conditions of the licence or for public interest. Such suspension or revocation shall be published in at least one national daily newspaper.²⁷

Regulations and Guidelines

The Commission is conferred with powers to make regulations and guidelines on matters falling within its jurisdiction.²⁸ Pursuant to this power, the Commission has issued some guidelines and regulations which expand and give effect to some general provisions of the Act.²⁹

Competition Practices

The Commission is conferred with exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and regulations, whether of a general or specific nature, as it relates to the Nigerian communications market.³⁰ The Act prohibits a licensee from engaging in any conduct which has the purpose or effect of substantially lessening competition in any aspect of the Nigerian communications market.³¹ Specifically, it is provided that a licensee shall not enter into any understanding, agreement or arrangement whether legally enforceable or not, which provides for –

- a. rate fixing;
- b. market sharing;

²⁷ Section 45

²⁸ Section 70

²⁹ See below for the list of the Commission's Regulations and Guidelines

³⁰ Section 90

³¹ Section 91

- c. boycott of another competitor;
- d. boycott of a supplier of apparatus or equipment; or
- e. boycott of any other licensee.

Furthermore, a licensee shall not, at any time or in any circumstance, make it a condition for the provision or supply of a product or service in a communications market that the person requiring such product or service is also required to acquire or not to acquire any other product or service either from himself or from another person.³²

Pursuant to its regulation making power, the Commission made the Competition Practices Regulations 2007 which provide the regulatory framework for the promotion of fair competition in the communications sector and protection against the misuse of market power or other anti-competition practices.³³

Interconnection

An issue that posed considerable concern to consumers in Nigeria at the early stages of global system mobile communications³⁴ was that of interconnectivity among network providers. Consumers had to contend with the unwillingness or reluctance of network operators to allow interconnection by their competitors. Such interconnection as was allowed was at a huge cost the burden of which was borne by consumers.

The Nigerian Communications Act imposes an obligation on network service or facilities providers, on receipt of a request for interconnection from another licensee to grant such request at technically feasible locations and on terms and conditions negotiated between the parties in good faith.³⁵ All interconnection agreements are required to be registered with the Commission which has the power, to direct the parties to revise the agreement if, in the

³² Section 91(3)

³³ Published in the laws of Federation of Nigeria as Cap N 97, S.I 39 of 2007 see also "Competition Law in Nigeria", F. N. Monye, Consumer Journal, Vol. 4 2008, pp. 1-23, a publication of Consumer Awareness Organisation, Enugu Nigeria, printed by Chenglo Ltd, Enugu, Nigeria)

³⁴ This system came into being in Nigeria in 2001

³⁵ Section 96

Commission's opinion, it is inconsistent with the Act, or the Interconnection Guidelines or the integrity of the public network.³⁶

Parties to an interconnection agreement are forbidden from disconnecting or discontinuing interconnection to any interconnecting party without the prior written approval of the Commission.³⁷

Consumer Protection and Quality of service

The Act imposes a duty on all service providers to –

- a. meet such minimum standards of quality of service as the Commission may, from time to time, specify and publish;
- b. deal reasonably with consumers; and
- c. adequately address consumer complaints.³⁸

Both the Commission and service providers are required to establish dispute resolution procedures for resolution of consumer complaints. But in seeking redress, an aggrieved consumer is required to exhaust the dispute resolution process of the service provider before approaching the Commission.³⁹

Consumer Code

The Commission is conferred with the power to prepare a General Consumer Code of Practice as a model for individual consumer codes to be prepared by service providers. The General Consumer Code of Practice sets out the minimum requirements that must be contained in the individual codes to be prepared by service providers. Pending the publication of an individual code, each service provider is bound to observe the provisions of the General Code.

³⁶ Section 98

³⁷ Section 100

³⁸ Section 104

³⁹ Section 105

The Commission has exercised its powers in this regard by producing the Consumer Code of Practice Regulations 2007 discussed at the end of this section.

Required application services

The Act enjoins the Commission to determine a list of required application services such as emergency services, directory assistance services, operator assistance services and services for disabled consumers. As regards emergency situations, the Commission is enjoined to promote and enhance public safety through the use of a particular number which shall be designated as the universal and emergency assistance number for telephone services; and encourage and facilitate the prompt deployment throughout Nigeria of a seamless, ubiquitous and reliable end to end infrastructure for emergency communications needs.⁴⁰

Tariff Rate Regulation

The Act imposes a duty on holders of individual licences not to impose any tariff or charges for the provision of any service without the approval of the Commission. Similarly, service providers shall not change their tariff rates and charges without the prior written approval of the Commission.⁴¹

It is remarkable that these provisions do not mention the duty of the service providers to consumers of their services. Experience has shown that service providers usually change their tariffs without notification to their consumers even by SMS message which they freely adopt in unsolicited telemarketing.

Since the relationship between service providers and their respective consumers is personal and contractual, personal and advance notification should be given to them before any tariff change. The law should incorporate this step as a mandatory requirement.

Universal Service Provision Fund

The Act provides for the establishment of the “Universal Service Provision Fund” (USP Fund) by the Commission. The Fund is meant to promote the widespread availability and usage of network services and applications services throughout Nigeria by encouraging the installation

⁴⁰ Section 107

⁴¹ Section 108

of network facilities and the provision of network services and applications services to unserved, underserved areas or the underserved groups within the community. Detailed provisions are made on sources of funds for the Fund, membership of the governing Board, and proceedings of the Board.

The UPS Fund is a novel programme that is expected to address the challenges faced by the unserved and underserved communities in Nigeria. This will ensure extension of services to communities which ordinarily will not attract the patronage of service providers due to factors such as low population and economic unviability.

Type Approval

The Commission is given the power to conduct type approval tests and issue certificates in respect of communications equipment and facilities to be used in Nigeria. It is mandatory for service or facilities providers, equipment manufacturers or suppliers to obtain type approval certificates from the Commission in respect of their communications equipment or facilities prior to installation or sale in Nigeria.⁴²

In furtherance of its powers under this provision, the Commission issued the Type Approval Regulations 2008 which provide the framework for the approval of communications equipment in Nigeria.

Duty of care

The Act imposes a duty on licensees in installing their networks to take reasonable steps to ensure that they cause as little detriment and as little damage as practicable. In particular, a duty is imposed on all licensees to take all reasonable steps to –

- a. act in accordance with good engineering practice;
- b. protect the safety of persons and property;
- c. ensure that their activities interfere as little as practicable with –

⁴² Section 132

- i. the operations of a public utility;
 - ii. public roads and paths;
 - iii. the movement of traffic;
 - iv. the use of land; and
- d. protect the environment.⁴³

The foregoing is a very good provision aimed at protecting the safety and health of consumers. Consumers are yet to realize the full benefits of these provisions as there have been complaints about installation of communications equipment very close to residential houses. A case is pending before the Court of Appeal, Enugu Judicial Division involving alleged ill-health resulting from installation of communications mast very close to a residential building.

Power of entry and investigation by Inspectors

In pursuance of its powers under the Act, the Commission may at any reasonable time and without prior notice enter any premises and inspect and make copies of or extracts from books, records, documents or other information storage systems, and take any other steps to enforce the provisions of the Act.⁴⁴

Interception of Communications

The Commission enjoys the power to determine that a licensee or class of licensees shall implement the capability to allow authorised interception of communications and such determination may specify the technical requirements for authorised interception capability.⁴⁵

This provision has the apparent effect of interfering with the privacy of consumers of telecommunications services. But a counter argument is that it is a necessary tool to check criminal activities and protect national security.

⁴³ Section 136

⁴⁴ Section 14

⁴⁵ Section 147

Penalties and Jurisdiction

Specific penalties are stipulated for various offences created by the Act. But where there is no specific penalty, the general penalty of a fine not exceeding N100,000.00 (one hundred thousand naira) or imprisonment for a term not exceeding one year applies. For subsequent offenders, the penalty is a fine of N500,000.00 (five hundred thousand naira) or a term of imprisonment not exceeding three years or both.⁴⁶

The Federal High Court has exclusive jurisdiction to try offences under this Act.⁴⁷

Meaning of consumer

The Nigerian Communications Act under review uses the term “Consumer” interchangeably with “Customer” and “Subscriber”. These terms are collectively defined as any person who subscribes to and uses a communications service.⁴⁸

This definition is clear and unambiguous.

Consumer Code of Practice Regulations 2007

These Regulations made pursuant to the powers conferred on the Commission by sections 70 and 106 of the Act confer appreciable rights (and obligations) on consumers. Given the direct relevance of the regulations to the wellbeing of consumers of telecommunications services, it is necessary to consider the major provisions contained therein.

Objectives

The specific objectives of the Regulations are to confirm and clarify the procedures to be followed by licensees in preparing approved Consumer Codes of Practice.⁴⁹

Consumer Codes of Practice

Every licensee is required to prepare a Consumer Code of Practice applicable to its services. Each Code is required to be approved by the Commission. In preparing the Code, the service provider shall observe the provisions of the General Consumer Code of Practice prepared by

⁴⁶ Section 140

⁴⁷ Section 138

⁴⁸ Section

⁴⁹ Regulation 2

the Commission which sets out the minimum requirements for individual codes to be prepared by service providers. But providers are allowed to make variations in line with their service platforms and types of services provided. An individual code prepared by a service provider shall be published in two national newspapers. Pending the publication of such individual codes, each service provider must apply the General Code prepared by the Commission.⁵⁰

The schedule to the regulations sets out detailed rights and obligations applicable to telecommunications service and which must also be included in individual codes of service providers. These are discussed below.

Provision of Information to Consumers

A duty is imposed on service providers to provide consumers with information on their services that is complete, accurate, and up to date and in simple, clear language. They shall also endeavour to respond in a timely manner to consumer requests for information on their services free of charge. The information provided shall include rates and terms and conditions for all services offered to the public and shall be readily available in print and electronic format. In addition, where a licensee seeks any change in the tariff rates for service, affected consumers shall be notified of the proposed price change in an effective manner that in particular, lets them comment to the Commission on the proposed changes. After approval by the Commission, consumers shall be notified of the resulting tariff changes in an effective manner.⁵¹

This provision is quite laudable. However, practical implementation is yet to be seen. In the first place, it is unnecessary to tie the provision of information to a request made by a consumer. Consumers are generally ignorant about this legal requirement as such they may rarely request for information as envisaged by this provision.

As regards information to consumers as to a proposed tariff change, there is no evidence that service providers do this. The provision relating to this matter is in itself evasive. It requires that information should be given to consumers in “an effective manner”. The meaning of this phrase is not clear. The practice adopted by providers is to publish in national newspapers.

⁵⁰ Regulation 4-7

⁵¹ Clause 6

There is no personal notification to individual consumers. As argued above, since the relationship between service providers and consumers of their services is contractual, direct and personal notification to all affected consumers is necessary.

Another evasive provision is the imposition of obligation on service providers to make available on request⁵² a copy of the contract for the provision of services written in plain and clear language to the consumer.⁵³ To tie the supply of a copy of the contract to a request made by a consumer leaves much to be desired. This is particularly so in a country such as Nigeria where the level of consumer awareness is rather low. It is an understatement to say that many consumers are not aware of this legal requirement and consequently do not take advantage of it.

A further requirement is that before entering into a contract for any service, consumers shall be provided a complete description of the service in clear and plain language, avoiding unnecessary technical terms.⁵⁴

This provision, like the ones discussed above, is not observed in practice. Service Providers do not provide any such description of service terms and consumers are not also in the habit of asking. For the prepaid GSM subscription, consumers merely receive from service providers the SIM Card and the provider's advertising leaflets.

Furthermore, service providers are required to provide specific information regarding any compensation, refund or other arrangements which may apply if contracted quality service levels are not met, along with the procedures and methods for resolving disputes in respect of the service contract.⁵⁵

Compensation is the hallmark of any service delivery contract. This provision is, therefore apposite. But implementation requires consumer awareness to drive the process and that is lacking.

⁵² Emphasis supplied

⁵³ Clause 7

⁵⁴ Clause 8

⁵⁵ Clause 8

Pricing Information

The Code provides for pricing information to be given to consumers. Among other things, before a contract for service is entered into, the licensee shall inform the consumer of the applicable rates or charges; what the charges include; and whether the charges or elements thereof are subject to change, the circumstances of such changes and how the consumer will be informed of such changes.⁵⁶

Contract terms and termination

The Code contains detailed terms and conditions that shall be included in a service contract. These include the commencement date of the contract; the conditions and terms of disconnection and reconnection and fees that may be charged for disconnection or reconnection; terms and conditions that may apply to refund of any deposit; and terms and conditions relating to situations that may give rise to the interruption, withdrawal or disconnection of the service.⁵⁷

Product Warranties and Maintenance

The Code imposes an obligation on service providers, before entering into a contract of service with a consumer, to state whether the contract is subject to warranty and if so, the mode of obtaining the warranty if needed.⁵⁸

If well-implemented, this will lessen the problem of redress

Fault repairs, service interruption, operator's assistance etc.

The Code enjoins operators to implement the facilities and processes needed to permit consumers to report faults twenty four hours per day. Licensees are also encouraged to give advance warning of anticipated disruptions or planned outages.

Furthermore, licensees are required to ensure that any consumer can access assistance service and a directory enquiry facility containing directory information on all subscribers in Nigeria,

⁵⁶ Clause 9

⁵⁷ Clause 10

⁵⁸ Clause 11

except for those subscribers who have exercised their right to have their directory information suppressed or removed.⁵⁹

It is doubtful if consumers of telecommunications services in Nigeria are aware of this legal prohibition of disclosure of subscribers' information by service providers or the right to opt out of the system of disclosure. It is also doubtful if service providers observe the rule of non-disclosure. The experience is that subscribers' phone numbers are freely used by unauthorised persons to send invitations and other communications to subscribers. The strong suspicion by subscribers is that the phone numbers are obtain from service providers one way or the other.

Special measures for consumers with disabilities

Licensees are required to consult the Consumer Forum established by the NCC to ensure that the requirements and interests of disabled consumers are fully taken into account in the development and provision of their services.⁶⁰

Access to emergency services

Licensees are required to comply with any network or other requirements that may be approved by the NCC in respect of the provision of emergency services, including such measures as location identification information, special numbers and routing to emergency services locations. Calls to emergency services are free of charge.⁶¹

Advertising and Representation of Services

The Code acknowledges and adopts the Nigerian Code of Advertising Practice made by the Advertising Practitioners Council of Nigeria (APCON). In addition, it makes provisions with reference to telecommunications services. For instance, in any advertisement promoting availability of a service, any geographical or technical limitations which will substantially affect the performance of the service must be disclosed.⁶²

As regards telemarketing, providers are prohibited from engaging in unsolicited telemarketing unless the stipulated conditions are met, namely, disclosure of the identity of the provider, full

⁵⁹ Clause 13 &14

⁶⁰ Clause 15

⁶¹ Clause 16

⁶² Clauses 17-19

price of the service; and absolute right of the recipient to cancel the purchase or service within seven days of the communication. The mode of cancellation depends on the preference recorded by the consumer at the time of contract i.e. “call” or “do not call” preferences.⁶³

Consumer billing and charging practices

The Code makes detailed provisions on billing, charging and related matters. Consumers in Nigeria often complain about inaccurate billing. In view of this, it is necessary to reproduce the two vital provisions of the Code on this matter.

Item 21 of the schedule to the Code provides –

A licensee shall at all times endeavour to-

- a. ensure that billing is accurate and timely;
- b. ensure that billing accuracy is verifiable;
- c. ensure that sufficient information shall be on the bill or otherwise readily available to the consumer for verification of the bill without any charge;
- d. ensure that upon a *bona fide* request from a consumer, the Licensee shall inform or provide the consumer with timely, accurate and current information about its billing terms and conditions and options relevant to that consumer;
- e. retain records of a consumer’s bill and related charges for a minimum period of twelve (12) months.

In interpreting the obligations described in this section, references to “billing” or “bill” include the licensees’ systems for recording and processing any pre-paid transactions, including the debiting of call charges against pre-paid card balances

Furthermore, a licensee shall ensure that, as minimum, the following information is included in any bills issued by it or on its behalf –

⁶³ Clause 20

- a. the consumer's billing name and address;
- b. the licensee's current business name, address and registered number;
- c. a way of identifying the bill uniquely;
- d. the billing period;
- e. a description of the charges (and credits) for which the consumer is billed;
- f. the total amount billed, applicable credits, payments or discounts, and the net amount payable by the consumer (or repayable by the licensee);
- g. the date on which the bill is issued;
- h. the bill (or refund) payment due date;
- i. methods of bill (or refund) payment;
- j. methods of contact for complaints and billing inquiries; and
- k. any call charges applicable for complaints and billing inquiry calls.

Other requirements include itemised details of charges; timing for issuance of bills, receipts and consumer payment advice and billing frequency.

The Commission has taken some steps to ensure accurate billing. One such step was the directive mandating service providers to give billing notification to GSM subscribers at the end of each call or SMS. This directive which took effect from 01 November 2012 requires, in the case of phone calls, call duration, total cost of call and new account balance.

This is an improvement on the old system. But it does not solve the problem of inaccurate billing which may not be easily verifiable through the call details given at the end of each call.

Technical knowledge may even be needed. This being the case, much revolves on the Commission to monitor the billing systems of providers to ensure that they do not take advantage of the ignorance of consumers.

Protection of Consumer Information

The Code allows licensees to collect subscribers' information but such information must be limited to what is reasonably required for the provider's business purposes. In all cases the collection and maintenance of information on individual consumers shall be –

- a. fairly and lawfully collected and processed;
- b. processed for limited and identified purposes;
- c. relevant and not excessive;
- d. accurate;
- e. not kept longer than necessary;
- f. processed in accordance with the consumer's other rights;
- g. protected against improper or accidental disclosure; and
- h. not transferred to any party except as permitted by any terms and conditions agreed with the consumer, as permitted by any permission or approval of the Commission, or as otherwise permitted or required by other applicable laws or regulations.⁶⁴

It is further provided that a licensee's policy on the protection of consumer information shall be made available to the subscriber in an accessible and easy to read manner.⁶⁵

⁶⁴ Item 35

⁶⁵ Item 37

Where a licensee is allowed to disclose personal information, it shall take reasonable steps to ensure that the information is accurate, relevant and current for the purposes for which it is to be used.⁶⁶

Complaints Handling

The Code enjoins licensees to provide easily understood information about their complaints processes in various media and formats. Such information should notify consumers of their right to complain and how providers can be contacted in order to make a complaint.⁶⁷

Licensees are also encouraged to make adequate provision to ensure that people with physical disabilities or other special needs are able to access their complaint handling processes.

A duty is imposed on service providers to acknowledge consumer complaints and to act within the timeframe stipulated in the Quality of Service Regulations made by the Commission. At any rate, no consumer complaint shall remain unresolved for more than three months.⁶⁸ The Commission reserves the right to audit the dispute handling processes of service providers including publication of statistics of complaints, identified breaches of applicable Code provisions; recurring complaints and actions taken to address them.⁶⁹

The Commission maintains a data base of complaints received by service providers and the steps taken to resolve them. Providers are under obligation to submit to the Commission, on a monthly basis, all consumer complaints received by them and actions taken. The in-depth interview with the Commission reveals that this is observed in practice.

Consumers are required to lodge their complaints first with the service provider, and if unresolved, with the Commission. If a complaint is lodged directly with the Commission, the complaint shall be transferred to the service provider concerned.⁷⁰

⁶⁶ Item 38

⁶⁷ Item 19

⁶⁸ Item 41

⁶⁹ Item 51

⁷⁰ Items 53 & 54

Consumer Obligations

Reciprocal obligations are imposed on consumers by the Code. Thus, consumers are bound by the terms and conditions contained in the service contract.⁷¹

Consumers bear a duty not to tamper with providers' equipment. Re-sale of service without permission is prohibited. Dishonest churning is equally prohibited. Thus, a consumer who wishes to switch service must settle all valid payment arrears with his existing provider before switching to another. Indeed this obligation is also reflected in the number portability regime recently introduced by the Commission. Under this regime, a subscriber who wishes to port to another network must among other things, settle his obligations with the existing provider.⁷²

The requirement ensures that a subscriber does not abandon an accumulated bill and dishonestly switches over to another service provider. It is supported.

Other NCC Regulations and Guidelines

Other NCC Regulations and Guidelines that impact on Consumer Protection are listed below:

A. Regulations

- Frequency Pricing Regulations 2004
- Enforcement Processes Regulations 2005
- Telecommunications Networks Interconnection Regulations 2007
- Competition Practices Regulations 2007
- Universal Access and Universal Service Regulations 2007
- Consumer Code of Practice Regulations 2007
- Type Approval Regulations 2008
- Numbering Regulations 2008
- Frequency Pricing Regulations (Amended) 2009
- Registration of Telecommunications Subscribers Regulations 2011

⁷¹ Item 28. In practice, many consumers do not read the terms contained in the documents (if any) accompanying their service pack. But in law, in the absence of vitiating elements, parties are bound by documents that contain their signature. It is noteworthy that under the current dispensation in Nigeria, every prospective subscriber to the telecommunications service is required to register with the service provider. It is no longer possible to obtain a SIM Card without registration. This registration enables the service providers to obtain personal information on the subscriber including biometrics. Terms and conditions attached to such transactions are rarely explained to subscribers

⁷² Items 30-33

- Quality of Service Regulations 2012

Draft Regulations

The following are draft regulations currently under consideration

- Regulations on Licensing
- Regulations on Enforcement Processes - 2013
- Annual Operating Levy Regulations
- Lawful Interception of Communications Regulations
- Mobile Number Portability Regulations

A. Guidelines

- Guidelines on Procedure for Granting Approval to Disconnect Telecommunications Operators 2012
- Guidelines on Short Code Operation in Nigeria 2011
- Guidelines on Advertisements & Promotions
- Guidelines on Technical Specifications the Installation of Telecommunications Masts and Towers 2009
- Guidelines on Commercial Satellite Communications
- Guidelines for Deployment of Broadband Services on the 5.2-5.9GHz Band
- Guidelines on Technical Standards for Interconnectivity of Networks
- Guidelines on Consultations 2007
- Guidelines on Type Approval 2007
- Guidelines for the Provision of Internet Services
- Guidelines on Collocation and Infrastructure Sharing
- Guidelines for International Access and Voice over Internet Protocol (VoIP)
- Guidelines for Dispute Resolution 2004
- Guidelines for the Use of 2.4GHz ISM Band for Commercial Telecom Services (Deployment of Wi-Fi) 2004

Draft Guidelines

Draft guidelines currently under consideration are as follows:

- Guidelines for Complaints Adjudication
- Guidelines for the Management of Satellite Filings
- Guidelines on SIM Replacement

6. National Agency for Food and Drug Administration and Control Act 1993

The National Agency for Food and Drug Administration and Control Act established the National Agency for Food and Drug Administration and Control (NAFDAC) with functions, among others, to regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals. The Agency which replaced the Food and Drug Administration and Control Department of the Federal Ministry of Health is a body corporate with power to sue and be sued in its corporate name.

Functions of the Agency

Section 5 sets out the functions of the Agency. It provides that the Agency shall have the following functions, that is, to –

- a. regulate and control the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals;
- b. conduct appropriate tests and ensure compliance with standard specifications designated and approved by the Council for the effective control of the quality of food, drugs, cosmetics, medical devices, bottled water and chemicals and their raw materials as well as their production processes in factories and other establishments;
- c. undertake appropriate investigations into the production premises and raw materials for food, drugs, cosmetics, medical devices, bottled water and chemicals and establish relevant quality assurance systems, including certification of the production sites and of the regulated products;

- d. undertake inspection of imported food, drugs, cosmetics, medical devices, bottled water and chemicals and establish relevant quality assurance systems, including certification of the production sites and of the regulated products;
- e. compile standard specifications and guidelines for the production, importation, exportation, sale and distribution of food, drug, cosmetics, medical devices, bottled water and chemicals;
- f. undertake the registration of food, drugs, cosmetics, medical devices, bottled water and chemicals;
- g. control the exportation and issue quality certification of food, drugs, cosmetics, medical devices, bottled water and chemicals intended for export;
- h. establish and maintain relevant laboratories or other institutions in strategic areas of Nigeria as may be necessary for the performance of its functions under this Act;
- i. pronounce on the quality and safety of food, drugs, cosmetics, medical devices, bottled water and chemicals after appropriate analysis;
- j. undertake measures to ensure that the use of narcotic drugs and psychotropic substances are limited to medical and scientific purposes;
- k. grant authorisation for the import and export of narcotic drugs and psychotropic substances as well as other controlled substances;
- l. collaborate with the National Drug Law Enforcement Agency in measures to eradicate drug abuse in Nigeria;
- m. advise Federal, State and local governments, the private sector and other interested bodies regarding the quality, safety, and regulatory provisions on food, drugs, cosmetics, medical devices, bottled water and chemicals;
- n. undertake and co-ordinate research programmes on the storage, adulteration, distribution and rational use of food, drugs, cosmetics, medical devices, bottled water and chemicals;

- o. issue guidelines on, approve and monitor the advertisement of food, drugs, cosmetics, medical devices, bottled water and chemicals;
- p. compile and publish relevant data resulting from the performance of the functions of the Agency under this Act or from other sources;
- q. sponsor such national and international conferences as it may consider appropriate;
- r. liaise with relevant establishments within and outside Nigeria in pursuance of its functions;
- s. determine the suitability or otherwise of medicines, drugs, food products, cosmetics, medical devices or chemicals for human and animal use; and
- t. carry out such activities as are necessary or expedient for the performance of its functions under this Act.

Functions and Powers of the Governing Council

A Governing Council is created for the Agency with the functions to –

- a. advise the Federal Government generally on the national policies on the control and quality specifications of food, drugs, cosmetics, medical devices, bottled water and chemicals;
- b. designate, establish and approve quality specifications in respect of food, drugs, cosmetics, medical devices, bottled water and chemicals, necessary for their certification;
- c. establish relevant guidelines and measures for quality control of food, drugs, cosmetics, medical devices, bottled water and chemicals in conformity with the Agency's standard specifications;
- d. appoint, promote and discipline employees necessary for the proper discharge of the functions of the Agency;
- e. establish committees as may be expedient which shall be charged with specific functions delegated by the Council;

- f. establish appropriate programmes for the quality, safety and rational use of the food, drugs, cosmetics, medical devices, bottled water and chemicals;
- g. encourage and promote activities related to this process, standard specifications, guidelines on importation, exportation, sale and distribution of food, drugs, cosmetics, medical devices, bottled water and chemicals;
- h. utilise and promote the expansion of research, experiments, surveys and studies by public or private agencies, institutions and organisations concerning the quality, safety and use of food, drug, cosmetics, medical devices, bottled water and chemicals and such other matters related to this Act as the Agency may, from time to time, determine as necessary or useful;
- i. establish, encourage and promote training programmes for the employees of the Agency and other appropriate persons from public or private organisations; and
- j. carry out such other activities which are connected with its other functions.

In addition, the Council is conferred with the power to –

- a. open and operate ordinary and domiciliary accounts for the Agency in recognised banking institutions in Nigeria;
- b. subject to section 8 of the Act, to specify the management system of the Agency, including financial approval ceilings for officers of the agency;
- c. to enter into agreement with public or private organisations and individuals to develop, utilise, co-ordinate and share such information as is determined to be appropriate by the Council for the performance of its functions under the Act; and
- d. to do such other things as are necessary for the successful performance of its functions under the Act.

Powers of Officers of the Agency

Enormous powers are conferred on the officers of the Agency. Section 24(1) provides that an officer of the Agency may, in the course of his duty, at any reasonable time and on production of his certificate of designation if so required –

- a. enter (if need be by force) any premises in which he reasonably believes that any article to which this Act or the regulations apply is manufactured, prepared, preserved, packaged, stored or sold;
- b. examine any article in the premises which appears to him to be an article to which this Act or the regulations apply or anything in the premises which he reasonably believes is used or is capable of being used for the manufacture, preparation, preservation, packaging, storage or sale of any such article;
- c. take a sample or specimen of any article to which this Act or the regulations apply or which he has power to examine under paragraph (b) of this subsection;
- d. open and examine, while on the premises, any container or package which he reasonably believes may contain anything to which this Act or the regulations apply or which may help in his investigations;
- e. examine any book, document or other records found on the premises which he reasonably believes may contain any information relevant to the enforcement of this Act or the regulations and make copies thereof or extracts therefrom; and
- f. seize and detain for such time as may be necessary for the purpose of this Act, any article by means of or in relation to which he reasonably believes any provision of this Act or regulations has been contravened.

The Act enjoins the owner or person in charge of any premises entered into by an officer of the Agency in pursuance of this section and every person found thereon to give all reasonable assistance in their power to the officer and shall make available to the officer all such information as the officer may reasonably require for the purpose of the Act.

The Act makes provisions on the steps to be taken where an article is seized including the delivery of a copy of the report of the analysis to the owner if the article is to be the subject of legal proceedings under the Act.

Nigerian manufacturers duly feel the effect of this provision as NAFDAC officers pay scheduled and unscheduled visits to them. To say the least, every manufacturer is conversant with the role of NAFDAC as a regulatory Agency. NAFDAC Registration Number is highly valued by manufacturers and hardly can one find a product advertisement that does not include an affirmation that the product is registered with NAFDAC. Registration with the Agency has also acquired a strong selling symbol.

The foregoing notwithstanding, the problem of fake and substandard drugs still persists in the country as illustrated by the statistics of such drugs and other regulated products recently seized or destroyed by the Agency as shown below.

Some Products seized or destroyed by NAFDAC

- An estimated \$250,000.00 worth of contaminated bread improver (Edlen Dough Conditioner) imported from the USA was confiscated at the Onne Port in Rivers State by the National Agency for Food and Drug Administration and Control, NAFDAC.⁷³
- Destruction of fake and unwholesome products worth over N220m in Kaduna, Kaduna State.⁷⁴
- Seizure of large quantity of fake anti-malaria and other substandard drugs in some major pharmacies, patent medicine stores and market shops in Kaduna by officials of NAFDAC on 26 January 2010⁷⁵

⁷³ <http://www.vanguardngr.com/2013/05/nafdac-seizes-250000-contaminated-bread-improver/#sthash.pkdGnllM.dpuf>. Accessed on 29 November 2013.

⁷⁴ <http://www.nigerianbestforum.com/generaltopics/nafdac-destroys-n220m-fake-drugs-seized-in-northern-states/#sthash.mUjbTY8O.dpuf>. Accessed on 29 November 2013.

⁷⁵ . <http://www.nigerianbestforum.com/generaltopics/nafdac-seizes-fake-anti-malaria-drugs-in-kaduna-markets/#sthash.kB279lmv.dpuf> Accessed on 29 November 2013.

- Destruction of fake and counterfeit drugs and other regulated products worth N210.76m on 26 September 2013⁷⁶.

These are but examples.

Offences

It is an offence to obstruct an officer of the Agency in the performance of his duties. This offence attracts a fine of N5,000.00 or imprisonment for a term not exceeding two years or such fine and imprisonment.

Contravention of any provision of the Act or Regulations made thereunder is an offence attracting penalties ranging from N50,000.00 – N100,000.00 (Fifty to one hundred thousand naira).

Subsidiary Legislation

In exercise of the powers conferred on it by section 30 of the Act, the Agency has made the under-listed subsidiary legislation –

1. National Agency for Food and Drug Administration and Control Tariff Charges Regulation.
2. Drug Products Advertisement Regulations.
3. Pre-Packaged Food (Labelling) Regulations 2005.
4. Bottled Water (Advertisement) Regulations.
5. Cosmetic Product (Prohibition of Bleaching Agents, etc.) Regulations 2005.
6. Processed Food Registration Regulations 2005.
7. Bottled Water (Labelling) Regulations.
8. Pesticide Registration Regulations 2005.

⁷⁶ <http://www.punchng.com/news/nafdac-destroys-n210m-drugs/> Accessed on 29 November 2013.

9. Non-nutritive Sweeteners in Food Products Regulations 2005.
10. Non-nutritive Sweeteners in Drug Products (Prohibition) Regulations 2005.
11. Food Products (Advertisement) Regulations 2005.
12. Food Grade (Table or Cooking) Salt Regulations 2005.
13. Cosmetics and Medical Devices (Advertisement) Regulations.
14. Bottled Water Registration Regulations.

These Regulations make detailed provisions on the subject matters covered. The Regulations, apart from being published along with the principal Act in the laws of the Federation of Nigeria, are also available on NAFDAC website: www.nafdac.gov.ng

7. The Standards Organisation of Nigeria Act 1971

The Standards Organisation of Nigeria Act which has witnessed successive amendments established the Standards Organisation of Nigeria as a body corporate which can sue and be sued in its corporate name.

Functions of the Organisation and the Governing Council

The Organisation is charged with the responsibility of prescribing standards for products, metrology, materials, etc. The governing body known as the Standards Council of Nigeria exercises this function on behalf of the Organisation. The functions of the Council are to –

- a. advise the Federal Government generally on the national policy on standards, standards specifications, quality control and metrology;
- b. designate, establish and approve standards in respect of metrology, materials, commodities, structures and processes for the certification of products in commerce and industry throughout Nigeria;

- c. provide the necessary measures for quality control of raw materials and products in conformity with the standards specification;
- d. determine the overall policy of the Organisation, in particular with regard to the financial, operational and administrative programmes of the Organisation and to ensure the implementation of the said policy, and
- e. carry out other functions imposed on it by the Act or any other law.⁷⁷

The Organisation implements the decisions of the Council in addition to the other functions conferred on it by section 5 of the Act. This section is reproduced below since all the functions are consumer-related. By this section, the functions of the Organisation are to –

- a. organise tests and do everything necessary to ensure compliance with standards designated and approved by the council;
- b. undertaken investigations as necessary into the quality of facilities, materials and products in Nigeria, and establish a quality assurance system including certification of factories, products and laboratories;
- c. ensure reference standards for calibration and verification of measures and measuring instruments;
- d. compile an inventory of products requiring standardisation;
- e. compile Nigerian standards specifications;
- f. foster interest in the recommendation and maintenance of acceptable standards by industry and the general public;

⁷⁷ Section 4

- g. develop methods for testing of materials, supplies and equipment including items purchased for use of departments of the Government of the Federation or a state and private establishments;
- h. register and regulate standards marks and specifications;
- i. undertake preparation and distribution of standards samples;
- j. establish and maintain such number of laboratories and other institutions as may be necessary for the performance of its functions under the Act;
- k. compile and publish general scientific or other data –
 - i. resulting from the performance of its functions under the Act; or
 - ii. from other sources when such data are of importance to scientific or manufacturing interests or to the general public and are not available elsewhere;
- l. advise departments of the Government of the Federation or a state on specific problems relative to standards specifications;
- m. sponsor such national and international conferences as it may consider appropriate;
- n. co-ordinate all activities relative to its functions throughout Nigeria and to co-operate with corresponding national or international organisations in such fields of activities as it considers necessary with a view to securing uniformity in standards specifications; and
- o. undertake any other activity likely to assist in the performance of the functions conferred by the Act.

It is obvious that the above functions are comprehensive. They cover wide fields of consumer interest. Indeed, apart from the specific functions conferred by this section, the Organisation is mandated to establish a standards library of the highest standing which it may make available

to such categories of persons as it thinks fit and upon such terms and conditions as it considers necessary.⁷⁸ In furtherance of its functions, the Organisation maintains a standards library at its headquarters as well as its zonal offices.

Establishment of the Nigerian Industrial Standards

Section 12 of the Act makes detailed provisions on procedures for establishing industrial standards. Among other things, before establishing any industrial standard, the Council shall inform all parties having in its opinion, substantial interests in the industrial standard in question and thereafter constitute a committee to inquire into all the relevant aspects of the matter and make a report thereon. In constituting the committee, the Council is enjoined to ensure as wide a representation as possible.⁷⁹

Following the report of the committee, the Council may establish the industrial standard if in its opinion, the standard is of significance to the national economy and otherwise conforms with the objectives of the Act.

Certification Marking Scheme

A prominent activity undertaken by the Organisation pursuant to its functions is the certification of products. Before the era of SONCAP (Standards Organisation of Nigeria Conformity Assessment Programme) and MANCAP (Mandatory Conformity Assessment Programme) the Organisation adopted a voluntary certification system. Thus, manufacturers enjoyed the liberty whether or not to apply for certification of their products. Those who chose to do so, if successful, were awarded the Nigerian Industrial Standards (NIS) certificate which they could affix to the winning product(s). The voluntary nature of this programme left many products uncertified.⁸⁰

⁷⁸ Section 6

⁷⁹ A long list of bodies that should be represented is contained in the schedule to the Act

⁸⁰ See F. N. Monye, "The Conformity Assessment Programmes of the Standards Organisation of Nigeria", *Consumer Journal* Vol. 3, 2007, pp 1-7, a publication of the Consumer Awareness Organisation Enugu, Nigeria. See this paper generally for a pioneering work on SONCAP and MANCAP parts of which are reproduced in this section

Certification under the current programmes is mandatory. The aim is to protect consumers against substandard and unsafe products. It is also designed to protect genuine manufacturers against unhealthy trade practices, counterfeiting and unfair competition in the market place.⁸¹

The Mandatory Conformity Assessment Programme (MANCAP)

The Mandatory Conformity Assessment Programme (MANCAP) is a programme adopted by the Standards Organisation of Nigeria to ensure that all locally manufactured products conform to the relevant Nigerian Industrial Standard (NIS) before they are presented for sale in the Nigerian market or exported.

The objectives of the programme are as follows –

- a. Ensuring that manufactured products comply with the Nigerian Industrial Standards prior to introduction into the market.
- b. Promoting quality awareness and hence wealth creation through reduction of wastes in the form of substandard products.
- c. Preventing the production and sale of substandard and/or unsafe products to consumers thereby protecting lives and property.
- d. Ensuring that products purchased by consumers offer value for money while guaranteeing safety of life and the environment.
- e. Providing confidence that only products that meet the minimum quality requirements are put for sale on the Nigerian market.
- f. Providing a level playing ground in competitive domestic and international markets.
- g. Preventing dumping of unsafe and counterfeit products in our markets.

⁸¹ *Op. cit.* p. 2

- h. Providing reliable records for identification and traceability of all locally manufactured products in the country and to promote investment and trade of Nigerian products standardisation.
- k. Inspiring confidence in consumers that products purchased will meet intended use.⁸²

The process of certification for MANCAP is initiated by the manufacturer of the product that is intended to be certified. Such a manufacturer approaches any SON Office for the relevant Nigerian Industrial Standard and the MANCAP application form. This is followed by inspection of factory and analysis of product samples by SON technical officers. If the product meets the laid down requirements, the MANCAP certificate of conformity is issued for the product with a copy of the MANCAP NIS Logo. This logo and the certificate number must be affixed to the smallest unit pack of the product before sale to members of the public. To prevent a drop in quality after certification, SON monitors certified products through periodic factory inspection and product testing. The MANCAP Certificate is renewable on a three – yearly basis subject to a satisfactory yearly surveillance conformity report.⁸³

SONCAP

This scheme was introduced by the Federal Government of Nigeria in 2005 to check the importation of substandard and unsafe products into the country. It came into effect on 01 September 2005 with a grace period of 90 days.

Under the scheme, SON conducts conformity assessment and verification of regulated products⁸⁴ intended for the Nigeria market. The aim is to ensure that such products conform to the relevant Nigerian Industrial Standard or any applicable international standard. The verification is carried out in the country of shipment. This ensures that only safe and good quality products are shipped into Nigeria. It ensures that Nigeria is not made a dumping ground for substandard and injurious products, and has the further advantage of protecting consumers against unsafe and substandard finished products. It equally protects importers against financial

⁸² The Standards Organisation of Nigeria, *MANCAP in Brief*, pp 3-4

⁸³ SON MANCAP in Brief p. 5

⁸⁴ The phrase "regulated products" in this context covers toys, electricals and electronics, automotives, chemicals and chemical products, construction materials and gas appliances, food and related products. This list is subject to periodic review – *SONCAP in Brief*, p.5. <www.soncap.com>.

losses that might be occasioned by possible seizure and destruction of such products on arrival in Nigeria. Thus it affords a prospective importer the opportunity to protect his economic interest by ensuring that the products he intends to import are duly certified before shipment into Nigeria.

Objectives of SONCAP

The objectives of the programme are to:

- (a) ensure that regulated products comply with the Nigerian Industrial Standards (NIS) specification prior to export to the Nigerian market place.
- (b) ensure a level play field in terms of quality for both imported and locally manufactured regulated products so as to prevent unfair market competition;
- (c) prevent the dumping of substandard goods into the Nigerian market thus preventing economic loss to the importer and the nation at large;
- (d) prevent loss of lives and property including hard earned foreign exchange, as the exporting country/exporter would have been paid for the goods before shipping into Nigeria;
- (e) prevent any adverse reaction (such as environmental pollution occasioned by destruction of substandard products) by regulatory agencies on arrival of such goods in Nigeria;
- (f) ensure fast track clearance of goods at the ports thus facilitating trade; and
- (g) help to encourage genuine investors to come to Nigeria.⁸⁵

Scope of SONCAP and Compliance Procedures

SONCAP is an offshore activity which deals with the verification of product compliance. It ensures that regulated products conform to specifications of the Nigerian Industrial Standards (NIS) or other approved international standards. The review process covers accreditation of

⁸⁵ SONCAP in Brief, p. 4.

the laboratory used for the test, scope of test performed as well as validity and authenticity of Test Reports.

Two basic procedures are adopted in the SONCAP programme. The first is the product certification. This takes place if the product is being imported for the first time. Here, the exporter in the country of supply is required to submit to the SON Country Office (SONCO) in the exporting country,⁸⁶ a Test Report used for substantiating the declaration.⁸⁷ If the product passes the prescribed tests, a Product Certificate is issued with a maximum validity of three years. The final procedure which applies on a shipment-by-shipment basis is the issuance of the SONCAP Certificate. This is a mandatory customs clearance document in Nigeria and regulated products arriving without it will be subjected to delays and possible rejection.

SONCAP applies in addition to other import requirements such as destination inspection certificate.⁸⁸

SON has longed commenced the implementation of MANCAP and SONCAP. The first step was the issuance of MANCAP Certificates to manufacturers whose products bore the NIS certificate under the old system. For fresh applications, assessment is based on the MANCAP requirements.

As regards imported products, SONCAP is duly implemented. SON ensures that all products falling within the “regulated products”⁸⁹ list bear the SONCAP certificate before they are cleared for shipment into Nigeria.

⁸⁶ SON has offices in sixteen countries outside Nigeria. These are Argentina, Brazil, Colombia, China, (Shanghai and Hong Kong), France, India, Italy, Japan, Kenya, Korea, Singapore, South Africa, Spain, United Arab Emirates, United Kingdom, and USA (Miami). An intending exporter is also at liberty to contact the SON Office in Nigeria for necessary assistance and guidance.

⁸⁷ If the Test Report is not available, the intending exporter must follow the procedure of unsubstantiated declaration. This involves laboratory analysis of the product by a laboratory approved by the relevant SON Country Office

⁸⁸ Destination inspection took effect on 01 January 2006 thus replacing the pre- shipment inspection scheme. Under the current scheme, goods imported into Nigeria are subjected to inspection at the point of entry as against the point of shipment which was the position under the old regime. Detailed requirements for the implementation of the new scheme are contained in the guidelines issued by the Federal Government, namely; Import Guidelines Procedures and Documentations Requirements

⁸⁹ See the current SONCAP. <http://www.exports2nigeria.com/products/index.ht>; www.nigeriatradeshub.gov.ng/portal, accessed 30 November 2013

Powers of the Director-General

The Director-General of the Organisation is given special powers in relation to hazardous products. By section 17, the Director-General may, upon being satisfied that the quality or potency of any product (whether or not the subject of a mandatory industrial standard) is such as to be detrimental or hazardous to life or property, apply to the Magistrate's Court having jurisdiction in the area for an order to-

- a. seize, destroy or prohibit any person from selling or offering for sale such product; or
- b. seal up the premises where such product is manufactured or stored; or
- c. direct the manufacturer to rectify the deficiency in the case of low quality.⁹⁰

It is clear from these provisions that the Director-General can exercise his powers in relation to hazardous products whether or not such products are covered by SON standards. In other words, whether or not there exists a prescribed standard for a particular product, the Director-General can take any of the steps stated above once it is discovered that the product is hazardous or detrimental to life or property.

Other Powers of the Director-General and other officers

The Act gives the Director-General and any other officer of the Organisation authorised by him the right of access at all times to any building or other premises where an industrial or commercial undertaking is being carried on. A person carrying on such undertaking may also be required to furnish information on any matter as may be specified.

Power to make test purchases

Another important power conferred on the Organisation is the power to make such test purchases of goods as may appear expedient for the purpose of determining whether or not the provisions of the Act are being complied with. This provision provides strong basis for monitoring and surveillance to ensure that fake and substandard products are eliminated from the market.

⁹⁰ Section 17

Offences and penalties

The offences created by the Act include display of the NIS logo without authorisation; failure to supply required information; supply of false information and willful obstruction or assault of an officer of the Organisation in the execution of his duty under the Act. The penalties for these offences range between N200.00 (two hundred naira) and N1,000.00 (one thousand naira) or the prescribed term of imprisonment. Failure to comply with a prescribed standard attracts a fine of N50,000.00 to N100,000.00 (fifty to one hundred thousand naira) or imprisonment for a term not exceeding five years or to such fine and imprisonment.

In terms of implementation, the Standards Organisation of Nigeria has been quite active. The Organisation has prescribed a huge number of standards covering various product fields. Products covered by SON standards include cables, cylinders, tyres, cooling systems such as air conditioners and refrigerators; spare parts, power generating sets, cooking equipment, sockets, television sets, and electric fans

In addition, SON organises workshops and training programmes for stakeholders (importers, manufacturers, exporters, etc.) to impart knowledge on latest standards and best practices. It also conducts market surveillance with a view to checking the influx of substandard and unsafe products into the country; and renders testing services to producers.

8. The Civil Aviation Act 2006

The Civil Aviation Act 2006 which repealed the Nigerian Civil Aviation Authority (Establishment) Act 1999 among other earlier enactments established the Nigerian Civil Aviation Authority (NCAA) as a body corporate with power to sue and be sued in its corporate name.⁹¹

Powers of the Minister

The Act gives the Minister of Aviation far-reaching control and supervisory powers over the aviation industry. Section 1 confers on the Minister the responsibility for the formulation of policies and strategies for the promotion and encouragement of civil aviation in Nigeria and

⁹¹ Section 2

the fostering of sound economic policies that assure the provision of efficient and safe services by air carriers and other aviation and allied service providers as well as greater access to air transport in a sustainable manner and to assist with ensuring that Nigeria's obligations under international agreements are implemented and adhered to.

Functions of the Nigerian Civil Aviation Authority

The Act confers broad functions on the Nigerian Civil Aviation Authority. For a better appreciation, these functions are reproduced below. Section 31: The Authority shall be responsible for:

- a. the registration of any aircraft in Nigeria and issuance to the owner thereof, of a certificate of registration;
- b. the establishment and maintenance of a system or register for recording the title to or any interest in any aircraft registered in Nigeria;
- c. the prohibition of any Nigerian or foreign registered aircraft from operating within the Nigerian air space, unless a certificate of air worthiness in respect thereof, is issued or validated under the regulations in force with respect to the aircraft; provided that the foregoing prohibition shall not apply to aircraft undergoing test flights or flights to places where prescribed maintenance or repairs are to be carried out;
- d. the inspection and regulation of aerodromes, inspection of aircraft factories and for the prohibition or regulation of the use of aerodromes which are not licensed in pursuance of the regulations;
- e. the prohibition of any person from engaging in air navigation in any capacity whatsoever unless the authority determines that such a person satisfies the requirements of the Act and the regulations made thereunder.
- f. ensuring the efficiency and regularity of air navigation and the safety of aircraft, persons and property carried in aircraft and for preventing aircraft from endangering persons and property;

- g. the prohibition of aircraft from flying over such areas in Nigeria as may be prescribed;
- h. the issue, validation, renewal, extension or variation of any certificate, licence or other document required by regulations (including the examinations and tests to be undergone) and custody and production, cancellation, suspension, endorsement and surrender of any such document;
- i. the registration of births and deaths occurring in aircraft and of particulars of persons missing from aircraft; and
- j. the collation and maintenance of a data bank of aviation and aircraft accidents, incidents and occurrences and promote accident prevention programmes.

In addition, the Authority is charged with the responsibility to issue Air Operators Certificates (AOC) and other certificates relating to the safety of air transport undertakings. The Authority is also given the mandate to prescribe the minimum safety standards and all other relevant requirements for the grant, issuance, operation, variation and renewal of such certificates.⁹²

Furthermore, the Authority is empowered to vary, suspend or revoke any licence issued pursuant to the Act if it is no longer satisfied that holder of the licence is a fit person to operate air transport business based on the circumstances stated in the Act.⁹³

The Authority is obliged to give reasons for its action under the above provision except where such disclosure might adversely affect the security interest of Nigeria or the relations of Nigeria with any other country.⁹⁴

A person who furnishes false information to the Authority for the purpose of obtaining a licence is guilty of an offence and liable on conviction to imprisonment for a term of not less than six months or a fine of not less than N500,000.00 (Five hundred thousand naira) or both.⁹⁵

⁹² Section 34

⁹³ Section 35; the stated circumstances include inadequate resources and contravention of the provisions of the Act.

⁹⁴ Section 36(1-3)

⁹⁵ Section 36(4)

Carrier's Liability

In dealing with the liability of the carrier, the Act adopts the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at the Montreal on 28 May 1999 as set out in schedule II. In addition, it makes specific provisions on some issues such as advance payments to beneficiaries in the case of aircraft accident resulting in death or injury to passengers; compensation for loss or damage to any person or property on land or water by an article or a person in or falling from an aircraft while in flight, taking off or landing; salvage services rendered in saving life or cargo; patent claims, and detention of aircraft.

Offences

The offences created by this Act include flying an aircraft in a manner as to cause danger to any person or property; hijacking or interference with an aircraft on ground or in flight; violence against a person on board an aircraft; destruction or damage to an aircraft; unruly and indecent conduct; unlawful and intentional use of any device, substance or weapon at aerodromes; and destruction of or damage to air navigation and other facilities.⁹⁶

The penalties for these offences range from N500,000.00 (five hundred thousand naira) to N10,000,000.00 (ten million naira). The offence of destruction of aircraft attracts a penalty of life imprisonment. Hijacking attracts a fine of not less than N10,000,000.00 (ten million naira) in addition to life imprisonment.⁹⁷

Compensation schemes and Insurance

The Authority has the mandate to formulate schemes for suitable compensation for passengers and other aviation and allied service consumers arising from different forms of grievances.⁹⁸ The Authority has issued a Consumer Bill of Rights which clarifies the rights of consumers⁹⁹.

The Act also imposes an obligation on carriers operating air transport and allied services to maintain adequate insurance covering its liability under the Act and also its liability towards

⁹⁶ Section 54-63

⁹⁷ *Ibid*

⁹⁸ Section 71

⁹⁹ See Nigerian Civil Aviation Regulation 2012 which contains the list of the enshrined rights.

compensation for damage that may be sustained by third parties for an amount to be specified by regulations made by the Authority.¹⁰⁰

International Conventions adopted by the Act

The Act has domesticated vital International Conventions thus ensuring that Nigeria applies the international best practices. The Conventions adopted by the Act are as follows –

- a. Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague Convention) 1970¹⁰¹
- b. Convention for the Unification of Certain Rules Relating to International Carriage by Air (Montreal Convention) 1999.¹⁰²
- c. Modifications to the Convention for the Unification of certain Rules Relating to International Carriage by Air (Montreal Convention) 1999¹⁰³
- d. Convention on International Recognition of Rights in Aircraft (Geneva Convention) 1948.¹⁰⁴
- e. Convention on International Interests in Mobile Equipment (the Cape Town Convention) 2001.¹⁰⁵
- f. Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Cape Town Convention) 2001.¹⁰⁶

¹⁰⁰ Section 74(1)

¹⁰¹ Schedule 1

¹⁰² Schedule II

¹⁰³ Schedule III

¹⁰⁴ Schedule IV

¹⁰⁵ Schedule V(a)

¹⁰⁶ Schedule V(b)

List of Subsidiary Legislation

1. Civil Aviation (Air Transport) (Licensing) Regulations 1965
2. Civil Aviation (Aircraft Performance) Regulations 1965
3. Civil Aviation (Births, Deaths and Missing Persons) Regulations 1965
4. Civil Aviation (Investigation of Accidents) Regulations 1965
5. Civil Aviation Rules of the Air and Air Traffic Control 1965¹⁰⁷
6. Nigerian Civil Aviation Regulations 2009
7. Nigerian Civil Aviation Regulations 2012

The provisions of the last two Regulations are highlighted below.

a. Nigerian Civil Aviation Regulations 2009

These Regulations, among other things, address the licensing of personnel in accordance with Article 32 of the Chicago Convention which requires Nigeria to issue certificates of competency and licences or validate such certificates or licences issued by other Contracting States to the pilot of every Nigerian-registered aircraft and to other members of the operating crew of every Nigerian-registered aircraft engaged in international navigation. The licensing of personnel in accordance with international standards promotes safe and regular aircraft operations. Part 2 of the Regulations specifies detailed personnel licensing requirements that meet international standards covering personnel, namely, pilots, flight instructors, flight engineers, flight dispatchers, aircraft maintenance engineers, air traffic controllers, and aeronautical station operators. Other issues addressed are medical assessments of flight crew and air traffic controllers, air traffic safety electronics personnel, cabin crewmember, parachute riggers, aviation repair specialists, and designees.

b. Nigerian Civil Aviation Regulations 2012

¹⁰⁷ It is obvious from the dates of these Regulations (i.e. the 1965 Regulations) that they were made before the current Civil Aviation Act which was enacted in 2006. They are, however, still applicable having been saved by section 77(2) of the instant Act.

Part 19 of these Regulations deals with passengers' Rights and Airlines Obligations to passengers. It addresses consumer protection issues and sets out compensation for overbooking and denied boarding as well as delay and cancellation of flights.

Most of the matters contained in the Civil Aviation Act 2006 relating to consumer protection are now dealt with and elaborated by the 2012 Regulations.

9. The Central Bank of Nigeria Act 2007

The Central Bank of Nigeria Act 2007 repealed and replaced the Central Bank of Nigeria Act 1991. The Act established the Central Bank of Nigeria as a body corporate which can sue and be sued in its corporate name.

Objects of the Bank

The objects of the Bank are to –

- a. ensure monetary and price stability;
- b. issue legal tender currency in Nigeria;
- c. maintain external reserve to safeguard the international value of the legal tender currency;
- d. promote a sound financial system in Nigeria; and
- e. act as banker and provide economic and financial advice to the Federal Government.¹⁰⁸

A sound financial system is key to any economy. This buttresses the role of the Central Bank of Nigeria (CBN) in regulating financial services and other related matters. The CBN, in addition to its other functions, exercises supervisory role over banks and other financial institutions.

¹⁰⁸ Section 2

Financial Services Regulation Coordinating Committee

The CBN employs the system of committees to carry out its mandate. A committee that is particularly relevant to Consumer Protection is the Financial Services Regulation Coordinating Committee. The objectives of the Committee are to –

- a. co-ordinate the supervision of financial institutions especially conglomerates;
- b. cause reduction of arbitrage opportunities usually created by differing regulation and supervision standards amongst supervisory authorities in the economy.
- c. deliberate on problems experienced by any member in its relationship with any financial institution;
- d. eliminate any information gap encountered by any regulatory agency in its relationship with any group of financial institutions;
- e. articulate the strategies for the promotion of safe, sound and efficient practices by financial intermediaries, and
- f. deliberate on such other issues as may be specified from time to time.¹⁰⁹

Power to license and register credit bureaux

Section 57 of the Act gives the CBN the power to license and register credit bureaux. A recurrent problem facing consumers in Nigeria is the inability or difficulty in accessing credit facilities from financial institutions. Often times, consumers are unable to meet the conditions imposed by providers including the demand for physical collateral.

The instant provision seeks to generate credit information that might be used by lenders to assess the credit worthiness of prospective borrowers who may not have the physical collateral to pledge for a loan. The section gives the CBN the power to license and regulate credit bureaux to collect, in such manner as the Bank may deem fit, credit information on the customers of

¹⁰⁹ Sections 43 and 44

banks and other financial institutions. In furtherance of its mandate under this section, the CBN enjoys the power to collect in such manner as it may deem fit from any person or any such credit bureau, credit information on the customers of banks and other financial institutions and the Bank (CBN) may disclose the information so collected in such manner as may be deemed appropriate subject to confidentiality rule as stated in the section.

The Act imposes a duty on every bank, before granting a loan, advance or credit facility to any customer, to obtain from the CBN credit information on that customer where the amount of the loan, advance or credit facility is up to one million naira or such sum as may be set from time to time by the CBN.

Pursuant to the above mandate the CBN has licensed three private credit bureaux to provide credit history on borrowers and has issued a circular directing all banks and other financial institutions to partner with the licensed credit bureaux in order to enhance the performance of their operations.

Offences and penalties

It is an offence under the Act to tamper with a coin or note issued by the CBN. This offence attracts a term of imprisonment of not less than six months or a fine of not less than N50,000.00 (fifty thousand naira) or both.¹¹⁰

It is provided that a coin or note shall be deemed to have been tampered with if the coin or note has been impaired/diminished or lightened otherwise than by fair wear and tear or has been defaced by stumping, engraving, mutilating, piercing, stapling, writing, tearing, soiling, squeezing or any other form of deliberate and willful abuse whether the coin or note has or has not been thereby diminished or lightened.¹¹¹

The Act makes it clear that spraying of, dancing or matching on the naira or any note issued by the Central Bank at social occasions or otherwise however is an abuse and defacing of the naira or such note and constitutes an offence.¹¹²

¹¹⁰ Section 21(1)

¹¹¹ Section 2(2)

¹¹² Section 21(3)

It is also an offence to hawk, sell or otherwise trade in naira notes, coins or any other notes issued by the Bank.

“Matching” is defined as including spreading, scattering or littering of any surface with any naira notes or coins and stepping thereon, regardless of the value, volume, occasion or intent.¹¹³

“Spraying” includes adorning, decorating or spraying anything or any person or any part of any person or the person of another with naira notes or coins or sprinkling or sticking of the naira notes or coins in a similar manner regardless of the amount, occasion or the intent.¹¹⁴

So far, the implementation of this Act in this regard remains very weak. Spraying of the naira is still noticeable at social and other occasions. It is also not uncommon to see naira notes with inscription of figures and other marks. The CBN has to intensify its enforcement machinery to curb these and other prohibited practices and thereby give sanctity to the naira.

CBN Regulations and Guidelines

The Bank has issued many Regulations, Guidelines, Circulars and other Directives which impact on consumer protection. Below are examples of such instruments.

1. Weekly lending rates obtainable in all Deposit Money Banks.¹¹⁵
2. Guidelines for the Operation of Micro, Small and Medium Enterprises Development Fund for Nigeria 2013.
3. Power and Airline Intervention Fund.

¹¹³ Section 21(5)

¹¹⁴ Ibid

¹¹⁵ This is a directive of the Monetary Policy Committee aimed at achieving transparency and to guide business decisions. The rates are submitted to the CBN which publishes same in some selected national newspapers as well as its website. The rates are made up of all charges and commissions levied by each bank.

10. National Insurance Commission Act 1997

The principal object of the National Insurance Commission Act 1997 is to ensure the effective administration, supervision, regulation and control of insurance business in Nigeria.¹¹⁶

Functions and powers

The Commission is conferred with the functions, among others, to –

- a. establish standards for the conduct of insurance business in Nigeria
- b. approve rates of insurance to be paid in respect of all classes of insurance business;
- c. regulate transactions between insurers and reinsurers in Nigeria and outside Nigeria;
- d. act as adviser to the Federal Government on all insurance related matters
- e. approve standards, conditions and warranties applicable to all classes of insurance business;
- f. protect insurance policy holders and beneficiaries and third parties to insurance contracts
- g. publish for sale and distribution to the public, annual reports and statistics on the insurance industry;
- h. carry out such other activities connected or incidental to its other functions under the Act¹¹⁷

The above functions are of direct and indirect benefits to policy holders and beneficiaries. For instance, the approval of standards, conditions and warranties applicable to all classes of insurance business ensures that insured persons are not subjected to onerous terms by insurance companies.

¹¹⁶ Section 6

¹¹⁷ Section 7

In addition, the Commission is given the power to establish a bureau known as insurance institution to which complaints, against any insurer, reinsurer, insurance broker or loss adjuster may be submitted by members of the public; and do such other things as are necessary for the successful performance of its functions under the Act.¹¹⁸

The power to protect policy holders and beneficiaries gives wide latitude to the Commission to take any action deemed appropriate including redress mechanisms. In line with its mandate under section 7 of the Act, the Commission has in consultation with industry stakeholders introduced the Code of Ethics and Good Corporate Governance for the Insurance Industry. In the same manner, it has strengthened its Complaints Bureau Unit and was able to resolve over 100 complaints in 2011. The successful resolution of these complaints ensured the payment of over N500 million Insurance Claims to various beneficiaries and more significantly helped to enhance confidence in the insurance industry.

Inspection

Subject to the condition of confidentiality, the Commission is given wide powers to inspect, examine or investigate the books and affairs of an insurance institution. A special inspection may also be conducted with the approval of the Board where the Commission is satisfied that

—

- a. it is in the public interest so to do; or
- b. the insurance institution has been carrying on its business in a manner detrimental to the interest of its policy holders; or
- c. the insurance institution does not have sufficient assets to cover its liabilities to the insuring public and it is necessary to do so; or
- d. the insurance institution has been contravening the provisions of the Act; or

¹¹⁸ Section 8

- e. an application is made therefor by –
 - i. a director, shareholder or partner of the insurance institution; or
 - ii. a policy holder of the insurance institution.

Intervention

The Commission is empowered to intervene in defined circumstances to protect the interest of policy holders such as where the insurance institution is unable to meet its liabilities or fulfill the reasonable expectations of policy holders.

Where an insurance institution is of an unsound condition so that its method of business is such as to render its continued operation hazardous to its policy holders and potential clients, the Commission may, among other things, prohibit the institution from transacting any further business for such period as may be set out in the order and subject to the conditions as may be imposed by the order.

Offences and Penalties

Contravention of the provisions of the Act attracts penalties ranging from N250,000.00 to N500,000.00 in addition to specified terms of imprisonment.¹¹⁹

It is an offence to make a false claim under the Act. Section 52(3) provides that any person who knowingly, recklessly, negligently, willfully or otherwise makes an insurance claim which is false is guilty of an offence and liable on conviction to a fine of N250,000.00 or imprisonment for a term of three years or both.

In effect, this provision buttresses the nature of an insurance contract as a contract of good faith. The Act thus protects the interests of both parties, that is, the insurer and the insured.

The Federal High Court is conferred with the jurisdiction to try offences under the Act.

¹¹⁹ Section 52

The provisions of this Act are without prejudice to and are to be read in conformity with the Insurance Act 2003.

11. Economic and Financial Crimes Commission (Establishment) Act, 2004

The Economic and Financial Crimes Commission (Establishment) Act, 2004 established the Economic and Financial Crimes Commission which is a body corporate with power to sue and be sued.¹²⁰

Functions and Powers of the Commission

The functions of the Commission include the following –

- a. Investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc;
- b. Co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority;
- c. Adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the properties the value of which corresponds to such proceeds.
- d. Examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved.
- e. Collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous with those of the Commission concerning, among other things –
 - i. the identification, determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes.

¹²⁰ Section 1

- ii. the movement of proceeds or properties derived from the commission of economic and financial and other related crimes; and
- iii. maintaining data, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items or assets involved in economic and financial crimes.

The Commission is also charged with the responsibility to carry out and sustain rigorous public enlightenment campaign against economic and financial crimes within and outside Nigeria.¹²¹

The Act confers special powers on the Commission to facilitate the execution of its functions. Among others, the Commission has powers to –

- a. cause investigations to be conducted as to whether any person, corporate body or organisation has committed an offence under the Act or any other law relating to economic and financial crimes; and
- b. cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income.

In addition, the Commission is given the power to co-ordinate the enforcement of other crime-related laws such as the Money Laundering Act; the Advance Fee Fraud and other Related Offences Act; the Banks and other Financial Institutions Act; and any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.¹²²

Offences

The Act prohibits various acts relating to financial crimes and fraud-related matters; false information, retention of proceeds of criminal conduct, willful obstruction of officers of the

¹²¹ Section 6

¹²² Section 7

Commission and terrorism. Specific penalties are stipulated for these offences. The act of terrorism attracts a term of imprisonment for life.

In addition, a person convicted of an offence under the Act shall forfeit to the Federal Government –

- a. all assets and property which may or are the subject of an interim order of the court after an attachment by the Commission as specified in section 26 of the Act;
- b. any asset or property confiscated, or derived from any proceeds the person obtained, directly or indirectly, as a result of such offence not already disclosed in the Assets Declaration Form specified in the schedule to the Act.¹²³

Where it is established that any convicted person has assets or properties in a foreign country, acquired as a result of such economic or financial crime, such assets or properties, subject to any treaty or arrangement with such foreign country, shall be forfeited to the Federal Government.¹²⁴

A further penalty is the forfeiture of the passport of the offender to the Federal Government until he/she has served any sentence imposed or unless he/she obtains a pardon or prerogative of mercy from the President under the Constitution of the Federal Republic of Nigeria.¹²⁵

The Chairman of the Commission is equally empowered to apply to court *ex-parte* for an order to be issued to the manager of a bank or any other financial institution to freeze the account funded through the proceeds of any offence under the Act.¹²⁶

The Commission is given the power to seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce.¹²⁷ Officers of the Commission cannot be compelled to disclose the source of information or identity of their informants except by the order of the court.¹²⁸

¹²³ Section 20

¹²⁴ Section 22(1)

¹²⁵ Section 23

¹²⁶ Section 34

¹²⁷ Section 39

¹²⁸ Section 39

There is no doubt that some of the above provisions touch on the privacy of individuals. But many are not likely to see this as objectionable given the general desire in the country to check financial crimes and terrorist activities.

Practical Implementation

Some of the activities of the Commission to implement the provisions of the Act are as follows

—

- Investigation of all cases that fall within the mandate of the Commission
- Enforcement of all economic and financial crimes laws (arresting and prosecuting criminals)
- Informing and educating the public on the prevention of economic and financial related crimes
- Liaison with citizens and civil society organisations (CSOs) in anti-corruption campaigns
- Providing effective corruption prevention services to public and private sector organisations
- Maintaining data, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items and assets involved in economic and financial crimes
- Undertaking research and similar works with a view to determining the manifestation, extent, magnitude and effects of economic and financial crimes.¹²⁹

Some EFCC Alerts

¹²⁹ www.efccnigeria.org, Accessed 09 December 2013

Some EFCC Alerts to save people from the snare of scammers include the following:

- Do not give out information about yourself to anybody you don't know or trust.
- Never respond to any mail except you are sure of the source.
- Be very circumspect about stories you are told by strangers and supposed lovers in an Internet affair.
- Never send money or disclose your banking details to any one you do not know or trust.
- Never part with your money until you are 100 percent certain that the business is genuine.
- Don't be part of any transaction that seems dubious or which you might not be comfortable discussing with your family, friends and associates.
- Any transaction cloaked in secrecy is an expressway to financial ruin.¹³⁰

Subsidiary Legislation

Economic and Financial Crimes Commission (Enforcement) Regulations 2010

12. Federal Road Safety Commission (Establishment) Act 2007

The Federal Road Safety Commission (Establishment) Act 2007 established the Federal Road Safety Commission as a body corporate with power to sue and be sued in its corporate name. The functions of the Commission cover a wide range of matters relating to traffic management, supervision of users of the highways, clearing obstruction and educating motorists and other road users. For effective execution of its functions, a body known as the Federal Road Safety Corps is established for the Commission. The functions of the Corps include the following –

- a. Making the highway safe for motorists and other road users.
- b. Educating motorists and members of the public on the importance of discipline on the highway

¹³⁰ *Ibid*

- c. Preventing or minimising accidents on the highways
- d. Clearing obstructions on any part of the highway
- e. Educating drivers, motorists and other members of the public generally on the proper use of the highway.
- f. Designing and producing the driver's licence to be used by various categories of vehicle operators.
- g. Designing and producing vehicle number plates.
- h. Giving prompt attention and care to victims of accidents
- i. Conducting research into causes of motor accidents and methods of preventing them and putting into use the result of such research.
- j. Determining and enforcing speed limits for all categories of road and vehicles and controlling the use of speed limiting devices.
- k. Regulating the use of sirens, flashers and beacon lights on vehicles other than ambulances and vehicles belonging to the Armed Forces, Nigeria Police, Fire Service and other paramilitary agencies
- l. Providing roadside and mobile clinics for the treatment of accident victims free of charge
- m. Regulating the use of mobile phones by motorists
- n. Regulating the use of seat belts and other safety devices.¹³¹

¹³¹ Section 10(1)-(3)

The Act gives the Corps the power to arrest and prosecute any person reasonably suspected to have committed any traffic offence listed in section 10(4). The offences include –

- a. Obstructing the highway with a vehicle or any other object.
- b. Driving any vehicle on the highway in excess of the prescribed speed.¹³²
- c. Wrongful overtaking of another vehicle.
- d. Failing to obey traffic lights, road signs, pavement or road markings.
- e. Being on a road without lights, signs or reflectors as required by law.
- f. Driving without a valid driver's licence and a vehicle licence, insurance papers, plate number, spare tyre, windscreen
- g. Driving negligently or recklessly or in a manner dangerous to the public
- h. Driving under the influence of drug or alcohol
- i. Carrying passengers or loads in excess of what the vehicle is licensed to carry
- j. Driving by a person below 18 years
- k. Rejection of accident victims by hospitals and/or medical personnel
- l. Assaulting a member of the Corps in the performance of his duties

¹³² The speed limits for various categories of vehicles in Nigeria are: The minimum speed for any motor vehicle is 45 kilometres an hour and the maximum speed is 100kilomertres an hour, except where otherwise indicated by a sign as prescribed in the eight schedule to the National Road Traffic Regulations 2004. This schedule prescribes different speed limits for different vehicles depending on the nature of the area concerned, that is to say, whether built-up area, highway or expressway. The speed limits on these areas respectively are as follows - Cars – 50, 80 and 100 km/hr; Taxis and Buses – 50, 80 and 90 km/hr; Tankers/Trailers – 45, 50 and 60 km/hr

- m. Failure to re-claim detained vehicle after twenty-four hours
- n. Driving a vehicle without a fire extinguisher which conforms to the required specifications
- o. Driving an inter-city passenger carrying commercial vehicle without a passengers' manifest
- p. In the case of a vehicle carrying a load of gravel or other unstable materials, failure to cover such materials with a tarpaulin or strong plastic
- q. Making or receiving phone calls while driving
- r. Riding a motorcycle without a crash helmet properly strapped to the head and fastened under the chin by both the rider and the passenger
- s. using a motor vehicle for purposes other than that for which it is licensed

Penalties

The Act stipulates different penalties for the various offences covered. The penalties range from N2,000.00 to N50,000.00 in addition to specified terms of imprisonment. Where no penalty is prescribed, in the case of first offence, the penalty is a fine of N3,000.00 or imprisonment for a term not exceeding twelve months or both, and in the case of a second or subsequent offence, the penalty is imprisonment for a term of eighteen months without an option of a fine subject to the discretion of the court. Causing death by dangerous or reckless driving attracts imprisonment for a term not exceeding seven years.

Retention of Driver's Licence

A member of the Corps enjoys the power to demand and retain the driver's licence and/or vehicle documents of a traffic offender to secure his compliance with payment of fine or appearance in court. But on payment of the fine or appearance in court, the document must be returned forthwith.

List of Subsidiary Legislation

1. National Road Traffic Regulations 2004¹³³
2. Federal Road Safety Corps (Ranks and Badges of Ranks) Regulations 2004

The Pharmacists Council of Nigeria Act 1992

This Act established the Pharmacists Council of Nigeria (PCN) as a body corporate with power to sue and be sued in its name.

Functions of the Council

The Council is conferred with the general functions of –

- a. determining the standard of knowledge and skill to be attained by persons seeking to become registered members of the pharmacy profession and reviewing those standards, from time to time, as circumstances may require;
- b. securing, in accordance with the provisions of the Act, the establishment and maintenance of registers of persons entitled to practise as members of the profession and the publication, from time to time, of lists of such persons;
- c. reviewing and preparing from time to time, a statement as to the code of conduct which the council considers desirable for the practice of the pharmacy profession;
- d. regulating and controlling the practice of the profession in all its aspects and ramifications; and
- e. performing such other functions as may be required of the council under the Act.¹³⁴

¹³³ It is to be noted that the principal Act i.e. the Federal Road Safety Commission Act 2007 repealed the Federal Road Safety Commission Act 1992 but saved the National Road Traffic Regulations, 2004 pending the making of new Regulations pursuant to the instant Act.

¹³⁴ Section 1

Registration with the Council

For a person to be eligible to hold an appointment or practise as a pharmacist in Nigeria, he must be registered with the Council.¹³⁵ Each member is required to renew his registration on a yearly basis.¹³⁶ These provisions enable the Council to monitor the activities of its members.

Making of false statements for the purpose of procuring registration is an offence which attracts a fine of N1,000.00 (one thousand naira) or imprisonment for a term not exceeding two years or both. It needs no emphasis to say that the paltry sum stipulated for this offence is patently unrealistic.

Professional Discipline

The Act establishes two organs charged with the duty of considering cases relating to unprofessional conduct. These are the Pharmacists Council of Nigeria Disciplinary Tribunal and the Pharmacists Council of Nigeria Investigation Panel. The latter conducts preliminary investigations and makes recommendations to the Tribunal.¹³⁷

If a registered pharmacist is found guilty of unprofessional conduct by the Tribunal or is convicted by any court in Nigeria or elsewhere of any such offence, the Council may, if it thinks fit, give a direction reprimanding that person or ordering the Registrar of the Council to strike his/her name off the register.¹³⁸

These provisions ensure that members of the profession observe their professional ethics in their dealings with consumers of their services. Cases reported to the Council are duly investigated and considered by the organs noted above and appropriate sanctions meted to the offender. Names of members that have been struck off the register of pharmacists are published in the Official Gazette of the Federal Republic of Nigeria.¹³⁹ It is left to consumers who suffer injury or damage as a result of unprofessional conduct of members to lodge their complaints with the Council.

¹³⁵ Section 10

¹³⁶ Section 14

¹³⁷ Section 17

¹³⁸ Section 18

¹³⁹ See for instance the Federal Republic of Nigeria Official Gazette, No. 58, Vol. 93, S. I. 56 of 2006 for names of pharmacists struck off the register

Section B: Other Consumer Protection Laws

13. Food, Drugs and Related Products (Registration, Etc.) Act 1993

Duty to register products

This Act prohibits the sale, importation, exportation, advertisement, distribution, etc. of food, drug, drug product, cosmetic, medical device or water without registration. But the National Agency for Food and Drug Administration and Control may grant permit for the manufacture or importation of a sample of any of these articles for the purpose of registration or clinical trial.¹⁴⁰ In all cases, the Agency must satisfy itself that there is a need to have the article registered in Nigeria. Registration is valid for five years and may be renewed.¹⁴¹ The Agency reserves the right to suspend or cancel the registration of any article mentioned in the Act if, among others, the grounds on which the article was registered were later found to be false or incomplete or the standard of quality, safety or efficacy as presented in the documentation for registration is not being complied with.

Offences and penalties

A person who contravenes any of the provisions of the Act or a regulation made thereunder is guilty of an offence and liable on conviction to a fine not exceeding N50,000.00 (fifty thousand naira) or imprisonment for a term not exceeding two years or to both such fine and imprisonment and in the case of a body corporate, to a fine not exceeding N100,000.00 (one hundred thousand naira). Any asset or property acquired through the offence is forfeited to the Federal Government.

14. Food and Drugs Act 1974

This Act makes provisions for the regulation of the manufacture, sale and advertisement, etc. of food, drugs and cosmetics.

Prohibition of sale and advertisement of certain food, drug

The Act prohibits the sale, importation and manufacture of any article of food which –

¹⁴⁰ Section 1

¹⁴¹ Section 2

- a. has in it or upon it any poisonous or harmful substance not being a food additive or contaminant of a type and within the level permitted by regulation made under the Act;
- b. is unfit for human consumption; or
- c. consists in whole or in part of any filthy, disgusting, rotten or diseased substance.¹⁴²

The Act also prohibits the sale, importation or manufacture of any food or drug which is adulterated.¹⁴³ Similarly, sale, importation, etc. of injurious cosmetics is prohibited.¹⁴⁴ Furthermore, except as otherwise provided by regulation, no person shall sell or advertise to the general public any food, drug, cosmetic or medical device as treatment, preventive or cure for any of the diseases, disorders or abnormal physical states specified in the first schedule to the Act. The schedule contains a long list of communicable and non-communicable diseases. A prominent reason often adduced for this prohibition is that such diseases as listed in the schedule require strict medical attention and therefore victims should not be exposed to unethical sales and advertisements which may be spurious.¹⁴⁵

Prohibition of Misleading Practices

The Act prohibits certain misleading practices. Thus, it is an offence under the Act to label, package, sell or advertise any food, drug, cosmetic or medical device in a manner that is false or misleading or is likely to create a wrong impression as to its quality, character, value, composition, merit or safety. Sale, advertisement, etc. of any regulated item in a manner that gives the impression that the item has complied with a prescribed standard whereas it does not is an offence.¹⁴⁶

Sale under Insanitary Conditions

It is an offence to manufacture, prepare, preserve, package or store for the purpose of sale, any food, drug or cosmetic under insanitary conditions.¹⁴⁷

¹⁴² Section 1(1)

¹⁴³ Section 1(2).

¹⁴⁴ Section 1(4)

¹⁴⁵ See F. N. Monye, *Law of Consumer Protection*, *op cit* pp.

¹⁴⁶ Section 5

¹⁴⁷ Section 6

Sale of food items under insanitary conditions is a big problem in Nigeria. In 2001, the Consumer Awareness Organisation (CAO) organised a workshop on Hygienic Processing and Packaging of Bakery Products. The workshop which was organised in collaboration with the Enugu State Environmental Protection Agency (now Enugu State Waste Management Authority) was prompted by the deficiencies noticeable in the manner of processing and packaging of bakery products in Nigeria.¹⁴⁸

Packaging, sale, etc. under insanitary condition is not restricted to bakery products but extends to other food items.

Consumers need to complement the efforts of the regulatory agencies in this regard by shunning food and other items prepared and sold under insanitary conditions.

“Insanitary Conditions” under this Act means such conditions or circumstances as might contaminate any food, drug or cosmetic with dirt or filth or render it injurious to health.

Declaration by Manufacturers

The Act places a duty on importers of food, drugs, cosmetic or medical device to accompany such items with a certificate from the manufacturer to the effect that it was manufactured in accordance with any existing standard or Code of Practice pertaining to such product or, where such standard or code of practice does not exist for the particular product, in accordance with any international standard laid down, in the case of food, under the directive of the Codex Alimentarius Commission. In addition, the item must be accompanied by a certificate issued by the Government of the country where it was manufactured to the effect that its sale in that country would not constitute a contravention of the law of that country.¹⁴⁹

These provisions ensure that Nigeria is not used as a dumping ground by unscrupulous importers who may collude with foreign-based manufacturers to package substandard products for the Nigerian market.

¹⁴⁸ The product of the workshop was published as *Hygienic Processing and Packaging of Bakery Products*, edited by Felicia N. Monye and printed by Chenglo Limited, Enugu Nigeria, 2003)

¹⁴⁹ Section

Inspection of premises, articles, books etc.

The Act confers wide powers on inspecting officers to inspect premises, books and articles with a view to checking compliance with the provisions of the Act.

The National Agency for Food and Drug Administration and Control implements the provisions of all laws relating to regulated products.¹⁵⁰ As such, this Act comes under the purview of the Agency.

Offences, penalties and Legal Proceedings

It is an offence to obstruct an inspecting officer in the execution of his duty under the Act. It is also an offence to supply false information or to remove or alter any article which is the subject of an inspection.¹⁵¹

A person convicted of an offence under this Act is liable to a fine of not less than N50,000.00 (fifty thousand naira) or imprisonment for a term not exceeding two years or to both such fine and imprisonment.¹⁵² Forfeiture of the offensive article to the Government is an additional penalty.¹⁵³

The Federal High Court is conferred with the jurisdiction to try offences under the Act.¹⁵⁴

Defences

A person charged with the offence of sale of an article in contravention of the Act may raise the defence that he sold the article in the same package and in the same condition as it was in when he bought it and that he could not with reasonable diligence have ascertained that the sale of the article would be in contravention of the Act or the regulations made thereunder. To succeed in this defence, the accused person must disclose the name of the person from whom he purchased the article. He must also give advance notice (at least ten days to the date of the trial) of his intension to raise the defence.¹⁵⁵

¹⁵⁰ Food, drug, cosmetic, medical device, chemical and detergent

¹⁵¹ Section 12

¹⁵² Section 17

¹⁵³ Section 14

¹⁵⁴ Section 18

¹⁵⁵ Section 19

It is remarkable that this provision does not provide any defence for the manufacturer. This is supported because the manufacturer, being the actual offender should not be allowed to pass the buck.

15. Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act 1999

Sale, manufacture etc. of prohibited items

This Act prohibits the production, importation, manufacture, sale, distribution or being in possession of any counterfeit, adulterated, banned or fake, substandard or expired drug or unwholesome processed food. Sale or display for the purpose of sale is also an offence. Furthermore, it is an offence to aid or abet any person to produce, import, manufacture, sell, distribute or display any such product for the purpose of sale.¹⁵⁶

Apart from prohibiting the sale of counterfeit and fake drugs and unwholesome processed foods, the Act also prohibits the sale of genuine drugs in prohibited places. Section 2 provides that any person who –

- a. hawks or sells; or
- b. displays for the purpose of sale; or
- c. aids or abets any person to hawk, sell, display for the purpose of sale, any drug or poison in any place not duly licensed or registered by the appropriate authority, including any market, kiosk, motor park, road-side stall or any bus, ferry or any other means of transportation, is guilty of an offence.

Dealing in any of the prohibited acts attracts a fine not exceeding N500,000.00 (five hundred thousand naira) or a term of imprisonment not less than five years while sale in prohibited places attracts the same sum or imprisonment for a term not less than two years or both.

¹⁵⁶ Section 1

The National Agency for Food and Drug Administration and Control (NAFDAC) is given the mandate to administer this Act while the Federal High Court is conferred with exclusive jurisdiction to try offences under the Act.

The problem of counterfeit and fake drugs has given successive governments of Nigeria serious concern necessitating a series of legislative enactments to tackle the menace.¹⁵⁷

The current Act expands the scope of the subject matter by adding “unwholesome processed foods”. The Act defines the phrase “unwholesome processed food product” as any food product which –

- a. consists in whole or in part, of any filthy, putrid or decomposed substance; or
- b. has been prepared, packaged or stored under insanitary conditions where it may have been contaminated with filth or whereby it may have been rendered injurious to health; or
- c. is packed in a container composed in whole or in part of any injurious or deleterious substance which may render the content injurious to health; or
- d. bears or contains for the purposes of colouring other than one which is prescribed; or
- e. contains any harmful or toxic substance which may render it injurious to health or has been mixed with some other substance so as to reduce its quality or strength.

The establishment of the National Agency for Food and Drug Administration and Control (NAFDAC), a big corporate entity solely charged with the responsibility of checking illegal dealing in regulated products¹⁵⁸ shows the seriousness with which the Government of Nigeria views such offences.

¹⁵⁷ An earlier law on the same subject is the Counterfeit and Fake Drugs (Miscellaneous Provisions) Act 1989, Cap. 73, Laws of the Federation of Nigeria 1990, which repealed the 1988 Act.

¹⁵⁸ Food, drugs, cosmetics, medical devices, detergents, bottled water and chemicals – S. 31, NAFDAC Act

Despite these efforts, the problem is far from solved. Newspaper reports of seizure and destruction of illegal drugs and other products worth millions of naira abound. As revealed by the statistics of products seized or destroyed by NAFDAC shown above, the Agency is constantly in battle with dealers in such products.

16. Harmful Waste (Special Criminal Provisions, Etc.) Act 1988¹⁵⁹

Prohibition of dumping of harmful wastes

This Act impacts on the interest of consumers by prohibiting the dumping of harmful wastes on any land or territorial waters in Nigeria. Section 1 of the Act prohibits all activities relating to the purchase, sale, importation, transit, transportation, deposit and storage of harmful wastes. A person found guilty of committing any of these acts shall on conviction be sentenced to imprisonment for life, and in addition –

- a. any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste; and
- b. any land on which the harmful waste was deposited or dumped, shall be forfeited to and vest in the Federal Government.

The Act excludes the privilege of immunity. It provides that the immunity and privileges Act shall not extend to any crime committed under it by any of those persons.¹⁶⁰ This buttresses the seriousness with which the Government views such offences.

Liability to the victim of the offence

In addition to criminal liability noted above, the Act imposes civil liability on offenders. An offender under the Act is liable to the victim of the damage except where the damage –

- a. was due wholly to the fault of the person who suffered it, or
- b. was suffered by a person who voluntarily accepted the risk thereof

¹⁵⁹ Cap.H1, LFN 2004.

¹⁶⁰ Section 9

“Damage” under this Act includes the death of, or injury to any person including any diseases and any impairment of physical or mental condition.

“Harmful waste” has a very wide meaning under this Act. It means any injurious, poisonous, toxic or noxious substance and, in particular, includes nuclear waste emitting any radioactive substance if the waste is in such quantity, whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, fatal injury or incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste.

Weights and Measured Act 1974

This Act repealed the Weights and Measures Act 1962 and re-enacted it with additional provisions to facilitate the change over to the metric system.¹⁶¹ The Act enshrines the metre as the unit measurement of length and the kilogramme as the unit of measurement of mass by reference to which any measurement involving a measurement of length or mass shall be made in Nigeria.¹⁶²

The Act covers a wide range of matters relating to units and standards of measurement, administration, offences and penalties. It prohibits various misleading practices such as weighing or measuring instruments with forged stamp; alteration of stamped or marked weight; delivery of articles less than the weight indicated; use of false or unjust weight or measure; sale or importation of unjust weights and measures; and forgery of stamp or mark.

Refusal to weigh or measure goods delivered is an offence. But the wording of this provision is to the effect that the offence arises where a request to weigh or measure the goods in question is made. The provision is as follows – “Any person who sells goods by weight or measure for himself or on behalf of any other person in any warehouse, market, store or other public place

¹⁶¹ See the long title of the Act. Nigeria operated the imperial system until 1973 when she changed to the metric system which came into force on 01 January, 1979 by virtue of Act No. 37 of 1978. See section 52, Weights and Measures Act 1974 which re-enacted the Weights and Measures Act 1962 and retained the subsidiary legislation made thereunder

¹⁶² Section 1

and **when required by the person to whom the goods are delivered**¹⁶³ refuses to weigh or measure the goods in the presence of the person to whom they are delivered shall be guilty of an offence.¹⁶⁴

The clause which makes the provision applicable only on request by the person to whom the goods are sold wanes the significance of the provision. This is so given the ignorance of many consumers as to this legal requirement. Evidence of practical implementation by the regulatory authority is not seen as articles to which the Act applies¹⁶⁵ are sold freely in Nigeria without compliance with the provisions of the Act. Sellers and buyers alike appear oblivious of this legal requirement.

A different rule however applies in the case of pre-packaged goods. Section 28 prohibits the sale or being in possession for the purpose of sale of any pre-packaged article unless the wrapper or container bears thereon, or on a label securely attached thereto, a true statement in plain characters of the minimum net weight or measure of the article contained therein.

This is a clear imposition of obligation unlike the evasive approach adopted with respect to un-packaged goods. In Nigeria, the requirement of disclosure of net weight and measure is observed by all manufacturers of genuine pre-packaged goods.

Apart from constituting an offence, a sale contrary to the provisions of the Act is void.¹⁶⁶

The Act also offers civil remedy to victims. Section 37 provides that the fact that any act or omission is an offence under the Act for which a person may be prosecuted shall not affect any civil remedy to which a person aggrieved by the offence may be entitled. This is a commendable departure from the position of some other existing laws which focus on the punishment of the offender without mentioning the civil rights of the victim.

Section 43 empowers inspectors under this Act to make test purchases of goods as may appear expedient for the purpose of determining whether or not the provisions of the Act are being

¹⁶³ Emphasis supplied

¹⁶⁴ Section 31

¹⁶⁵ These are tinned milk, biscuits, tinned tomatoes, detergents, soaps, packaged water, creams, etc.

¹⁶⁶ Section 32

complied with. Due execution of this function will improve compliance with the provisions of the Act.

Penalties

The offences under this Act attract a fine of N500.00 (five hundred naira) or imprisonment for one year or both in the case of an individual and N5,000.00 (five thousand naira) in the case of a body corporate.

List of Subsidiary Legislation

1. Weights and Measures Regulations 1965
2. Weights and Measures (Primary Standards) Order 1965
3. Weights and Measures (Definition of Units) Order 1965
4. Weights and Measures (Revocation) Order 1975
5. Weights and Measures (Standardisation of Indigenous Measures) Regulations 1992

As can be seen from the dates of these subsidiary legislation, many of them were made under the repealed Act and saved by the current one.

17. Tobacco Smoking (Control) Act 1990

Offences

This Act deals with the control of smoking in certain places and advertisement of tobacco in Nigeria. It prohibits the smoking of tobacco in the places specified in the first schedule.¹⁶⁷ In addition, it is an offence to advertise tobacco products to the general public through any of the

¹⁶⁷ Section 1. The places specified in the schedule are cinema, theatre or stadium, offices; public transportation, lifts; medical establishment; schools; and nursery institutions

means specified in the second schedule unless the advertisement contains a warning that tobacco smoking is dangerous to health.¹⁶⁸

It is also an offence for tobacco manufacturers or dealers to sponsor or promote any of their products at any sports event sponsored or promoted by them.¹⁶⁹

Warning

The Act imposes an obligation on tobacco dealers to insert the specified warnings on the packages containing tobacco products meant for smoking in Nigeria. The warnings are –

- a. “The Federal Ministry of Health warns that tobacco smoking is dangerous to health”
and
- b. “Smokers are liable to die young”

It is an offence to sell any tobacco product without the above warnings inscribed on the package. It is instructive that the Act prescribes these warnings in a conjunctive manner as can be seen from the use of the word “and”. The implication is that the two warnings should be used conjunctively. This is the literal interpretation of the provision. So far, the courts have not had the opportunity to pronounce on the provision. But in practice, manufacturers in Nigeria insert only one of the warnings on the packages of their products, i.e. The Federal Ministry of Health warns that smokers are liable to die young.

A related issue is the requirement to disclose the amount of tar and nicotine contents of each unit of the product on the package. It is an offence to sell any tobacco product in Nigeria without complying with this provision.

¹⁶⁸ Section 2. The media specified under the second schedule are newspapers; magazines; radio; television; cinema; bill boards; and hand bills

¹⁶⁹ Section 2(2)

Penalties

Smoking of tobacco products contrary to the provisions of the Act is an offence attracting a fine of not less than N200 (two hundred naira) and not exceeding N1,000.00 (one thousand naira) or imprisonment of not less than one month and not exceeding two years or both.¹⁷⁰

A person who advertises, sells or offers for sale any tobacco product in contravention of the provisions of the Act is guilty of an offence and liable, on conviction, to a fine of not less than N5,000.00 (five thousand naira).

In the case of an offence committed by a body corporate, every director, partner or a person concerned with the management of the affairs of the company is guilty of the offence and liable on conviction to a fine not exceeding N5,000.00 (five thousand naira) or imprisonment for a term not exceeding three years or both.¹⁷¹

“Tobacco” under this Act includes manufactured and unmanufactured tobacco of every description which is processed and used for smoking in pipes, cigars and cigarettes.

18. Advance Fee Fraud and Other Related Offences Act 2006

This Act prohibits certain acts pertaining to advance fee fraud, other fraud related offences as well as electronic telecommunication offences.

1. Advance fee fraud and other fraud related offences

It is an offence under the Act for any person, by false pretence and intent to defraud, to

—

- a. obtain, from any other person, in Nigeria or in any other country for himself or any other person;

¹⁷⁰ Section 4

¹⁷¹ Section 5

- b. induce any other person, in Nigeria or in any other country, to deliver to any person, or
- c. obtain any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence.¹⁷²

Furthermore, a person who by false pretence and with the intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for, commits an offence under the Act.¹⁷³

The above offences attract a penalty of imprisonment for a term not more than 20 years and not less than seven years without the option of a fine.¹⁷⁴

The Act also imposes sanctions on occupiers of premises. By section 3, a person who, being the occupier or is concerned in the management of any premises, causes or knowingly permits the premises to be used for any purpose which constitutes an offence under the Act commits an offence and is liable on conviction to imprisonment for a term of not more than 15 years and not less than five years without the option of a fine.

To invite a person to Nigeria with the intent to commit fraud against or with such a person is an offence attracting a term of imprisonment for not more than 20 years and not less than seven years without an option of a fine.¹⁷⁵

a. **Electronic Telecommunications Offences etc.**

The Act imposes some obligations on electronic communications service providers as well as on consumers of such services. Section 12 provides that any person or entity providing an electronic communications service or remote computing service either by e-mail or any other form shall be required to obtain from the customer or subscriber –

- a. residential address, in the case of an individual; and

¹⁷² Section 1(1)

¹⁷³ Section 1(2)

¹⁷⁴ Section 1(3)

¹⁷⁵ Section 4

- b. corporate address, in the case of corporate bodies

On the part of customers, the Act requires each customer to furnish his particulars in terms stated above. Failure to supply the required information is an offence. Supply of false information is also an offence attracting imprisonment for a term of three years or a fine of N100,000.00. Contravention of any of the provisions of the Act by a service provider attracts the same penalties in addition to forfeiture of the equipment or facility used in providing the service.

The Act requires every provider of electronic communications service coming within its scope to register with the Economic and Financial Crimes Commission (EFCC). The provider must also maintain a register of all fixed line customers which shall be liable to inspection by the Commission.¹⁷⁶

“False pretence” under this Act means a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true.¹⁷⁷

The stiff penalties stipulated by this Act demonstrate the seriousness with which the Government views advance fee fraud and other related offences. No doubt, a term of imprisonment for 20 years without an option of fine is sufficient to deter an average prospective offender.

But experience has shown that the stern stance of the law is yet to achieve the desired results. Statistics from the EFCC show that some people who may be described as hardened criminals still engage in the prohibited acts.

¹⁷⁶ Section 13

¹⁷⁷ Section 20

The onus is on members of the public both within and outside Nigeria to beware of the antics of the social miscreants who give bad name to Nigeria. Any suspected deal should be reported to the EFCC.

19. Sale of Goods Laws

The Sale of Goods Laws of different states of the Federation impose some obligations and confer some rights on parties to a sale of goods contract.

Nigeria applied the English Sale of Goods Act, 1893 as an Act of general application until local laws began to appear on the scene. The first local statute in this regard was the Sale of Goods Law, 1959 of the defunct Western Region. Today, there exists local Sale of Goods Laws applicable in different states of the Federation. Each of these laws is largely a reproduction of the English Sale of Goods Act, 1893 (UK). This explains the similarities in their provisions. A summary of these laws is given below but except as otherwise indicated, references to sections are to the Sale of Goods Law of Lagos State, 2003.¹⁷⁸

Scope of the Sale of Goods Law

The Sale of Goods Laws of different states apply to contracts of sale of goods. A contract of sale of goods is defined as a contract where the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.¹⁷⁹ It follows from this provision that any article of sale which does not fall within the ambit of this definition cannot qualify as a subject matter of a contract of sale.

Some transactions are specifically excluded from the application of these laws. These are transactions in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security. Indeed, for a transaction to qualify as a sale of goods contract, the subject matter must come under the definition of “goods” as contained in the Sale of Goods Laws. This term is defined as including “all chattels personal other than things in action and

¹⁷⁸ See the following examples – Sale of Goods law 2003, Lagos State, Kaduna State Sale of Goods Law 1990, Contract Law of Enugu State 2004

¹⁷⁹ Section 3(1)

money, and includes emblements, industrial growing crops, and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale”.¹⁸⁰

Who is protected by the Sale of Goods Laws?

A question that may be asked is whether a “consumer” as defined in this project is protected by the Sale of Goods Laws. These laws do not use the word “consumer”. They apply to parties to a contract of sale as can be seen from the definition of contract of sale given above. The parties to a contract of sale are the “seller” and the “buyer”. A seller is defined as a person who sells or agrees to sell goods while a buyer is defined a person who buys or agrees to buy goods.¹⁸¹

From the foregoing, it is clear that a buyer is a person who has entered into a contract of sale with a seller. In other words, there must be a contractual relationship between the buyer and the seller.

It is known fact that the concept of “Consumer” goes beyond contractual relationship and extends to all relationships where there is a duty of care. This means that a third party to a contract can qualify as a consumer if he is adversely affected by the subject matter of the contract. Thus a person who is injured by a product obtained by way of gift can seek redress as a consumer under the law of negligence. The same applies where a consumer is injured by a product bought by another or where he/she is adversely affected by an injurious product.¹⁸²

A strict interpretation of the definition of “Contract of Sale” given above is to the effect that only a party in privity of contract with a seller can claim the benefits provided by the Sale of Goods Laws. For other persons adversely affected, the options are to sue in negligence or through a party in privity of contract. Better still, the party in privity of contract can institute

¹⁸⁰ See P. S. Atiyah, *Sale of Goods* 9th ed. By John Adams, London, Pitman Publishing, 1995; Felicia Monye, *Commercial Law: Sales of Goods, Hire Purchase and Carriage of Goods by Sea*, Enugu, Chenglo Limited, 2006

¹⁸¹ Section 1

¹⁸² Some of the authorities that illustrate these points are *Donoghue v. Stevenson* 1932 AC 562, *Grant V Australian Knitting Mills Ltd.* [1936] AC. 85; *Okwejiminor & Anor V Nigerian Bottling Plc* [2008] 5NWLR (P T 1079) 172, SC; *Osemobor v Niger Biscuits (Nig) Ltd* [1973] NCLR 382, *Soremi v Nigerian Bottling Co. Ltd* [1977] 12 CCHCJ 2735; *Boardman v Guinness (Nig) Ltd* (1980) NCLR 109, *Okonkwo v Guinness (Nig) Ltd* (1980) IPLR 581; *Ebelamu v Guinness (Nig) Ltd*, FCA IL/101/82, Monday 24 January 1993

an action on behalf of the injured parties. For instance, if a house wife buys a product which injures her family members, she can institute an action on their behalf.

It must be emphasised that a consumer who obtained a product by way of sale can sue the seller under the sale of goods law.

Terms implied by the Sale of Goods Laws

The Sale of Goods Laws imply some conditions and warranties into every contract of sale. These terms apply in addition to the terms expressly inserted by parties. They are terms designed to ensure that parties obtain the benefit(s) contemplated under the contract. They guarantee the sanctity of commercial transactions by ensuring that parties do not flout their obligations with impunity. Any violation attracts some sanctions under the law depending on whether the term violated is a condition or a warranty.

The term “condition” is defined by section 3(1) of the Sale of Goods Law of Kaduna State, 1990 as a term which goes directly to the substance of the contract for the sale of goods and so essential to its very nature that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all and so gives him the right to repudiate the contract and reject the goods in addition to a claim for damages.

“Warranty” is defined as “an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

It follows from the above provisions that “conditions” are major terms which go to the root of a contract while “warranties” are minor terms which do not affect the substance of the contract but nonetheless, diminish the benefit obtainable therefrom. For the former, the law gives the right to repudiate the contract and reject the goods while for the latter, the aggrieved party is only allowed to claim damages and not to repudiate the contract.

The terms implied by law which are classified as “conditions” and “warranties” are the right to sell; compliance with description, fitness for purpose, merchantable quality;¹⁸³ compliance with sample and time stipulations. Whether a particular implied term is a condition or a warranty depends on the wording of the provision that deals with it. For clarity the relevant provisions are reproduced below.

1. *Stipulations as to time*

Section 11

- a. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale but whether any other stipulations to time is of the essence of the contract or not depends on the terms of the contract.
- b. In a contract of sale “month” means *prima facie* calendar month

2. *Implied undertaking as to title, etc.*

Section 13

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is –

- a. an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass:
- b. an implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- c. an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

¹⁸³ The Sale of Goods Act 1979 (UK) has changed the phrase “Merchantable quality” as used in the repealed Sale of Goods Act, 1893 (UK) to “satisfactory quality”

3. *Sale by description*

Section 14

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description, and if the sale be by sample as well as by description, it is not sufficient if the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

4. *Implied conditions as to quality or fitness*

Section 15

Subject to the provisions of this law and of any written law in that behalf there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows –

- a. where the buyer, expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;

- b. where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed;

- c. an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- d. an express warranty or condition does not negative a warranty or condition implied by this law unless inconsistent therewith.

5. *Sale by Sample*

Section 16

- a. A contract of sale is contract of sale by sample where there is a term in the contract, express or implied, to that effect.
- b. In the case of a contract for sale by sample –
 - i. there is an implied condition that the bulk shall correspond with the sample in quality;
 - ii. there is an implied condition that the buyer shall have reasonable opportunity of comparing the bulk with the sample;
 - iii. there is an implied condition that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample.

Remedies of the parties

If a party breaches any of the obligations imposed by law,¹⁸⁴ the aggrieved party can seek any appropriate remedy.

Remedies of the seller

If the buyer is in breach of the contract, the seller will be entitled to both personal and real remedies. The real remedies of the seller are the right of lien or retention; stoppage of goods in transit; and the right to resell the goods. Each of these remedies is subject to some conditions that must be satisfied by the seller. For instance, he can only exercise the right of lien while he is still in possession.¹⁸⁵ The personal remedies of the seller are action for the contract price and damages for non-acceptance.

¹⁸⁴ On the part of the seller, the obligations are to deliver the goods at the right place, right time, right quantity and quality and according to the terms of the contract. Subject to due performance of his duties by the seller, the buyer bears the obligation to accept the goods and pay the contract price.

¹⁸⁵ For a detailed examination of these remedies, see Felicia Monye, *op. cit.* pp. 94-99

To succeed in any of the above claims, it must be shown that the person making the claim is an unpaid seller. A person is deemed to be an “unpaid seller” when –

- a. the whole of the price has not been paid or tendered; and
- b. a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.¹⁸⁶

Remedies of the Buyer

Remedies which an aggrieved buyer may claim are damages for non-delivery; specific performance; damages for breach of warranty, action for breach of warranty; action for refund of price and rejection of the goods. As regards the last, it is necessary that the rejection is done within a reasonable time and also, before property passes to the buyer. But this last factor depends on the state of the goods. If the goods are defective leading to a breach of condition, the buyer can reject so long as he has not done any act amounting to acceptance.¹⁸⁷

Based on the foregoing summary, it can be argued that the Sale of Goods laws offer some measure of remedies to a consumer who is in privity of contract with the seller. Privity being the only requirement, such an action can be maintained against any person in such a relationship irrespective of the origin of the product. Thus it can be maintained against the seller or distributor whether or not he is the manufacturer of the offending product. In *Nigerian Bottling Co. Ltd v. Ngonadi*¹⁸⁸ a buyer successfully maintained an action against a distributor. The Supreme Court applied section 15(1) of the Sale of Goods Law¹⁸⁹ and emphasised that it made no difference that the appellants were mere distributors and not the manufacturers of the refrigerator. A similar principle was applied in *Solu v. Total (Nig) Ltd*¹⁹⁰ to hold the distributors of a defective gas cylinder liable to the plaintiff who bought the cylinder from them.¹⁹¹

¹⁸⁶ The meaning of “Unpaid Seller” was given due consideration by the Supreme Court in *Afrotec Technical Services (Nig) Ltd v. MIA & Sons Ltd* (2000) 12 SC (pt. 2) 1.

¹⁸⁷ See Felicia Monye op. cit. pp. 103-105

¹⁸⁸ [1985] 5SC 313

¹⁸⁹ Cap 150, Vol. V1 of the defunct Bendel State

¹⁹⁰ Unreported Lagos State High Court, Suit No ID/619/85, 25 March 1988

¹⁹¹ See Felicia Monye, *Law of Consumer Protection*, Ibadan: Spectrum Books Ltd, 2003 pp. 132-136

The above notwithstanding, privity of contract limits the ability of non-contractual consumers to make claims under the Sale of Goods Laws.

Exclusion Clauses

In a contract of sale, just like any other contract, parties are free to stipulate terms which should govern their transaction. These terms show the reciprocal promises made by the parties. In the same way, parties may insert some exclusion clauses in the contract. Such clauses show the extent of obligations assumed by the parties in the event of loss, damage or breach. The power of the parties in this regard is informed by the principle of freedom of contract.

An issue that is yet to receive a final pronouncement by Nigerian courts is whether parties can exclude terms implied by the Sale of Goods Laws. The laws themselves are not consistent on this matter. While some make provisions to the effect that such terms may be excluded, others provide otherwise or may be regarded as indefinite. Some examples will suffice.

Section 55 of the Sale of Goods Law of Lagos State provides –

where any right, duty, or liability would arise under a contract of sale by the implication of law, it may be negatived or varied by express agreement or by the course of dealing between parties or by usage, if the usage be such as to bind both parties to the contract.

The effect of this provision is that parties can insert exclusion clauses to vary the operation of the rights and obligations implied by law. The provision is not specific on whether it is permissible to insert a clause exempting a fundamental breach. But it can be argued that it is wide enough to cover such breaches given the fact that some of the obligations imposed by law can qualify as fundamental terms.

In contrast, the Plateau State Sale of Goods Law does not allow the exclusion of implied terms. Section 65 provides as follows:

1. where a right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by such usage as binds both parties to the contract.
2. nothing in subsection (1) of this section shall be construed to permit the exclusion by express agreement or otherwise of any condition or warranty implied by this Law.¹⁹²

It is not clear from this provision the rights and duties that may be excluded under subsection (1). But subsection (2) leaves no doubt that implied terms cannot be excluded. This is a realistic position which ensures that the buyer obtains the benefit of the terms implied by law.

Similarly, section 190 of the Contract Law of Anambra State provides –

Nothing in the foregoing shall be construed as to enable a party guilty of fundamental breach of a contract, or a breach of a fundamental term to rely upon an exemption clause so as to escape liability.

The interpretation of the above provision came up before the Supreme Court in *International Messengers (Nig) Ltd v. Pegofor Industries Ltd*.¹⁹³ In this case, the plaintiff/respondent gave a vital component of their machinery to the defendant/appellant (an air courier company) for urgent transmission to the manufacturers in Italy for repairs and return by a stated date. The respondent paid freight charges of N2,110.00 (two thousand, one hundred and ten naira). The Airway Bill, which was signed by the managing director of the respondent, contained an exemption or limitation clause which limited the liability of the defendant/appellant to the sum of N500.00 (five hundred naira) in the event of loss or damage of the consignment. The consignment got lost and the respondent sued for its value and refund of the freight paid. The appellant admitted the loss but sought to rely on the limitation clause contained in the contract. The Supreme Court, affirming the decisions of the lower courts, unanimously dismissed the appellant's appeal. The apex court, relying on section 190 of the Contract Law of Anambra

¹⁹² See also section 66(2) of the Kaduna State Sale of Goods Edict, which is the same as this provision

¹⁹³ (2005) 7CLRN 1.

State,¹⁹⁴ held that the limitation clause could not absolve the breach which was a fundamental breach.

The Supreme Court concluded that the defendant/appellant was guilty of a fundamental breach of contract and therefore, was not entitled to be protected by the exemption clause in Exh. “C”. The court reviewed the common law rule of construction and noted that “this rule of common law has been modified by section 190 of the Contract Law....”

A question that may be asked is: would the position of court have been different if the matter had arisen in a state without an equivalent provision as the one under consideration? The Sale of Goods law of Lagos State, for instance, does not have an equivalent provision.

The disparity in local laws on the issue of exemption of liability leaves much to be desired. There is an urgent need to review all local Sale of Goods Laws to prohibit the exclusion of implied terms and indeed any fundamental term of the contract. This is the only way to protect the interest of the buyer or any similar person labouring under a weaker bargaining power.¹⁹⁵

¹⁹⁴ Cap 32. Revised Laws of Anambra State. 1991

¹⁹⁵ See Felicia Monye *Commercial Law op.cit.* pp. 55-61

Section C: Major Judicial Decisions¹⁹⁶

Consumer protection cases may relate to product or service liability. Viewed from the extended meaning of the concept of consumer, such cases may also cover all fields that affect consumers' interest and wellbeing. It is not possible in a project of this nature to cover all these fields. This review is, therefore, restricted to product liability. Service liability and other ancillary issues of consumer protection are not covered.

Indeed, even for the field covered, attention is focussed on tort-based as against contract-based actions. This decision is informed by the fact that tort-based actions (negligence) provide a veritable option to claimants who are not in privity of contract with the person being sued i.e. the manufacturer in most cases. Decided cases have, however, shown that the ability of claimants to take advantage of this option is seriously restricted by the burden of proof imposed by law. To succeed, the claimant must discharge this burden by establishing the three ingredients of negligence, namely, duty of care, breach of duty and consequential damage. The first element i.e. duty of care is now taken for granted following a plethora of cases¹⁹⁷ which have firmly established that anyone in the chain of production and distribution owes a duty of care to the ultimate consumer.

The twin elements of breach of duty and consequential damage require convincing evidence on the part of the claimant. He must show the acts or omissions, which constitute negligence. In addition, he must show that the negligence resulted in damage to his person or property. These requirements constitute an uphill task. Claimants are often confronted with the defence of "foolproof" system of production and the defence of lack of nexus between the act complained of and the alleged injury or damage. Attention is focused on cases involving these elements.

¹⁹⁶ Most of the cases discussed in this section were also reviewed by the present writer in the *Consumer Journal*, Vol. 1, 2005 from which some of them and the views expressed therein were reproduced. See "The Defence of Foolproof System of Production", F. N. Monye, pp.1 – 34.

¹⁹⁷ *Donoghue v. Stevenson* (1932) A.C. 562; see also *Grant v. Australian Knitting Mills Ltd.* [1936] A.C. 85; *Stennett v. Hancock and Peters*, [1939] 2 All E.R. 578; *Nigerian Bottling Co. (Nig.) Ltd. v. Ngonadi*[1985] 1 NWLR (Pt.4) 739; *Ebelemu v. Guinness (Nig.) Ltd.* FCA/1/101/82 (1993); *Boardman v. Guinness (Nig.) Ltd.* (1980) NCLR 109; *Soremi v. Nigerian Bottling Co. Ltd.* 1977) 12 CCHCJ 2735; *Dumuje v. Nigeria Breweries Plc.* (Unreported, Suit No. ENC/236/94,04 July 2001; cf. cases decided before *Donoghue v. Stevenson* e.g. *Winterbottom v. Wright* [1842] M & W 109; *Earl v. Lubbock* [1905] K.B. 253; *Blacker v. Lake & Elliot Ltd.* [1912] 106 L.T. 533; *Longmeid v. Holliday* 6 Ex 761.

20. Cases relying on foolproof system of production

A common practice which manufacturers adopt in Nigeria in a bid to absolve themselves from liability is the defence of foolproof system of production. This is one of the challenges that a plaintiff has to face in a product liability case. Cases reviewed below show judicial attitude to this defence.

*i. Onyejekwe v. Nigerian Breweries Ltd*¹⁹⁸

In the relatively old case of *Onyejekwe v. Nigerian Breweries Ltd*, the plaintiff claimed from the defendants the sum of 10,000 (Ten thousand pounds) being special and general damages suffered by him through the negligence of the defendants in that he drank from a bottle of Star beer brewed and bottled by the defendants, whereby he became ill. The allegation was that the bottle of beer from which he drank and others were found to contain foreign bodies which could not have been there without the negligence of the defendants. In defence, the defendants gave evidence of the processes of beer brewing from the moment malt, hops, sugar and water are mixed together for a start to the time when the beer in the corked bottle is put into the carton ready for the market. The evidence showed several stages of washing of bottles by automatic machines in which highly concentrated solution of caustic soda and other chemicals are used, the filling of the bottles and corking by mechanical process and checking at various sighter stations by groups of sighters. Commenting on the evidence of the defendants' witness, Anyah, J. said:

I am convinced by the evidence of this witness, that is, D.W.I. that the beer and the bottles undergo complete pasteurisation and sterilisation before the bottles leave the factory and that in these circumstances no living organisms can be found in the bottles unless afterwards tampered with.¹⁹⁹

The plaintiff thus lost his case.

*ii. Okonkwo v. Guinness (Nig) Ltd and Anor*²⁰⁰

¹⁹⁸ (Unrep.) Suit No. E/129/72, 01 June 1973

¹⁹⁹ *Ibid.* at p. 7

²⁰⁰ (1980) IP. L.R 581

The same approach was adopted in this case. Here, the plaintiff and his friend went to the second defendant's hotel to drink. His friend paid for the drinks which both of them ordered for. In the course of drinking, he complained of abdominal disorder. When the bright lights were switched on, they saw what looked like roots, leaves and bark of trees in the drink (Stout). The plaintiff was subsequently treated for food poisoning. He instituted an action for negligence against the manufacturer and the retailer of the Stout.

The barman who attended to the plaintiff and his friend testified that while they were drinking, they called him to switch on the bright light. When this was done, he saw the foreign bodies in the drink. He also confirmed that the plaintiff vomited after taking the drink.

The policeman on duty on the day of the incident also testified that the plaintiff vomited while making his report. He stated that he accompanied them (plaintiff and his friend) to the hospital where he was treated by one Dr. Obiorah who advised them to take the Stout to government chemist for analysis.

The medical doctor who treated the plaintiff testified that he was on call duty when the latter arrived. He had acute cramps and abdominal pain. In his presence, the plaintiff vomited. He was put on treatment. He stated that the plaintiff told him that he drank Stout and he produced a bottle containing blackish liquid which he said was part of what he drank. He was accompanied by one other person who described himself as a policeman. He advised them to have the liquid analysed in a laboratory. Both of them left. He stated that in his opinion, the plaintiff was suffering from food poisoning. He treated him for four days.

He, however, stated that the plaintiff did not disclose to him what he consumed, if any before and after the drink. He said that a poison might react within 30 to 60 minutes of it being taken.

A scientist in the office of the Government Chemist Lagos also testified for the plaintiff. He said that on 26/6/74, a large bottle of Guinness Stout was brought to their office for analysis. A former colleague of his did the analysis and issued a report. He identified the report and stated that he had an idea of the process of brewing Stout. Under normal circumstances a bottle of Stout does not contain roots, leaves or bark of trees. The presence of tree bark, roots and leaves shows that the bottle contents must have been tampered with.

He further stated that they had no means of finding out whether or not the foreign matters were in the bottle at the brewery or afterwards.

On behalf of the first defendants, the brewery manager for Stout, a witness who was described as a brewer of good qualification and considerable experience stated as follows:

There are four main ingredients in brewing Stout, viz: malt, hops, yeast and water. At every stage of the process of brewing, we have laboratory control to ensure conformity with specifications. The four ingredients mentioned above are not bark of trees, not roots, and not leaves. The final products- Stout- is tested before bottling to ensure that it is good product. The bottles themselves are subjected to strict scrutiny before use. Bad ones are destroyed. Only good bottles are machine washed thoroughly before use. Washing is in stages of hot water, and later with detergent, to ensure that the bottle is sterile. There is physical examination of washed bottles to eliminate bad ones. We use electronic detector for particles in bottles. By the process we adopt, it is not possible that any bottle with sediment or particles can be used to bottle the Stout product.... The final product- Stout does not contain bark of trees, roots, or leaves and there is no way by which they can get into the bottle during all the process of brewing up to the bottle being put in in their cartons.

The above evidence was accepted by the court. Obi-Okoye, J summarised his impression thus:

In short, their precautionary measure was fool-proof and left no room for roots, leaves or bark of trees to be bottled with their Stout. There was no rebutting evidence against which his evidence can be weighed. I am satisfied he knew what he was talking (about) and that he was not deceiving the court. I believe his evidence.²⁰¹

The court noted that the plaintiff called no witness regarding the process of manufacture of Guinness Stout by the first defendants. It was further noted that there was no evidence whatsoever that the first defendants either generally or in the manufacture of this particular bottle of Stout (assuming it was their product) did not take any or adequate or necessary

²⁰¹ P. 592

precautions. The court observed that the burden assumed by the plaintiff of proving these allegations was not even attempted, let alone discharged. According to the court, these were facts which could not be presumed; they were meant to be proved.

To the extent that a plaintiff must produce evidence to counter the defendant's evidence one supports the decision of the court. Such counter evidence will provide a yardstick on which the defence evidence is to be weighed. This is necessary because in civil cases the standard of proof is balance of probabilities.²⁰² But in applying the pieces of evidence, the court should be guided by the advice of the Supreme Court in *Mogaji v. Odofin*.²⁰³ There it was advised that before reaching a conclusion on the evidence before him, the trial Judge should set up an imaginary scale by putting up the evidence adduced by the plaintiff on one side of the scale and also that of the defendant on the other side. He should then weigh them together not by the number of witness called by the parties but by ascribing probative value to the pieces of evidence to find where the scale tilts.

But the instant case raises the issue of the nature of evidence that can counter a defence of foolproof system. Going by the reasoning of the court, such evidence should show that the defendant did not apply the precautionary measures as claimed. How? Probably, by calling brewers of repute to testify to the process of beer brewing.

It is noteworthy that the plaintiff in this case took immediate steps to report the incident to the police; consult a doctor; and have the Stout analysed by a government chemist. He equally called an eye witness- the bar man to witness the incident. He also called all these persons to testify for him.

The court should have used a combination of these pieces of evidence to hold in favour of the plaintiff. As rightly pointed out by the court in the instant case, “--- pieces of evidence which by themselves are insufficient to establish a fact, may, when considered together, constitute a significant whole capable of proving a fact in issue”.²⁰⁴ Viewed from this perspective, with due respect, the insistence of the court that the plaintiff must prove that the defendant did not take adequate or necessary precautionary measures places unwarranted burden on the plaintiff.

²⁰² *Gello v. Eweka* [1981] ISC 101

²⁰³ [1978] 3 SC 91 at 98

²⁰⁴ At p. 596

Harvey captures the helplessness of a plaintiff in a case of this nature. He writes, “In an increasingly complex technological age, this may involve an expensive investigation of the producer’s system of work and testing, safety records with other goods and so forth”.²⁰⁵

The statement of Lord Wright in *Grant v. Australian Knitting Mills Ltd.* (*supra*) is apposite. He said:

If excess sulphites were left in the garment, that could only be because someone was at fault. The appellant is not required to lay his fingers on the exact person in all the chain who was responsible, or to specify what he did wrong. Negligence is found as a matter of inference from the existence of the defect taken in connection with all the known circumstances.²⁰⁶

*iii. Boardman v. Guinness (Nig.) Ltd.*²⁰⁷

The allegation was that the plaintiff opened a bottle of Harp beer in an ill-lit room and drank part of the contents. He noticed that it tasted sour and shortly afterwards he became violently ill. One of his companions then examined the beer which was cloudy and contained a considerable quantity of sediment. The beer was sent for laboratory analysis which revealed that it contained certain bacteria but did not establish that such bacteria caused the plaintiff’s illness.

A medical doctor who testified on behalf of the plaintiff said the plaintiff consulted him on 14 June 1976 and complained of vomiting, frequent stooling and stomach gripping. He came to the conclusion that the plaintiff had inflammation of the large and small intestines - a condition, which is medically called gastroenteritis. He prescribed some drugs for him and later referred him to Park Lane Hospital for further treatment. He tendered ‘Exhibit A’ which was the plaintiff’s treatment medical card over the illness.

²⁰⁵ Brian Harvey, *The Law of Consumer Protection and Fair Trading* (London: Butterworths, 1978) p. 99

²⁰⁶ (1936) A. C. 85 at p. 101

²⁰⁷ (1980) NCLR 109

The medical doctor to whom the plaintiff was referred also testified. He said that he examined the plaintiff and treated him. He also sent the plaintiff to the laboratory for the examination of his stool. He forwarded the remnant of the beer the plaintiff drank on the material night to the laboratory for examination. "Exhibit B" was the laboratory report on the plaintiff's stool by the Park Lane Hospital, Enugu. The doctor said he suspected that the plaintiff's trouble was caused by the beer he drank a few minutes before his complaint. He also tendered a laboratory report from WABCO Diagnostic Laboratory with regard to the beer he sent to them for examination.

The last expert witness called by the plaintiff was a laboratory technologist in charge of WABCO Diagnostic Laboratory, Enugu. According to this witness, on 18 June 1976 the plaintiff brought a specimen of stool and an opened bottle of beer for examination and culture. The reports he issued were 'Exhibits C' and D respectively. The appearance of the stool was bloody and mucoid. Microscopic examination showed presence of pus cells and red blood cells. No ova or protozoa were seen. The beer, on the other hand, was cloudy and contained some debris. Microscopic examination thereof showed numerous amorphous debris and some bacteria. He stained the sample and found it contained grain negative bacilli. The culture of the beer showed heavy growth of pseudomonas and coliform. He described grain negative bacilli as a type of bacteria and pseudomonas and coliform as a type of grain negative bacilli.

Under cross-examination by the defence counsel, this witness stated that he merely identified pseudomonas and coliform in his report 'Exhibit C' as broad specie bacteria and did not narrow his identification of them to pin-point the organisms seen with a view to determining whether they were the harmful or the harmless group to the human body. This was because he had no facility in his laboratory to distinguish the type of pseudomonas or coliform that is harmful to the body as against the harmless type. The witness further admitted that any liquid that was left open might easily be infected. The beer that was brought to him had been opened. He agreed that if an opened beer was left for some time, pseudomonas and coliform might be found therein. A bottle once opened and although subsequently closed can be contaminated by any organisms.

The defence in the main was a complete denial of negligence on the part of the defendant company. The bottling manager of the defendant gave an exceptionally detailed account of each and every step taken by the defendant company in the entire process of Harp beer brewing. The witness painted a picture of fool proof system of manufacture. He claimed that their

products were manufactured under the strictest scientific brewing process. He stated that at every stage of production, the laboratory takes various samples for analysis. He stated further that at every stage of production, they seek to eliminate sediment and impurities of whatever nature from their Harp beer. He dwelt on the several stages of the washing of bottles by automatic machines. In some of these stages, highly concentrated solutions of caustic soda and other chemicals at a high temperature of 60 degrees centigrade are used to jet in and to rinse the bottles inside and out at three separate jetting compartments. Before this stage is reached the bottles are individually examined by sighters and bottles with cracks, chipped tops, damaged bodies or any bottle containing foreign matter is taken out and destroyed. He stated further:

The function of caustic solution is to descale any particles that adhere to the body of the bottles whether internally or externally. Because of its corrosive nature, any micro-organisms in the bottle will be disintegrated and will die. After the soaks, the bottles get into a second jetting compartment where liquor at a higher temperature of 70 degrees centigrade and a high pressure is used to wash off the caustic soda and any particles.... The bottles next go over the third water jetting compartment and from there they go to the final cold water rinsing compartments. The bottles are finally discharged from the washer very clean and sterile. There are men positioned to examine the bottles as they come out of the washer....

He gave evidence of human sighters as well as electronic opticians by which final process any bottle containing any foreign body or liquid must be noticed, taken out and destroyed. Under cross-examination, he said that to know whether the cracks and labels on the bottles were their own, it would be necessary for him to subject them to further tests. He said it was difficult to know whether the second bottle had been opened before as there were clever ways of opening and corking a bottled drink without any body discovering this. He said he knew a method of opening and closing a bottle of beer without anyone whatever realising this and offered to demonstrate this in chambers to avoid letting the secret out to the general public. He admitted that nothing that is done by human hands or head is perfect but added that any mistake which occurs in their brewing system is immediately detected and corrected and that the final products of their beer are pure and perfect.

Another witness called by the defence was Professor Wilson Onuigbo, an internationally acclaimed expert in pathology, medical science and laboratory services. He examined the laboratory report on the Harp beer and adduced a number of reasons from which he came to the conclusion that the report bacteriologically had “absolutely no merit.” He noted the error in the wording of the report and the spelling of some basic terms such as “bacilli” “yielded” and species” and concluded that the said report did not read like one produced from a competent laboratory. He said that to diagnose pseudomonas and coliform without showing whether they are pathogens, that is to say, whether they are dangerous to the individual patient is valueless to the doctor. He explained that gastroenteritis requires two possible tests - bacteriological and toxicological. The instant case required the latter and not the former. In that case, one has to examine every possible carrier of the toxin including the glass if the fluid was drunk from a glass, the bottle and the fluid that was consumed. He said that the report concerned a bacteriological test and not a toxicological test and could not therefore reveal anything in respect of immediate gastroenteritis. Under cross-examination by counsel for the plaintiff, the witness stated that beer could contain pseudomonas and coliform without becoming harmful unless such pseudomonas and coliform were pathogenic. There was nothing in the first laboratory report to show that the pseudomonas and coliform were pathogenic or disease- producing. As regards the beer, he said that to carry out tests several days after it was opened could not give any accurate result of the beer at the time it was opened.

The court accepted the evidence of the defence and dismissed the suit. According to Iguh, J.

If the system by which a manufacturer produced his commodity was as near perfection as human ingenuity could make it, the manufacturer in those circumstances would have proved that he had not been negligent.

His lordship conceded that some human error in the foolproof system was not impossible but stated that cross-examination did not succeed in showing where such errors were made or that people who were working the system were incompetent in any specific or given respects with the result that they did not give the foolproof system a chance.

It can be seen from the above analysis that the plaintiff’s case failed because, as observed by the court, the plaintiff did not provide any rebuttal evidence to debunk the foolproof system advanced by the defence. Equally relevant to the court’s decision was the fact that the

laboratory tests were badly punctured by the defence evidence. As regards the last factor, although the ground on which Professor Onuigbo challenged the laboratory tests was convincing, (i.e. that given the nature of the case, what was needed was a toxicological and not a bacteriological test) the case nonetheless illustrates the fact that in matters relating to the ability to procure experts in a given case, the defendant enjoys a relative advantage. The scenario in *North Scottish Helicopters Ltd v. United Technologies Corp*,²⁰⁸ a case involving a defective helicopter aptly demonstrates this point. Seeing the familiarity displayed by the defence expert witnesses in the matter in issue, Lord Davidson commented as follows:

As the proof progressed, it became clear that the pursuers' expert laboured under serious disadvantages. Although they had considerable engineering ability, none of them had the detailed knowledge and familiarity with the subject that the defenders' various engineering witnesses could command. In addition, the defenders had ample opportunity to carry out tests on S.76 helicopters and other equipment. The pursuers' experts had no comparable facilities.²⁰⁹

21. Cases Predicated on Causation

Another burden which the consumer bears is to show that the act of negligence complained of is the cause of his injury or damage. Some cases illustrating this point are discussed below.

*i. Okwejunior v. Gbekeji Nigerian Bottling Company*²¹⁰

The appellant claimed against the first and second respondents jointly and severally the sum of ₦2,000,000.00 (Two million naira) being special and general damages for injuries arising from a Fanta drink. The appellant case was that on or about 13 February 1991 at Ughelli, he bought a crate of Coca-Cola mineral from the first respondent who was an agent of the second respondent, the manufacturers of Coca-Cola range of mineral drinks. From the crate, he took

²⁰⁸ (Unreported), cited in A.M. Clark, *op. cit.* at pp. 149-150

²⁰⁹ *Ibid*

²¹⁰ (2008) LPELR-2537(SC); (2008) LPELR-2537(SC); (2008) 1 S.C. Pt.III 263. See also, the decision of the Court of Appeal which had insisted on the need for scientific analysis of all food items consumed by the claimant on the day of the incident - (1998) 8 NWLR (Pt. 561) pp. 295 and 308. This decision was reversed by the Supreme Court as can be seen from the first set of citations under this footnote.

one bottle of Fanta orange, opened it and started to drink. Whilst drinking, he felt some sediment down his throat. On examination, he discovered that the bottle contained some particles and foreign bodies. He also discovered that another bottle of Fanta in the crate contained some foreign bodies. He felt uncomfortable and went to sleep without food.

The following morning, he developed stomach pain and was rushed to a hospital where he was confirmed to be suffering from food poisoning which could have been caused by the Fanta orange he consumed. He was subjected to some laboratory tests and later discharged.

The Medical Director (PW2) who treated the appellant tendered before the court the entire medical case note of his treatment. He explained how he sent the Fanta and the appellant's faecal matters to the laboratory for test and sensitivity. He stated that he treated the appellant on the sensitivity and he became cured.

In answer to cross-examination, PW2 said:

I have been in medical practice since 1986. Overfeeding can cause stooling but not vomiting. Cholera and typhoid fever can cause stooling and vomiting. Polluted water can be classified as food poisoning. I did not see the plaintiff when he drank from the Fanta bottle. It is true that apart from drinking Fanta he can get food poisoning from eating any other kind of food. "Exhibits C and D" were not made in my hospital. I am not a laboratory technologist. First defendant was not present when I obtained the specimen of the Fanta liquid for the laboratory test.

The laboratory scientist (PW4) under cross-examination said:

Samples were sent to me in a specimen bottle. I was not present when the specimen was packed. I got to know the name of the plaintiff from the request form. Fanta was also in the specimen bottle. I cannot tell when the samples were collected. It is possible to find these bacteria from other substances not sent to me. The bacteria in the stool can be related to some other food substances. I cultured the sample for a day by using some other quicker methods.

PW3, the appellant's wife answered a question arising from cross-examination as follows:

The bread I gave to my husband in the morning was not baked by me. After breakfast, I did not go out with my husband. I am not in a position to know whether or not my husband took anything before returning to the house. I was in the parlour with him when he opened the Fanta bottle in question

The appellant on his part answered a question arising from cross-examination as follows:

I had a breakfast of bread and coffee before I left the house. The bread was not baked by my wife. She bought the bread from hoteliers. I cannot tell whether the bread I ate that day was baked

The appellant's claim was granted by the trial court. On appeal to the Benin Division of the Court of Appeal, the Court held that the above answers by PW2, PW3, PW4 and the appellant had greatly punctured the case for the appellant that the Fanta orange drink complained of caused injuries or any injury to him.

The court re-iterated the general principle that he who asserts must prove²¹¹ and stated that it was the appellant who should have produced the bread and tea he admitted he took in the morning for laboratory test to show that they were not contaminated. Many probabilities were postulated as possible sources of contamination- the bread and tea, the glasses, the cutlery, etc.

The court noted that although under section 57(1) of the Evidence Act. PW2 and PW4 gave opinions of experts but no evidence was adduced by the appellant as to how well equipped the laboratory was to enable PW4 to carry out accurately the sensitive tests he said he did as per Exhibits 'B' and 'D'.

On the contrary, the court accepted the evidence of the defence witness DW1, the plant microbiologist. The court described the evidence as very clear and concrete as to the measures the second respondent takes to ensure that its products are not contaminated. It was held that

²¹¹ Sections 135, 136 and 137(1), Evidence Act Cap. E14, Laws of the Federation of Nigeria, 2004

there was no nexus between the plaintiff's injury and the Fanta drink in question. According to the court, the burden was not on the second defendant to establish.

On appeal to the Supreme Court by the appellants, the determination centred on burden of proof and causation amongst others. As regards causation, the Court dismissed the submission that the consumption of bread and tea was a possible cause of the appellant's ailment. This decision was based on the grounds that the second respondent did not plead the fact that appellant's ailment was caused by the bread and tea taken at breakfast.

On the issue of foolproof system of production, the court observed that the second respondent did not give evidence to rebut the case of the appellant as to the cause of the appellant's ailment nor lead evidence as to the source of the Fanta orange. Their evidence superficially touched on their manufacturing process and never answered the main issue involved in the case. The apex court affirmed the decision of the trial court and allowed the appellant's appeal.

*ii. Ebelamu v. Guinness (Nig) Ltd.*²¹²

In this case, the appellant and some of his guests at his wedding anniversary started stooling and vomiting after taking some quantity of Harp beer brewed and bottled by Guinness (Nig) Ltd. They were taken to a hospital where they were treated by a medical doctor for five days. The medical doctor gave evidence. His findings were that the people he treated that night suffered from gastroenteritis and he gave the cause of the illness as food poisoning.

The food and drink used at the party were brought to the hospital. The doctor did not query the food items but saw some sediment in two opened bottles of Harp beer and also in the third unopened bottle and sent the three for analysis. The report revealed that the sediment in the beer contained algae and therefore unwholesome and not fit for human consumption. The government analyst who prepared the report gave evidence. The analysis done was on the unopened bottle because it was not their practice to accept opened bottles.

The respondents' evidence through an expert was devoted mainly to the process of beer brewing and how it was made free of impurities up to and after the bottling stages. The court

²¹² FCA/1/101/82, Monday Jan. 24, 1993

did not, however, place emphasis on the foolproof system but based its decision on the question whether “the act of the respondent caused the damage complained of.” It was held that there was no proper nexus between the unopened bottle of beer which was analysed and the other two bottles which had been opened and consumed.

This decision exposes the precarious position of a plaintiff in a product liability case. As stated above, the government analyst declined to analyse the opened bottle on policy grounds. On the other hand, both the trial court and the Court of Appeal refused to admit the result of the analysis of the unopened bottle of beer because there was no proper nexus between the injury suffered by the plaintiff and the unopened bottle. The Court of Appeal noted that the partly drunk beer was not analysed so as to know the nature of the sediment in question. It further noted that the bottle analysed and found to contain poisonous sediment was not drunk by the appellant as the bottle was not opened before its analysis. The court concluded that it was clear that the appellant had not connected himself with the three bottles of beer which were ‘Exhibits K-K2’ in the suit.

With due respect, this approach restricts the freedom of a plaintiff to produce supporting evidence. A better result would be achieved if the offending bottles and samples from the same source were subjected to analysis. As argued by the counsel to the appellants in the instant case, “on the balance of probability, the injury to the appellant must have been caused by sediment of a similar nature in another bottle of beer as in the unopened bottle reported on in ‘Exhibit A’”²¹³

iii. Soremi v. Nigerian Bottling Co. Ltd

The plaintiff bought a crate of mixed mineral and stored them in a refrigerator. Some days later, he drank a bottle of Coca-Cola, had his lunch and then took out a bottle of Sprite from the refrigerator to drink. Floating in the bottle was an extraneous object which turned out to be a screwed-up piece of paper. The plaintiff complained to the defendant who in reply denied liability and took no steps to settle the matter. The plaintiff sued for negligence. The defendant entered appearance and filed a defence but did not show up at the trial. It was held that the defendant as the manufacturer of the Sprite, owed a duty of care to the plaintiff, the ultimate consumer.

²¹³ *Ibid.* at p. 7

Oguntoje, J. stated:

.... When a crate of soft drinks is bought with all the bottle-caps apparently secure, it is not usual to take out every bottle and inspect it before purchasing On the particular facts of this case I take the view that there was no reasonable possibility of examination by Mr. Soremi before he took the bottle out of the refrigerator with the intention of consuming its contents. The defendant company therefore owed a duty to the plaintiff to take reasonable care.²¹⁴

iv. *Dumuje v. Nigerian Breweries Plc & Ors*²¹⁵

The plaintiff claimed that he placed an order for a bottle of Guinness Stout and two bottles of Maltina Malt drink. The drinks were purchased from the third defendant, a retailer who had obtained them from the second defendant, a distributor who in turn had obtained them from the first defendant. As soon as the plaintiff started drinking the Malt meant for him, he felt a solid substance in his throat. He made efforts to vomit it and succeeded in vomiting it out into his right palm. The object was a dead cockroach. He returned the cockroach into the bottle. The incident happened in the presence of four other people. The plaintiff claimed that he suffered from a plethora of ailments after consuming the Malt such as muscular tremor, sleeplessness, stomach upset, and high blood pressure, among others and was treated by several clinics. The plaintiff claimed against the defendants jointly and/or severally, the sum of ₦3,000,000 (Three million Naira) being special and general damages for injury suffered as a result of their negligence.

The plaintiff testified in person and called four witnesses. The first defendant only filed an amended statement of defence, but never appeared in court, neither was it represented. The second and third defendants filed no statements of defence and never appeared in court neither were they represented.

The plaintiff's counsel urged the court to apply the doctrine of *res ipsa loquitur* contending that it was not necessary to plead it specifically²¹⁶ before it could be relied on. He submitted that it was sufficient to plead facts which lead to the conclusion that the particular incident would not have happened in the absence of negligence. According to him the fact that a cockroach was found in a Maltina bottle showed

²¹⁴ *Ibid.* at p. 2740

²¹⁵ Suit No. ENU/236/94; 04 July 2001

²¹⁶ *Management Enterprises Ltd. v. Otusanya* (1987) 2NWLR (PT.55), 179; *Chanchagi v. N.R.C.* (1996) 5 NWLR (P.446); *Strabag Construction Ltd. v. Ogarekpe* (1991) 1NWLR (PT.170) 733.

that either of the defendants was negligent. He noted that cockroaches dwell in faeces and septic tanks and filth; the fact that the cockroach was in a place where cockroaches could not normally be found led to the conclusion that somebody could have been negligent. He submitted that the defendants had admitted the case against them since they did not appear to disprove the presumption of negligence.

The court adopted the principle of *res ipsa loquitur* as expounded in *STRABAG Construction (Nig) Ltd. v. Ogarekpe*²¹⁷ as follows:

The Res speaks because the facts stand unexplained and therefore the natural and reasonable, not conjectural inference from the facts shows that what happened is reasonably to be attributed to some act of negligence, that is some want of reasonable care on the part of somebody under the circumstances.²¹⁸

The court concluded as follows:

... Maltina drinks are taken by persons and being a consumable, it is expected that manufacturers provide it in the best of healthy atmosphere and environment. Cockroaches are insects associated with slum, septic tanks and slough. The defendants clearly owed the plaintiff a duty of care that the Maltina drink which he consumed was free from filth, and that duty of care is one which the defendants cannot shift to someone else, and the injury caused the plaintiff as a result of drinking a Maltina drink with a dead cockroach in it, constitutes a breach of that duty of care and the plaintiff as a result is entitled to damages for the injuries suffered.²¹⁹

The defendants were held liable in negligence. The plaintiff was awarded the sum of two million and four thousand naira as general and special damages.

As earlier noted, the defendants did not appear in court. A pertinent question is what would have been the position if the first defendant had put up a defence. Would the decision of the court have been the

²¹⁷ (1991) 1NWLR (Pt.170) 733.

²¹⁸ At p. 9

²¹⁹ At pp. 9-10

same? Would the court have relied on the doctrine of *res ipsa loquitur*? Would the court have gone beyond the foolproof system and the principle of causation to consider the main issue as stated in the following passage: “--the fundamental issue here is whether a cockroach was found in the Malta bottle.”²²⁰.

*Soremi v. Nigerian Bottling Co. Ltd.*²²¹

In this case, discussed above, the defendant filed statements of defence but did not appear in court making the burden of proof relatively easy for the plaintiffs. It is, therefore, impossible to know the direction the decision would have taken if the defendants had put up a defence. The instant case presented similar facts as some other cases which were unsuccessful.

v. *Nigerian Breweries Plc v. David Audu*²²²

The facts of this case were as follows:

On 26 November 2003 the respondent at about 8:00pm went to Ochid Beer Parlour, Ankpa with two friends to drink. He bought six bottles of Star larger beer, a product of the appellant. In the course of drinking his first bottle which he drank directly from the bottle, he felt an object in his mouth. He spewed out the object which was found to be the remains of a dead cockroach. He subsequently took ill on the night in question, was taken to a hospital, treated for shock and gastroenteritis and discharged the following day.

On 01 December 2003, the respondent as plaintiff instituted an action at the High Court of Kogi State against the appellant as defendant by a writ of summons and statement of claim. The respondent claimed against the appellant the sum of Five Hundred Million Naira (N500 Million) only being general damages for negligence and nervous shock.

The defendant/appellant entered appearance and filed its statement of defence. The plaintiff/respondent called three witnesses including himself and tendered six exhibits. Among the said exhibits were the remaining contents of the bottle of Star larger beer from which he drank, exhibit D1. He also tendered the unopened second bottle of Star larger beer, exhibit D2

²²⁰ At p. 6

²²¹ Suit No. LD/263/76C

²²² (2009) LPELR-8863 (CA)

purchased by him on the night in question which allegedly contained remains of a dead cockroach.

He testified that in the process of drinking the content of exhibit D1, some of the remains of a dead cockroach got into his mouth and system. The second bottle, exhibit D2 was then examined and found to also contain the remains of a dead cockroach. It was contended that this constituted a breach of duty of care owed by the appellant. The appellant, therefore, had the burden to explain how the beer got contaminated.

It was further contended on behalf of the respondent that the dead cockroach spewed out by him which was found in the drink was the issue before the court; hence the carrying out of scientific analysis of the said content was unnecessary.

The counsel for the appellant contended that the issues before the court were whether or not the drink (Exhibit D1) was contaminated and that the consumption of part of Exhibit D1 by the respondent caused him to have shock? In which case, there was the need for the Respondent to adduce expert evidence to authenticate that the content of Exhibit D1 was contaminated and that the consumption of same by him led to his ill-health.

It was further pointed out by the appellants that the medical doctor who treated the respondent was not called as a witness and no reason was advanced for this gap as required by law. They submitted that the medical report, Exhibit C issued by the said doctor did not qualify as an expert evidence; that Exhibit C did not contain the fact that the doctor actually saw the allegedly contaminated drink consumed by the respondent.; and that the cause of the diagnosed ailment of the respondent was not categorically linked to the substance allegedly consumed by the respondent.

The trial Judge accepted the evidence of the respondent and awarded the sum of ten million Naira as general damages.

The appellants appealed contending that the trial Judge erred in law when he held that exhibits D1 & D2 did not need to be subjected to any scientific laboratory analysis to establish the poisonous content of same; that the learned trial Judge's reliance on the dictionary meaning of cockroach and Exhibit C in the alternative amounted to speculation which could not be taken as a substitute for relevant and necessary evidence; and that the issue of the cockroach was not before the trial Court.

It was further submitted that the respondent did not adduce credible evidence at the Trial Court to establish that the content of Exhibits D1 & D2 emanated from the appellant company. It was the defence of the appellant at trial that the owner of Orchid Beer Parlour, Ankpa was not one of its accredited distributors. The respondent did not adduce evidence indicating that Exhibits D1 & D2 emanated from one of the appellant's outlets in Ankpa. The said defence of the appellant which was not challenged by the Respondent ought not to have been rejected by the learned trial Judge.

In addition, the appellant submitted that damage must be proved in an action for the tort of negligence. That is, both negligence and actual damage must co-exist to give a cause of action. Hence, to succeed in a case of negligence, a plaintiff must prove factual cause and be able to persuade the court with credible admissible evidence that he has suffered a genuine and not a speculative harm. On this legal position, reliance was placed on the case of: *International Messengers Nig. Ltd v. Engr. David Nwachukwu*²²³

According to the counsel for the appellant, the respondent's evidence that he suffered shock as a result of the contaminated content of Exhibit D1 consumed by him was not confirmed by any expert evidence. For the law requires the need for experts or persons specially trained or qualified in a particular discipline to assist the court by testifying on causation arising from certain phenomena studied by them. In this respect, he referred to the provisions of Section 57(1) & (2) of the Evidence Act.²²⁴

They submitted that the view held by the trial Judge that chemical analysis of Exhibit D1 and that of Exhibit D2 was unnecessary in the circumstances of the case was unknown to law and urged the Court of Appeal to set the decision aside.

In its decision, the Court of Appeal restated the general principle that “--- it is settled law that a manufacturer of products owes a duty to take reasonable care that the products reach the ultimate consumer in the form in which they left the manufacturer with no reasonable possibility of intermediate examination.”²²⁵

²²³ (2004) 6 SCNJ p. 56 at p. 72.

²²⁴ Cap E14, LFN 2004, now section 68. Evidence Act 2011.

²²⁵ Per OMOLEYE, J.C.A. at p. 24, Para. A

The Court, however, stated that a plaintiff in an action for negligence must discharge both the legal and evidential burden of proof. In the instant case, the respondent did not call or subpoena the wholesaler to confirm that the retailer who was called as a witness actually purchased the product from them. In the alternative, the retailer could have tendered in evidence the purchase receipt from the wholesaler in that regard. The laboratory analysis of the remaining half of the consumed drink, exhibit D1 was not carried out to establish the alleged noxious nature of same. The medical doctor that treated the respondent was not also called or subpoenaed to give evidence on oath and of course be cross-examined to establish that the alleged illness of the respondent was as a direct result of the portion of exhibit D1 consumed by him. For it was quite possible that the respondent had eaten or drunk some other consumables that day prior or subsequent to drinking the Star larger beer in dispute.

The Court remarked that the medical report from a private hospital was somewhat suspect. According to the Court:

--- the respondent on the night in question purchased six bottles of Star larger beer, two for himself and two for each of his two friends who were on the outing with him. It was just the two bottles given to the respondent that allegedly contained remains of dead cockroaches. To a discerning mind, this story appears funny, quite intriguing and indeed stranger than truth. Personally, I am of the view that there is more to the scenario presented by the respondent than meets the eye.²²⁶

The Court stated that the law is quite trite that, he who asserts must prove. For in civil cases, the burden of proof is on the party who asserts a fact to prove the fact. The burden of proof of negligence falls upon the plaintiff, in this case, the respondent who alleged negligence. This is because negligence is a question of fact, not law, and it is the duty of the one who asserts it to prove it. By virtue of section 135(1)²²⁷ of the Evidence Act, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Therefore, failure to prove the particulars of negligence pleaded is fatal to the plaintiff's case.²²⁸

The Court adopted the opinions of the Courts of Appeal in *Nigerian Bottling Company PLC v. Olarewaju*²²⁹ and *Nigerian Bottling Company PLC v. Okwejinor*²³⁰ which insisted on

²²⁶ *Ibid.*

²²⁷ Now, section 131 Evidence Act 2011

²²⁸ Per OMOLEYE, J.C.A. at p..33, Paras. A-F.

²²⁹ (2007) 5 NWLR (pt. 1027) p, 255

²³⁰ (1998) 8 NWLR (Pt. 561) pp. 295and 308

chemical analysis and high standard of proof respectively. The appeal was allowed with a cost of thirty thousand Naira against the respondent.

Surprisingly, the Court did not mention the Supreme Court's decision in *Okwejiminor v. Gbekeji and Nigerian Bottling Company* decided about thirteen months before the instant case but rather relied on the decision of the Court of Appeal in the same case which had been overturned by the apex court. This is a serious oversight.

22. Cases illustrating liberal judicial attitude

*i. Solu and Ors v. Total Nigeria Ltd,*²³¹

The plaintiffs' claim against the defendants was for a total sum of N10, 400, 000.00 (Ten million, four hundred thousand Naira) being total special and general damages for pain, injury, loss and damage suffered by the plaintiffs in a gas cylinder fire accident in consequence of the negligence and breach of contractual and statutory duty of the defendants, their servants or agents.

The facts of the case which are substantially reproduced can be gathered from the testimony of the second plaintiff. She informed the court that she had two domestic gas cylinders purchased from the petrol filling station of the defendant. The last purchase of cooking gas was on 03 September 1983 as shown in 'Exhibit 2B' when on that day, two cylinders of LPG cooking gas were purchased. She had been a customer of the defendant for a period spanning 17 years.

On 27 September 1983, after 6 p.m., that day, she was involved in the preparation of dinner for her family in her kitchen. The gas in the cylinder got finished, so she changed the empty cylinder with a second one filled with gas. She fixed the rubber hose to the cylinder and connected it properly to the gas cooker. She then switched on the control knob of the cooker to let in the gas. She waited for some time to perceive whether the gas had reached the cooker. After satisfying herself, she lighted the burners and put on the kettle on one and cooking pot on the other.

Later, the water in the kettle boiled. She then switched off the knob of the burner used for boiling the water and continued with the cooking on the other burner.

²³¹ (Unreported), Lagos State High Court Suit No. ID/619/85; 1988

About 15 minutes later, she noticed that the gas cylinder turned into a missile, hit the kitchen roof and came back on the floor with a big explosion and the gas content spilled on the floor, engulfing the kitchen in fire.

The explosion drew the attention of her children to the kitchen. She made efforts to get the children out and in the process she fell down due to the slippery nature of the kitchen. This led to severe burns to herself and the children until they were rescued by the neighbours. She later found herself in the hospital as she was unconscious for few days after the incident.

The fourth plaintiff's witness was a lecturer in the Department of Chemical Engineering, University of Lagos. He testified that in the course of business on Monday, 03 February 1986, the second plaintiff's witness brought a damaged cooking gas cylinder to his Head of Department for examination. The latter directed him to examine the cylinder 'Exhibit 3'. Upon his physical examination of the cylinder, he saw a rupture of about 6 centimeters at the region which was the bottom half of the cylinder. The rupture manifested an explosion which in his opinion could be attributed to two main causes (a) faulty gas cylinder or (b) gas leakage. In his opinion, the rupture was caused by a faulty gas cylinder since it occurred outside the welded area.

The witness was subjected to very rigorous cross-examination. The first approach was to challenge his qualification as a lecturer in Chemical Engineering. He answered that he holds a Master's degree from MOSCO University after which he was appointed first as an Assistant Lecturer in the Chemical Engineering Department of the University of Lagos on 01 February 1977 until he rose to the position of Lecturer 1. His field of specialisation was Petroleum Refining and Petrol Chemicals which is a branch of Chemical Engineering, thereby wearing the toga of a chemical engineer. As a chemical engineer, he dealt with metallic cylinder. He disagreed that not being a metallurgist, he could not give the type of evidence he had given. He concluded that he had no interest in the case apart from professional interest. He only saw the plaintiff in court in February 1986 when he was invited by the court to give evidence.

The main thrust of the defendants' defence was that the cylinder in question was manufactured in compliance with the standards set by the Standards Organisation of Nigeria as well as relevant international standards. Based on this, it was contended on their behalf that the explosion could not be attributed to a fault in the cylinder but could only be attributed to external application of heat.

The first defence witness, who holds a Ph.D. degree in Chemical Engineering, was employed by a subsidiary company, KOSANGAS International of COPENHAGEN, Denmark. In his opinion, the rupture of the cylinder was not due to the explosion of the cylinder but was due to the application of an external energy which heated up the ruptured portion of the cylinder. According to him, the cylinder could not explode from within as the safety relief valve would control the pressure from getting the cylinder to explode. As a result, the cylinder could not be the cause of the fire.

The second defence witness was the Assistant Technical Manager, KOSANGAS INTERNATIONAL of COPENHAGEN. His company KOSAN CYLINDRIC manufactures gas cylinders. 'Exhibit 3' was made in September 1982 by his company. He stated that from his observation of 'Exhibit 3', it had been under fire on one side. In his opinion, the cause of damage to 'Exhibit 3' was due to strong heat, possibly a flame or most possibly, a flame which weakened the steel until it gave in to the internal pressure. The damage had nothing to do with the cylinder.

Under cross-examination, he stated that 'Exhibit 3' was manufactured by his company for Total AFRIQUE in Paris which shipped it to Nigeria with the standards required spelt out in 'Exhibit 25.'

The third defence witness testified about the monopoly of the NNPC in production and marketing of liquified gas in Nigeria from its refineries. It is the duty of the laboratory to control the standard of gas produced in compliance with the laid down standards of the Standards Organisation of Nigeria. After necessary tests and compliance with the required standards, a quality certificate was issued. This was admitted as 'Exhibit 26.'

The fourth defence witness, a plant engineer of the defendant, narrated his visit to the house of the plaintiff, his observation and what he was told. He testified that in his opinion, the fire was caused by a faulty cooker due to its wrong operation.

The fifth defence witness, an employee of the defendant and a holder of HND certificate in Mechanical Engineering (with training in gas locally and in France), stated that 'Exhibit 3' could not have exploded from internal pressure, there must have been an external influence such as fire to make 'Exhibit 3' explode.

The sixth defence witness, the General Manager of the Nigerian Gas Cylinder Manufacturing Co. Ltd. based in Ibadan holds a degree in Civil Engineering in addition to a diploma in Business Administration and metallurgy and gas in general with specialisation in petroleum gas. He stated that 'Exhibit 3' was not manufactured by his company but manufactured according to the American standards by KOSAN, a highly reputed gas cylinder manufacturer in Western Europe. From what he saw, the damage was given to the cylinder from outside rather than from inside. In his opinion, the cylinder ruptured due to an external fire that weakened the characteristics of the metal which led to a small deformation and pup out. He concluded that he came to give his evidence without any gratification but as an expert.

The court stated that the issue for determination, which was crucial and the central hub of the case, was whether the rupture in 'Exhibit 3' was, as contended by the plaintiffs, caused by a faulty cylinder or as contended by the defendants, due to an external application of heat.

Onalaja, J. observed that it was common ground that 'Exhibit 3' was made of steel and needed a high degree of heat to melt. According to His Lordship:

From a layman's point, to melt steel you require the heat coming from a furnace like the furnace of the billets of ALADJA STEEL COMPANY WARRI or the furnace of SHADRACH, MESHACH and ABEDNEGO, and in my judgment, to apply such a heat to a highly inflammable object is suicidal and just like a person jumping from the antenna of the NET Building to the floor.²³²

The court came to the conclusion that the fire was caused by a faulty cylinder and not an external application of heat.

*ii. Nigerian Bottling Company Ltd. v. Constance Obi Ngonadi*²³³

The plaintiff/respondent bought a kerosene refrigerator from the defendant/appellant. Soon after delivery, it caught fire while in use. The respondent reported to appellant which sent one of its technicians to effect necessary repairs. After some months, the fridge exploded while in use causing serious bodily injuries to the respondent. She sued contending that the appellant sold to her a fridge which was defective or which the appellant ought to know to be defective. The trial judge, Maidu, J accepted the submission of Mrs. Edewor, counsel for the plaintiff/respondent and stated thus:

I believe the evidence of the plaintiff ... as to how the accident happened. The evidence was never controverted and it remains unchallenged in the proceedings. In an attempt to refute the evidence, however, the defendant suggested various ways in which the tank of a fridge could be involved in an explosion. I must say out-right that the evidence was speculative and I prefer the evidence of the plaintiff in this regard, in arriving at

²³² *Ibid.* at p. 31

²³³ (1985) LPELR-2017(SC); (1985) NWLR (Pt.4) 739; (1985) 5 S.C 317.

my decision The plaintiff's contention had been that the defendant sold to her a fridge which was defective or which the defendant ought to know to be defective, if reasonable care were taken by the defendant. This negligence on the part of the defendant occasioned the injury to the plaintiff."

The plaintiff/respondent was then awarded N435.50 special damages and N30,000.00 as general damages. The defendant/appellant appealed to the Court of Appeal Benin Division. In a well-considered judgment Pepple, J.C.A. (Omo-Ebo and Okagbue, JJ.CA. concurring) upheld the judgment and the award by the trial judge and dismissed the defendant's/appellant's appeal.

On a further appeal to the Supreme Court, Oputa, J.S.C., delivering the leading judgment, adopted the findings and decision of the trial court as stated above and dismissed the appeal.

Similarly, Aniagolu, J.S.C., stated that there was clearly no merit in the appeal having regard to the concurrent findings of fact of the two courts below and the state of the law. His Lordship stated:

While commending the respondent in her tenacity in pursuing her claim in the courts below, one would trust that others of the citizenry who have suffered, or are suffering, from purchases of unmerchable goods would readily have recourse to the courts for a remedy.

23. A critique of the general judicial attitude to the issue of proof of negligence

a. Probative Value of Foolproof Defence

An important question that arises from the decisions discussed above which were predicated on the defence of foolproof system of production is the probative value of such a defence. Worthy of note is the fact that in all the cases under review, the key defence witnesses were the employees of the defendants and in fact, the quality control officers of the company. They can, therefore, be regarded as great stakeholders. In such cases, the syndrome of personal interest is inherent. Traces of bias may not also be ruled out as regards external defence

witnesses. This fact did not escape the notice of Onalaja, J. in *Solu v. Total (Nig) Ltd* who treated the pieces of evidence of the defence witnesses with circumspection. His Lordship rightly noted that the witnesses belonged to the gas cylinder manufacturing cartel and had their economic interests to protect as to the quality of their manufactured goods, thereby giving rise to *esprit de corps* syndrome. In line with the rule that where there is a conflict in the opinions of experts, it is the duty of the court to come to a conclusion in the case by resolving such a conflict by rejecting the opinion of one or the other without stating his reasons,²³⁴ the court accepted the evidence of the fourth plaintiff's witness in preference to that of the defence witnesses.

The treatment of the defence of foolproof system in this case is supported. Despite the expertise of the defence witnesses in gas cylinder field, the court refused to ascribe much weight to their testimonies. This is perfectly within the discretion of a court.

Indeed, it has been noted that a judge would be right to prefer the credible evidence of a non-expert witness on an issue to the evidence of an expert on the same, where the former is an independent witness, whilst the latter prepared his evidence specifically for the case on hand on the direction of the party calling him.²³⁵

It logically follows from the foregoing that for a court to arrive at an objective decision in a product liability case, it must go beyond the evidence of foolproof system of manufacture adduced by the defence witness. This is particularly imperative given the fact that a foolproof system is not infallible as illustrated by the contrasting cases discussed above. In fact, consumer complaints investigated by the Standards Organisation of Nigeria over a period have revealed some defects in products manufactured by companies which flaunt a foolproof system.²³⁶ Commenting on the results of such investigations, Kanyip observes that the implication is that every production process does admit of defective products. He concludes that it is wrong to assume that a foolproof production process negatives liability.²³⁷ In the same vein, Mickleburgh argues that the more evidence the manufacturer adduces of a proper system

²³⁴ *Ozigbo v. COP* (1976) INMLR 273; see also *The Shell Petroleum Development Co. Ltd. v. Farah & Ors.* [1995] 3NWLR (Pt. 382) 148

²³⁵ C.C. Nweze, *op. cit* p. 211; *Elf (Nig) Ltd v., Sillo* (1994) 6 NWLR (pt 350) 258

²³⁶ See cases discussed by B.B. Kanyip in "The Production Process, Negligence and Enterprise Liability", *Nigerian Current Legal Problems* volumes 4&5, (Nigerian Institute of Advanced Studies, Lagos 2000) pp. 59-61

²³⁷ *Ibid.* at p. 61

of manufacturing and testing his products, the stronger must be the inference that somebody (that is, an employee for whom the manufacturer is vicariously liable) failed to operate the system properly.²³⁸

In *Ebelamu v. Guinness (Nig.) Ltd. (supra)* the Court of Appeal referring to the evidence of foolproof system led by the respondent said: “That may be well so but there is still the odd chance of a defect and that is where its liability begins.”

b. Causation

As can be seen from the cases examined under this heading above, proof of a link between the act complained of and the injury or damage suffered by the plaintiff is an almost uphill task. Often, the matters which the plaintiff is required to prove are within the exclusive knowledge of the defendant thus making it impossible for the plaintiff to discharge the burden. The cost of procuring expert witnesses poses an additional challenge.

²³⁸ John Mickleburgh, *Consumer Protection* (Abingdon: Professional Books, 1979) pp.78-79

Section D: Focus Group Discussions And In-Depth Interviews

24. Methodology

The methodology involved desk review of relevant laws, agencies and judicial decisions. We also conducted in-depth interviews (IDIs) and Focus Group Discussions (FGDs) and mystery shopping. Content Analysis was used to analyse and interpret information from the FGD and IDS

Desk Review

This was done with a view to finding out the rights available to consumers in Nigeria, the regulatory agencies and other laws that impact on consumer protection. The review also looked at some judicial decisions and other redress mechanisms.

In-depth Interviews

Some senior officers of two regulatory agencies, the Nigerian Communications Commission (NCC) and the Consumer Protection Council (CPC) were interviewed to document their experiences with regards to consumer protection.

Focus Group Discussions

The study was carried out in two locations in Enugu State, Nigeria. Enugu was chosen as a result of its metropolitan nature. The population though mostly made up of the Ibos also consists of a sizeable population of other ethnic groups. The State thus could serve as a fair miniature of the multi-ethnic groups in Nigeria.

Participants in the FGD were carefully selected to cut across adult consumers above eighteen years of age. This is the official voting age in Nigeria. All persons aged eighteen years and above are adults that can seek an independent legal redress before a court of law in the country. The FGD was held in two locations (Enugu town – urban, and *Akama Oghe* community in *Ezeagu* local government area Enugu State – a rural location). A total of twenty four participants took part in the two FGD sessions. This number was spread evenly (twelve for the urban location and twelve for the rural location).

In both the rural and the urban locations, efforts were made to ensure gender balance in the distribution of participants. Of a total of twelve participants in the rural area, six were females, while in the urban location, there were four females as against eight males. Young persons were also represented in both locations. While social class was not particularly of interest, we made effort to engage persons that could communicate in English language. This was because English language was the medium of communication.

Both FGD sessions (urban and rural locations) were held on separate days for logistic reasons. The FGD session held for urban residents was held on 22 October 2013 while the rural session was held on 29 October 2013. Each session lasted about two and half hours.

In-depth Interviews

In-depth interviews with the two selected agencies, the Nigerian Communications Commission (NCC) and the Consumer Protection Council (CPC) were held in Abuja on 14 and 15 November respectively. The interview with NCC was held with the Consumer Affairs Bureau of the Commission while that with CPC was held with the Consumer Education and Enforcement Departments. Each session was very rewarding with officers of the agencies sharing information on all issues placed before them by our members.

Mystery Shopping

To test the effectiveness of the claimed redress schemes of service providers, we conducted two sets of mystery shopping on two telecommunications service providers, namely, Etisalat Nigeria and MTN, Nigeria concerning the reports we received from some of their subscribers.

25. Summary of focus group discussions

a. Awareness about Consumer Protection Laws by consumers

Many consumers in Nigeria have little knowledge about existing laws that protect their rights as consumers of products and services. This low awareness is not class, education, gender or location sensitive. The low awareness is further compounded by the low literacy level and apathy to formal litigation. The cost of litigation (finance, time, and other resources) is high. This was apparent from the views of some participants in the FGD who were asked about their awareness of the laws that protect them as consumers. According to a male participant, “*I do not know of any existing law that protects me as a consumer, I however know that if I pay for something I should as a matter of right be given the worth of my money*”.

In other words, consumers in Nigeria basically rely on the age long obligations of service providers to the consumers who have paid for the products/services. The average consumer does not know the laws that protect him/her in a transaction. Not only are many consumers ignorant about the existing laws, there appears to be apathy towards seeking redress.

This implies that the ability of many consumers to seek redress is limited given that they do not know the position of the law with regards to their rights as consumers of products and services. To buttress the helplessness of Nigerian consumers, another male participant narrated his experience with an eatery. He stated:

“I ate in a restaurant in town one day, after the food I ended up in a hospital with food poisoning. I did not eat any other thing that day except the food from the restaurant. Because I knew the owner of the restaurant, I called her from the hospital after the problem had eased of. I told her that the food poisoning was from the fish I took in her restaurant. Of course, she apologised, but after a pause told me I was not the only person that ate fish from her restaurant, how come others were not sick or complaining?”

When asked why he preferred reporting the matter to the owner of the restaurant and not the Health Authority or police for further necessary action, the respondent said he only wanted the owner of the restaurant to save her clients from contracting food poisoning and not to face the legal consequences of her negligence. He added that the clumsiness of the Nigerian legal system was what discouraged him from seeking legal action. He said that if he had gone to the law court, he would be required to prove that his problem emanated from his consumption of food in the restaurant; also, to get food samples from the source and before doing that, “the food source would have been finished or thrown away”. He was thankful to God that he was alive to tell his story. According to him, being alive was enough for him than the stress of a legal action.

Another participant was of the opinion that even if you had the courage to go to the police, nothing would come out from it.

Besides the challenges associated with litigation in Nigeria, some participants also noted that most business operators do not display customer care numbers that could be used by aggrieved customers.

The FGD participants in the rural community were not aware of the laws that are meant to protect consumers in Nigeria. They are, however, aware of the existence of some consumer

protection agencies such as the Consumer Protection Council (CPC), the National Agency for Food and Drug Administration and Control (NAFDAC), the Standards Organisation of Nigeria (SON) and the Nigerian Communications Commission (NCC). They are, however, not comfortable with the fact that most of the agencies operate only in the cities. .

b. Awareness about obligations of consumers

In as much as consumers are to be protected by laws the consumers have responsibilities under the law. The study therefore sought to find out opinions of the FGD participants on the obligations of consumers. Most agreed that consumers should protect themselves by doing the basic things required of them under their transactions. In response to the question as to whether consumers have obligations under the law, a female participant said “Yes” She then mentioned and listed the need to complain or seek redress when a person feels cheated in a transaction as one way of curbing consumer abuse. Some participants said that when consumers complain, affected producers and service providers will be forced to improve and change their methods.

Another obligation stated by a male participant was *“the need for consumers to form associations that can rise to protect them when their rights are breached.”*

The responses given by participants to this question reveal a general lack of awareness about obligations of consumers.

c. Attitude of consumers to the enforcement of their rights

On the attitude of consumers to the enforcement of their rights, a male participant shared his experience with the public water supply agency in Enugu. He said: *“I reside in a public yard, Enugu State Water Board supplies water and charges appropriate fees. At a time, the monthly bill they gave us was to my mind outrageous. I queried the amount, and my co-tenants were of the opinion that we should pay the five thousand naira bill as charged. I told them the one thousand naira earlier paid to the agency covered the months of the new bill. Other co-tenants were not keen on challenging the new bill, and were in a hurry to pay the new bill and get away from the problem of being disconnected. I threatened to cause the Police to arrest anyone that paid the bill. It took over a year to resolve the problem. At the end, the board accepted the earlier bill we had paid and exonerated us from the new payment”*

The above scenario typifies the attitude of an average consumer to the enforcement of his/her rights. Oftentimes consumers will not want to challenge the utility agencies and other authorities to assert their rights. This position was collaborated by a male participant who

decried the attitude of Nigerian consumers. According to him, *“Nigerian consumers are lazy in pursuing their rights even if they know; they may see the pursuit of their rights as unnecessary time wasting. In fact I won’t go to court so things remain the way they are because no one is willing to challenge”*.

Another participant expressed the view that some consumers may not want to soil their relationship with service providers even when they know that they have been cheated by them.

According to a female FGD participant, if one intends to travel by public transport and he/she boards one of the vehicles operated by an established transport company, the person stands a chance of refund in the case of the vehicle breaking down on the way as against boarding an anonymous one. She was also of the opinion that when aggrieved, consumers should in the first instance make complaints to appropriate authorities and unions.

A male participant was of the opinion that *“when the consciousness of consumers in Nigeria is awakened, civil disobedience is an option”*. Another participant who agreed with this view urged voluntary consumer associations to work harder on public education and awareness creation. He opined that at the moment, consumer rights NGOs are very few and not very visible. They should work harder to educate the people on their rights. They are to serve as advocates of the masses; they know the laws and have the mission of consumer protection. These consumer NGOs should readily intervene to help the masses.

d. What consumers should do to protect their interests

On what consumers should do to protect their interests, some of the participants said that consumers should endeavour to obtain receipts when they purchase products or services. They should ask for specific receipts and not general receipts without addresses or details of the supplier. This according to the participants will help an aggrieved customer to make his claim in the event of a default. The consumer should strive to keep away tribal/religious sentiments when entering into transactions. They should be ready and willing to go to court if a transaction goes sour.

A participant said that consumers should be aware that every transaction no matter how small is under the protection of the law. People should not attach importance to the money worth of the product or service for instance when you buy a box of matches, and when you strike the stick and it fails to light and you simply throw the box away without challenging the shop just because the cost is small.

Another participant advised that “*we consumers should watch out for the expiry dates, compare with the previous items you had been using. If it is a public transport bus be sure you ask the driver to be sure of the destination he is going*”.

e. Adequacy of existing consumer protection laws

Some participants were not comfortable with the provisions of Nigerian laws with regards to consumer protection. According to them, the laws are too old and inadequate to protect the contemporary Nigerian consumers. The onus of proof is on the complainant as against the government or her agencies.

f. Challenges facing consumers in seeking redress

The opinions of participants were sought on challenges that Nigerian consumers face in seeking redress. This section summarises the opinions of the participants.

j. Poverty

It was the general consensus of participants that poverty plays a negative role as the cost of litigation is high. According to a female participant, “*poverty is part of the problem, because for you to seek redress you must have the resources*”. Referring to the case of food poisoning earlier mentioned, she pointed out that even if the customer had died as a result of the incident his relations would not even bother to carry out a post-mortem examination not to talk of seeking redress. There is also the fact that many Nigerians would not want to waste their money in pursuing their rights.

ii. Lack of faith in the judicial system

Another participant noted that “*most Nigerians do not have faith in the Nigerian legal system*”. Some would not even dare challenge the status quo because they believe they would not win without the usual interference of the big and mighty in the society.

A male participant recalled the experience he had when the use of motor cycle (popularly called “*okada*”) for carrying passengers/goods in Enugu town was banned. He said that he personally went to court (Federal High Court, Enugu) to challenge the stoppage without the government providing alternative means of transportation for the masses and an alternative occupation for those who hitherto depended on *Okada* business for their livelihood. He said that the case is pending before the court.

iii. Cost of Litigation

One major issue that kept on recurring is that of cost of legal services in Nigeria, which to a large extent discourages consumers from seeking redress. A participant recalled the common adage that the police is your friend, but noted that when you approach the police to report a case of breach of your right, the police will require some money to follow up your case. You may spend three times the amount spent on buying the item, so people try to avoid spending more money to ask for their rights. Most of the participants said that they do not know the agencies that can take up cases without charging money; and that if the agencies are there, that may be in the cities. One participant added: “We cannot take the task of pursuing the case to the city for the sake of right enforcement”.

iv. Ignorance

Most consumers are ignorant of their rights. The reverse was however the case with one of the female participant who narrated her experience with the purchase of a fake *Astymim* blood tonic. She said that she bought the medicine over the counter in her village drug store. But on getting home, she realised that it was fake. She told her husband and went back to the seller who insisted that he bought the drug in the same condition and that he was not the manufacturer. He refused to change the drug or refund her money. She went back to relate the story to the husband, but the man remained adamant. She kept repeating her visits to the drug seller who later offered to refund five hundred naira as against the eight hundred naira she paid for the drug. She stood her grounds and after some months her money was refunded. She said: “*If I did not know the original and my right and insisted on my right, I would have been cheated.*”

This is not the case with many Nigerians. Many buy items without checking for details and particulars of the product, the identity of the manufacturers, etc. At times consumers buy from itinerant street hawkers who cannot be traced in the event of any challenges with the product.

A female participant said “*my mother bought a deep freezer from the market which did not last three months before breaking down. So when we were told that the purchase should come with a warranty of up to one year, we were ready to get back to the trader to change it, but a relation advised us not to waste our time, that even if we went back to the trader, we would be required to spend some money. She advised us to look for a technician to work on the fault, which we did.*”

v. Corporate might

Some participants cited corporate might as too intimidating for legal practitioners and consumers may dare to sue. The mere fact that corporate entities have large organised legal departments creates fear and discourages consumers who lack the resources to confront such entities.

A rural male participant shared his experience with the purchase of a DVD player while he was on the mandatory National Youth Service Corps scheme in Lagos. He said that he bought a DVD and within six months it developed a fault which he promptly reported to the agency. He left the machine with the technical section of the company. He was given a receipt. But he could not go back to pick the repaired item as he had to travel back to his village at the end of his national assignment. He went back to the dealer about eight month later. The office argued and argued but he stood his ground. When he insisted on calling the police, they brought out his DVD.

A participant also brought to the fore the new antics of some big firms which go about advertising some registered products and making everything about the products look alright. The manufacturers will initially make the product conform in weight, quality and size, but as soon as they are sure sure that the market is in their favour they change the weight and size of the product a little. Many unsuspecting consumers do not know that they are short- changed.

g. Purchase of fake products

Many consumers noted the existence of substandard and fake products in the Nigerian market. When asked if they had ever bought any fake product, many said they had at one time or the other. A male participant said that he had bought fake products in the past mostly textile materials. He said he knew that they were substandard because they faded on just the first or second wash

Another participant shared her experience with a fake pharmaceutical product. She said: *“My sister just put to bed. The doctor prescribed some antibiotic capsules which I obtained from a patent medicine store; she took the medicine as prescribed by the physician. Rather than the medicine making her strong, she was going down. The doctor then asked me to get another set of antibiotics specifically “Beecham” product which I did. As expected the new medicine worked and she became hale and hearty. The doctor was compelled by the development to send someone to the patent medicine store to check. It was found that all the drugs that were supplied*

by a particular company to the store had expired. So I threatened to call NAFDAC, the owner of the store had to call the sales representative of the company who came to remove the expired drugs. This I did to save the other unsuspecting innocent consumers.”

In the rural area, participants noted that electronic products are among the products mostly faked in the Nigerian market. A male participant noted that he bought a home theatre but found out when he got home that the remote control was faulty. He went back to the trader but did not succeed.

26. Summary of in-depth interviews with regulatory agencies

a. Nigerian Communications Commission (NCC)

The interview was held with the Consumer Affairs Bureau of the Commission.

I. Consumer complaints

In response to the question as to whether the Commission handles consumer complaints, one of the participants stated: “NCC is a regulator in the telecommunications sector. It is part of our mandate to protect consumers, inform them and educate them. To achieve this mandate, we have created a Consumer Affairs Bureau”. This department (Consumer Affairs Bureau) deals with consumer issues. This the department does with support of the other departments- Monitoring, Enforcements, Technical Standards and Network Integrity Departments.

ii. What has the response been like? Do consumers normally respond? Are consumers aware of your dispute resolution mechanisms?

“Consumers are aware of the dispute resolution mechanism. We receive lots of complaints from consumers through different means-Web portal which they can access, some visit us and we talk one –to -one, Consumers also make calls to the call centres and others write to us to lodge their complaints. As soon as we receive the complaint, we take over from that level.

ii. Complaints handling strategies

Different strategies are used by NCC. Those that cannot come to our office can lay their complaints online or email us or call the call centres and talk to them. Once the call centres receive a complaint a ticket is issued. As soon as a ticket is issued it is recorded in the system – it is automated. Typically, when a particular service provider receives say twenty complaints

within a given period, we know because of the automated nature. This will enable us to track the complaint till it is resolved. When we find out that a complaint has not been resolved we take it over from there.

When informed that the service providers rarely give tickets, the participant pointed out the need for complainants to receive tickets. This is to guarantee that the complaint has been registered formally.

We also have zonal offices in Enugu, Port Harcourt, Kwara and Kano. We are also expanding to Sokoto, Yola, Asaba, Otukpo Lokoja where we urge consumers to reach out to and lodge their complaints.

iii. Accessibility of consumer complaints centres

On the plight of consumers in locations that do not have zonal offices of the NCC, one of the participants explained that consumers can call; they do not need to go to any office, they can call any of the centres regardless of the zone.

Consumers do not have to leave their locality to visit the zonal offices of NCC; that is why we ask them to give us a call to lodge their complaints. We also have the Consumer Parliament where the service providers are there to resolve complaints from the public.

On the appropriateness of consumers contacting the call centres of the offending telecommunications company, we were informed that the Commission insists on the complainants reaching the service providers first by calling their call centres. The complainant must ensure he/she receives a ticket, otherwise they may deny that such a complaint was logged.

iv. Duration for resolution of consumer disputes

We were informed that “there are cases that are resolved instantly, but some may take one week or two weeks depending on its nature. Our Consumer Parliament serves to bring the service providers and consumers in contact. In this Parliament depending on the nature of complaint, the issue can be resolved while the Parliament is on, sometimes the service providers reach out to their offices for assistance”.

v. *Effectiveness of complaints resolution strategies*

The officials of NCC do appreciate that the current strategy of the Commission may not be widely known yet. However, from the enthusiasm of those that have lodge complaints with them and the number of complaints resolved, they are confident that they are making some impact. “We want to do more. In our outreach programmes, consumer parliament, and town hall meetings, we get direct feedback from the public on what areas we need to work on. In these meetings we use some Nigerian languages - Hausa, Igbo and Yoruba to ensure that every one participates”. One of the participants said:.

“Due to our stand the telecoms service providers are on their toes. They are embarking on a lot of promos. The recently introduced number portability is another measure that is to the benefit of consumers. Once consumers port en mass the service provider is finished. This makes the consumer the king”

b. Consumer Protection Council (CPC)

i. *Does your agency handle consumer complaints, and what has been your experience?*

Initially not many complaints were received which could be due to lack of knowledge that there is an agency responsible for handling consumer complaints. There is also the attitudinal question; many consumers would not want to bother to press on for their rights especially when the money worth is say fifty naira. We have established consumer clubs in five hundred schools in Nigeria and made inroads into incorporating consumer education in school curricula.

ii. *Strategies for handling consumer complaints*

Consumer protection is a reactive process - somebody has to make a complaint and we take off from there. There are call centres in all the major cities in Nigeria to receive consumer complaints. These are in addition to CPC's call centres. We expect consumers to first call the call centres of the product or service provider in question. If we are contacted in the CPC, first we must acknowledge within two days if the complaint is within our immediate location, if it is outside, some couple of days are added. At least the acknowledgement gives them the assurance that we are working on their complaints.

The promptness of response is also related to the nature of complaint and the likely number of persons that are affected or would be affected, if it may result in bodily harm or if it will affect a large number of consumers we mobilise immediately to ensure that the harmful product is removed from the market.

iii. Withdrawal of harmful products from circulation

We sought to know if CPC had ever had cause to order the withdrawal of harmful products from circulation. The participants answered in the affirmative. According to them, if they discover that a particular batch of a product is involved they endeavor to get that batch out and also inform the manufacturer to withdraw the batch till further notice. After the withdrawal, they go back to trace the source of problem - whether it was from production, transportation or storage.

The CPC also puts up alerts in major media - newspapers, radio, television - warning consumers to be wary of any product declared hazardous. This is meant to help the Council to reach out to persons in very remote locations across the country that CPC may not be able to get to within the shortest possible time.

iv. Accessibility of CPC to the public

How accessible is your agency to the public? “We are accessible, may be many Nigerians do not know about the Council (CPC). We are working hard to make members of the public to be aware of our existence. We use occasional radio programmes, sensitization at markets, parks and grassroots. The CPC also has developed promotional jingles in three major Nigerian Languages and Pidgin English. These jingles are broadcast on local FM radio stations. The frequency of broadcast is subject to availability of funds. We also have a media programme called “Consumer Speaks”.

We were also informed that CPC has six zonal offices that consumers are free to reach out to. There is also one CPC office in Lagos. These are in addition to the call centres that have been created to allow consumers to bring in their complaints. The call centres receive calls from all over the country. They also noted that by law, states are allowed to form State Committees. Presently there are state committees in Enugu, Imo, Kano and Ondo States (out of 36 states in Nigeria). We have no control over these State Committees because CPC is not the agency funding them. We are supposed to be represented on the State Committees but the truth is that

we are not. Funding and establishment of State Committees depend on the good will of State Governors”.

They referred to the proposal in the CPC Bill before the National Assembly for CPC offices in all the States of the Federation. This if approved will help them to achieve better coordination and efficient service delivery to consumers.

v. *Duration for resolution of consumer complaints*

When asked the average duration of complaints from registration to resolution, one of the participants stated “The length of time it takes for complaints to be resolved depends on the nature of the complaint. Some complaints take longer to be resolved than others depending on the technical nature. To shorten the period of resolution, we require the service providers especially telecoms service providers to set up customer service centres. For consumer complaints against financial institutions, these usually take longer duration because money is involved. For complaints against product manufacturers, the resolution period is shorter, because we simply call or visit the company to have the issue resolved, no manufacturing firm likes trouble, so they try to resolve whatever issue is raised against them and move on. In general we do not have records of average duration of time for resolving complaints in our zonal offices but at the Headquarters of the CPC, it is not common for the resolution to last up to twenty days.

vi. *Number and frequency of consumer complaints*

When asked to know the number of complaints so far resolved by the Council, one of the participants said: “We have handled up to 313 complaints between January to June 2013. We however do not have this statistics on our website. On regional basis, we receive most of the complaints from South East Nigeria, which to some extent is due to the activism of CPC in the area.

vii. *Relationship with other agencies*

Given that the work of consumer protection by CPC requires collaboration/cooperation of other agencies, we sought to know the relationship between CPC and these agencies. According to them, they have a working relationship with some of them. In the case of products that require SON certification, if they discover that the product does not have, if it does not not require the technical expertise of SON they simply deal with the problem but may consult the Organisation if necessary. They also relate with the Central Bank of Nigeria (CBN), the Nigerian Electricity

Regulatory Commission (NERC) and the Nigerian Communications Commission (NCC). Their relationship with other agencies is growing and is not based on just social interactions but on changes in the industry for the benefit of consumers.

27. Mystery shopping report

a. ETISALAT NIGERIA

A customer of Etisalat, one of the telecommunications service providers in Nigeria reported to the Consumer Awareness Organisation office (Enugu) on 19 November 2013 that he bought Etisalat SIM and registered it as required. According to him, he subscribed to one of the advertised promotional services of Etisalat called Flex bundle. The promotional product (flex bundle 300) allows the customer to get twice the amount he/she has recharged his/her phone. In other words, if you recharge your phone with an air time worth three hundred naira (N300.00) the service provider rewards you with twice the amount making the total air time available to you, six hundred naira (N600.00). This service (airtime) is expected to be used within seven days of loading the credit.

According to the complainant, on each occasion of buying six hundred or three hundred worth of Etisalat air time and requesting to subscribe to the flex bundle (*344* 300#) he was told that his request was successful. But after making just one call of less than the stipulated airtime, on the next call, he would be told that he had no sufficient credit for the flex bundle product. This he found curious as he noted he had never even exhausted the amount of airtime or the promotional extra airtime due from the flex bundle.

On receiving the complaint, Consumer Awareness Organisation (Enugu Nigeria) wrote to the Zonal Office of Etisalat in Enugu providing particulars of the complaint and the phone number of the complainant. After receiving the complaint on 21 November 2011, Etisalat called the Consumer Awareness Office Enugu and denied that the Customer's number was on their data bank. We rechecked our records and found that we missed a digit in the phone number of the customer. After this correction, Etisalat called the complainant on 21 November 2013 (two days later). They promised to get back to our client after verification with the appropriate department. The matter is still pending

b. Second Mystery Shopping: MTN Nigeria

We wrote to MTN Nigeria on behalf of four of their customers who had lodged their complaints with us. The letter was delivered to MTN Nigeria, Enugu Regional Office by courier on 28 October 2013. Our clients later reported that MTN called them to enquire about the matter. They also gave them follow up calls with a view to assessing the progress. Our clients were satisfied with the line of action adopted by MTN so we did not have to pursue the matter further.

Analysis of Research Findings

Some facts revealed by this work are summarised below.

a. Piecemeal Legislation

There is no single body of Consumer Protection Law in Nigeria. Laws protecting the interests of consumers are scattered in the statute book as pieces of legislation dealing with specific subject matters e.g.

- Financial services - the Central Bank of Nigeria Act and the Banks and Other Financial Institutions Act.
- Food, drug and related products – the Food and Drugs Act; the Counterfeit and Fake Drug and Unwholesome Processed Foods (Miscellaneous Provisions) Act; the National Agency for Food and Drug Administration and Control Act etc.
- Standardisation of products - the Standards Organisation of Nigeria Act;
- Consumer redress and allied matters - the Consumer Protection Council Act.

A researcher in the field of Consumer Protection in Nigeria will have to go through the statute book to sift out the laws that are consumer-oriented.

b. Gaps in Legislative Framework

This work shows that many issues of consumer protection are covered by existing laws. But some other issues that impact on the interest of consumers are not. Prominent in this regard is competition law. There is no general competition law in Nigeria. The much that exist are sector specific laws and regulations regulating specific issues. A good example is the NCC Competition and Practices Regulations 2007 made pursuant to the Nigerian Communications Act 2003. There are also some laws aimed at engendering competition. Included in this list are the Investments and Securities Act 2007; the Public Enterprises (Privatisation and Commercialisation) Act 1999; and the Nigerian Investment Promotion Commission Act 1999.

Furthermore, there is no law governing unfair contracts terms. Exemption clauses are freely used by suppliers of products and services. Consumers who normally bargain from a weaker position are often at the mercy of such suppliers.

c. Meagre penalties

The penalties imposed by most consumer protection laws in Nigeria are too meager to deter offenders. For most of them, the penalties have remained static since the inception of the laws some of which have existed for decades. The inflationary trend in the country has consequently rendered them insignificant. It is however remarkable that all the laws impose terms of imprisonment in addition to the stipulated sums. This in itself has serious consequences as a person so convicted will wear the cloak of “ex-convict” thus losing many privileges that are available to other persons in the country.

d. Apparent Proliferation of regulatory agencies

Apparent proliferation of agencies performing similar consumer-related functions is also noticeable. A likely fallout of this is the possibility of role-conflict amongst the agencies. Cooperation is needed particularly where similar functions are conferred on the agencies. It is, however, noteworthy that the enabling statute of each agency contains some provisions aimed at achieving inter-agency co-operation. For instance, part of the functions of the Standards Organisation of Nigeria (SON) is to co-ordinate all activities relative to its functions throughout Nigeria and to co-operate with corresponding national or international organisations in such fields of activity as it considers necessary with a view to securing uniformity in standards specifications.²³⁹

Similarly, the Governing Council of the National Agency for Food and Drug Administration and Control (NAFDAC) is enjoined to enter into agreements with public or private organisations and individuals to develop, utilise, co-ordinate and share such information as is determined to be appropriate by the Council for the performance of its functions.²⁴⁰ The inter-agency co-operation embedded in this provision is strengthened by the composition of the Governing Council. The external members of the Council are drawn from other regulatory agencies such as the Standards Organisation of Nigeria (SON), the National Drug Enforcement

²³⁹ Section 5, SON Act

²⁴⁰ Section 7

Agency (NDLEA), the Pharmacists Council of Nigeria (CPN), the Food Beverages Group of the Manufacturers Association of Nigeria and three other persons representing public interest to be appointed by the Minister of Health.²⁴¹ Similar provisions are contained in the enabling laws of other agencies such as the Consumer Protection Council Act.

The standards making process of SON is a good practical illustration of inter-agency co-operation. The Standards Committee, in addition to the internal members, comprises representatives of the following bodies among others: specified ministries; university education and research; processing and manufacturing industry; chambers of commerce, industry and mines; and consumer associations.

A conclusion that can be drawn from the foregoing framework is that the agencies are structured to engender inter-agency cordial and good working relationship. The agencies should utilise this framework to enhance their works and avoid unnecessary role conflicts.

It is remarkable that some agencies have entered into Memoranda of Understanding (MoU) with related agencies. A prominent example is the MoU between the Consumer Protection Council (CPC) and the Nigerian Communications Commission (NCC). The MoU signed by the parties in 2005 covers, among others, the scope of their cooperation and respective responsibilities and obligations for consumer protection in the ICT sector

A further example can be seen in the NCC Consumer Code of Practice Regulations 2007. The Code acknowledges the Nigerian Code of Advertising Practice established by the Advertising Practitioners Council of Nigeria (APCON) for regulation of advertising practices in Nigeria and enjoins all licensees to comply with the provisions of the said Code in addition to the rules set out in the NCC Code.

e. Legislative Activism

Nigeria has witnessed a high level of legislative activism in the area of Consumer Protection. Right from the 19th Century, the country has had some laws protecting the interest of consumers. Some of the old laws which have been repealed and replaced over the years include the Sale of Drugs Act 1891 (Lagos); the Food Adulteration Act, 1903; the Drugs and Poisons

²⁴¹ Section 2

Act 1915; the Sale of Food law 1917 (Eastern, Western and Northern Regions of Nigeria respectively); and the Adulteration of Produce Act 1958. Consumer Protection is now governed by a myriad of laws which have been discussed or mentioned in this work.

Legislative activism is also noticeable in the area of amendment and review of Consumer Protection laws to keep them up to date. Almost every existing law in the field has received one amendment or the other. Right now, the following laws are before the National Assembly for amendment -

- The Nigerian Communications Commission (Amendment) Bill, 2013
- The Consumer Protection Bill 2010.

Even though frequent amendments may be seen by a School of Thought as evidence of poor initial planning, the fact remains that the field of consumer protection is seen by the legislature as deserving periodic attention.

In terms of subsidiary legislature, consumer protection has also received adequate attention. Numerous Regulations, Guidelines and other instruments have been issued by the regulatory agencies to give effect to the general provisions contained in their respective enabling Acts. These instruments cover diverse issues of consumer protection.

f. Activism of Regulatory Agencies

There is no doubt that many of the regulatory agencies are making appreciable efforts. A click on the website of each agency reveals past and ongoing activities, arrests of offenders, seizure and destruction of prohibited products, workshop papers, etc.

For agencies that have direct roles towards service providers, some level of activism is also noticeable in the areas of registration of products; licensing of providers and certification of products. But viewed from the point of view of consumers, many of the agencies are yet to make noticeable efforts to sensitise consumers to serve as catalysts for change.

g. Ignorance of Consumers about Rights and Regulatory Policies

This work has revealed that although the regulatory activities of agencies performing consumer-related functions are geared towards the protection of consumers, the low level of awareness about such activities and available rights pushes the matter to the exclusive domain of the regulators and service providers. Conceded that consumers benefit from the activities of regulatory agencies via improved quality of products and services, the fact remains that lack of active participation or involvement of consumers in the scheme of things reduces them to mere spectators. This denies them the opportunity to act as real and recognised drivers to influence the market place as envisaged by this project.

This state of affairs is created by gaps in the statutory framework as well as non-chalant attitude of many consumers to the enforcement of their rights. Most of the existing laws in the field of consumer protection do not involve consumers directly either as members of governing bodies or as parties to be consulted by product or service providers before taking major decisions that affect their interest. Furthermore, the laws do not make provisions for consumer education. Awareness about the laws and the rights contained in them is, therefore, minimal.

h. Burden of Proof

As can be seen from the cases examined this work, proof of negligence is almost an uphill task. Often, the matters which the plaintiff is required to prove are within the exclusive knowledge of the defendant thus making it impossible for the plaintiff to discharge the burden. Cases reviewed in this work show that there is no significant difference between the facts of the cases that failed and those that succeeded. The main difference was the ability or inability to discharge the burden of proof.

The implication is that the law relating to proof or disproof of negligence in product liability cases in Nigeria is far from settled. There is no case that can be regarded as a *locus classicus* for the contending issues that often arise in this class of cases. This constitutes a big problem to consumers seeking to enforce their rights.

i. Cost of litigation

Litigation imposes extreme hardship. This was a recurring factor identified by FGD participants.

j. Terms implied by law

An issue that is yet to receive a final pronouncement by Nigerian Courts is whether parties can exclude terms implied by the Sale of Goods Laws. As discussed above, the laws themselves are not consistent on this matter. While some make provisions to the effect that such terms may be excluded, others provide otherwise or may be regarded as indefinite.

Recommendations

a. Acceptance of evidence of similar products

It is common knowledge that products are produced in batches. It is, thus, probable that a defect affecting a unit in a batch is likely to affect other units in the same batch. This being the case, if the analysis of samples from the same batch as the offending product disclose similar injurious characteristics, this should provide strong evidence of breach. It is suggested that the offending product and samples from the same batch should be subjected to analysis to determine on balance of probabilities if the claimant's damage could be said to have been caused by a similar defect as the one in the item from the batch.

b. Abolition of the defence of foolproof system of production

The system of production should not be taken as a relevant issue because it is impossible for the courts to assess if such a system as demonstrated is actually applied by the defendant and indeed whether it was applied in the particular case under determination. It could be a paper scheme which any manufacturer could claim to operate. The Supreme Court in apparent recognition of this fact in *Okwejiminor v. Nigerian Breweries PLC* rejected this defence since, according to the Court, it did not touch on the main issue as to the cause of the respondent's illness.

c. Adoption of res ipsa loquitur

A viable approach could be the extension of the doctrine of *res ipsa loquitur* to product liability cases. The doctrine applies where the accident speaks for itself so that it is

sufficient for the plaintiff to prove the accident and nothing more. Once the plaintiff has proved the fact of the accident, the burden will then lie on the defendant to prove that it arose out of no negligence of his.

There are conflicting authorities on the applicability of the doctrine to product liability cases in Nigeria. In *Ebelamu v. Guinness (Nig.) Ltd. (supra)*; *Okonkwo v. Guinness (Nig.) Ltd. (supra)*; and *Nigerian Breweries PLC v. David Audu (supra)* the courts stressed the inapplicability of the doctrine to product liability cases. These cases contrast with *Boardman v. Guinness (Nig.) Ltd. (supra)* which shows judicial inclination to apply the doctrine. Substantial justice will be achieved by the application of this doctrine.

e. Adoption of Strict Product Liability

According to *Black's Law Dictionary*,²⁴² strict liability is a concept applied by the courts in product liability cases in which the seller is liable for any and all defective hazardous products which unduly threaten a consumer's personal safety. *Osborn's Concise Dictionary*²⁴³ explains that strict liability arises where a man acts at his peril and is responsible for accidental harm, independently of the existence of either wrongful intent or negligence.

It follows from these definitions that strict liability is a principle under which a person is held liable for the consequences of his acts irrespective of fault.

On policy grounds, strict liability should be imposed on producers since they are in a position to prevent product defects. They are also in a position to take up product liability insurance.

f. Accessible Offices and call centres

Regulatory agencies and service providers should maintain cost-effective and accessible offices and call centres to make the system of consumer redress attractive to consumers.

²⁴² H. C. Black, *Black's Law Dictionary*, 6th ed. (St. Paul, Minn.: West Publishing Co.; 1990), p. 1422.

²⁴³ Roger Bird, *Osborn's Concise Law Dictionary*, 7th ed. (London: Sweet & Maxwell; 1982), p.313.

g. Prompt resolution of consumer complaints

This is a confidence building tool which many service providers tend to overlook. Strong patronage can result from this while the reverse can result in serious de-marketing. Regulatory authorities should adhere to the approved timeframe for resolution of complaints.

h. Capacity building for consumer voluntary organisations.

Non-governmental organisations are known to provide an independent voice to consumers. In Nigeria many of the existing NGOs lack the capacity to influence the system. Capacity building and financial support will position them to perform better. Those with the capacity to do so should be supported to offer pro bono services to aggrieved consumers.

i. Review of some existing laws

Many of the existing laws are due for review to bring them in line with today's reality. The penalty provisions need complete overhaul. Other areas not covered by existing laws such as competition, unfair contract terms and electronic commerce should be looked into.

j. Awareness Creation

This is about the most important factor considering the state of consumer protection in Nigeria. For a country that has the number of laws reviewed/listed in this work, it is surprising that many breaches go without a remedy. This work has revealed that majority of consumers are not aware of the existing consumer protection laws or the available redress options. Mass consumer education is therefore needed to empower consumers to act as real and recognised drivers of the system.

Appendices

Appendix A

List Of Consumer Protection Laws In Nigeria

The laws below are grouped according to subject matter for the purpose of this project. There is no such categorisation in the statute book.

1. THE GRUNDNORM

The Constitution of the Federal Republic of Nigeria 1999 (as amended)

2. PRODUCT QUALITY AND COSUMER JUSTICE

- A. Standards Organisation of Nigeria Act, Cap. S9 LFN 2004.
- B. Consumer Protection Council Act, Cap. C25 LFN 2004.
- C. The Criminal Code Act, Cap. C38 LFN 2004.
- D. Penal Code (Northern States) Federal Provisions Act
- E. Weights and Measures Act, Cap. W3 LFN 2004.
- F. The Trade Malpractices (Miscellaneous Offences) Act Cap. T12 LFN 2004.
- G. Price Control Act, Cap. P28 LFN 2004.
- H. Sale of Goods Laws of various States of the Federation

3. FINANCIAL SERVICES

- A. Banks and Other Financial Institutions Act, Cap. B3 LFN 2004
- B. Economic and Financial Crimes Commission (Establishment, etc) Act
- C. Central Bank of Nigeria Act 2007
- D. Nigeria Deposit Insurance Corporation Act
- E. Hire Purchase Act, Cap. H4

4. HEALTH AND PHARMACISTICAL PRODUCTS

- A. Food and Drugs Act, Cap. F32 LFN 2004.
- B. The Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, Cap. C34 LFN 2004.
- C. The Food, Drugs and Related Products (Registration) Act, Cap. F33 LFN 2004.

- D. National Agency for Food and Drug Administration and Control Act, Cap. N1 LFN 2004.
- E. Pharmacists Council of Nigeria Act, Cap. P17 LFN 2004.
- F. Tobacco Smoking (Control) Act, Cap. T6 LFN 2004.
- G. Registration of Pharmaceutical Premises Regulations 2005
- H. The National Health Insurance Scheme Act

5. AVIATION

Civil Aviation Act 2006

6. ENERGY

- A. Electric Power Sector Reform Act 2005

7. INTERNET AND CONSUMERS IN THE DIGITAL AGE

- A. The Nigerian Communications Commissions (Registration of Telephone Subscribers) Regulations, 2011.
- B. Nigerian Communications Act 2003.

8. ENVIRONMENT

- A. The National Environmental Standards Regulation Enforcement Agency Act 2007.
- B. National Emergency Management Agency Act
- C. National Oil Spill Detection and Response Agency (Establishment) Act 2006
- D. Harmful Waste (Special Criminal Provisions, etc.) Act, 1988

9. TRANSPORT

- A. Federal Road Safety Commission Act.
- B. National Road Traffic Regulations 2004.
- C. National Road Traffic Regulations 2010.
- D. Federal Road Maintenance Agency (Amendment) Act 2007
- E.

10. INVESTMENTS AND ALLIED MATTERS

- A. Investments and Securities Act 2007
- B. Public Enterprises (Privatisation and Commercialisation) Act 1999
- C. Nigerian Investment Promotion Commission Act 1999.

Appendix B

List And Contacts Of Some Pro Bono And/Or Public Interst Service Agencies

A. OMBUDSMAN

I. LEGAL AID COUNCIL

HEADQUARTERS

Federal Secretariat Complex

Phase II (Head of Service),

3rd Floor, Block C,

Central Area, Abuja.

Email: info@legalaidcouncil.gov.ng

Website: www.

North-East Zonal Office

Legal Aid Council

Federal Secretariat Complex

P.O. Box 1188, Yola

Tel: 08035462279

North- West Zonal Office

Legal Aid Council

Federal Secretariat Complex

3rd Floor Room 323 – 328

P.O. Box 4248, Kaduna

Tel: 08036148133

North-Central Zonal Office

Legal Aid Council

1st Floor Ministry of Education Building

State Secretariat Complex,

P.O. Box 6110, Jos

Tel: 08032199014

South-East Zonal Office

Legal Aid Council

Federal Secretariat Complex

Room 251 – 258, P.O. Box 1709

Enugu.

Tel: 08034513338

South-South Zonal Office

Legal Aid Council

Federal Secretariat Complex

Asaba.

Zonal Director:

Mrs Edith Shobowale- Adams 07030632033

South-West Zonal Office

Legal Aid Council

10 OkotieEboh Road

South West Ikoyi

Lagos.

Tel: 08035063339

2. Public Complaints Commission (PCC)

Headquarters

Public Complaints Commission Nigeria

25 Aguiyi Ironsi Way, Maitama, Abuja.

Tel –08056014878

E-mail –nigeriaombudsman@yahoo.com

Website: [www. publiccomplaints-ng.org](http://www.publiccomplaints-ng.org)

F.C.T Office

Public Complaints Commission Nigeria

Ajami Plaza, Area 3, Behind University of Abuja.

P.M.B 687, Garki, Abuja

Tel – 08064894561, 09-2915211

E-mail – publiccomplaintsfct@yahoo.com

Facebook - www.facebook.com/pccfctnigeria

Twitter - www.twitter.com/PCC_FCT

Abia State

Public Complaints Commission Nigeria

72, School Road, School Road Secretariat, Umuahia

Tel – 08030928737

E-mail – abiapcc2011@yahoo.com

Adamawa State

Public Complaints Commission Nigeria

Kashim Ibrahim Way, P.M.B 2105, Yola

Tel – 08024528125 / 08060203975

E-mail – adamawaombudsman@yahoo.com

Akwa Ibom State

Public Complaints Commission Nigeria

Federal Secretariat Complex, P.M.B. 1107, Uyo

Tel – 08063010688

E-mail – complaintscommissionuyo@yahoo.com

Anambra State

Public Complaints Commission Nigeria

1, Flora Ilonzo Drive, Ahocol Estate,

Phase 1 (behind government house)

P.M.B 5095, Awka. Anambra State.

E-mail – pccanambra93@yahoo.com

Bauchi state

Public Complaints Commission Nigeria

Federal Secretariat, 3rd Floor P.M.B 0144, Bauchi.

Tel – 08024520007

E-mail – pccbauchi@yahoo.com

Bayelsa State

Public Complaints Commission Nigeria

P.M.B. 33, Ekeki, Yenagoa. Tel - 08102302244.

Tel – 08102302244

E-mail – pccbys@yahoo.com

Benue State

Public Complaints Commission Nigeria

Federal Secretariat Complex, East Wing, 2nd Floor P.M.B. 102335,

Jonah Jang Crescent, Makurdi.

Tel – 07035154986

E-mail – benueombudsman@gmail.com

Borno State

Public Complaints Commission Nigeria

Jos Road, Opposite State Civil Service Commission,

P.M.B. 1235, Maiduguri.

Tel – 08038584082

E-mail- pccborno@yahoo.com

Cross River State

Public Complaints Commission Nigeria

Federal Secretariat, 2ND Floor, Block B(R) P.M.B. 1182,

Murtala Mohammed Highway, Calabar.

Tel – 08055667990

E-mail - crossriver4pcc@yahoo.com

Delta State

Public Complaints Commission Nigeria

Plot 71, River Basin Crescent (Beside Central Bank)

Off Mariam Babangida Way, Asaba.

Tel- 08064222626, 08054700829

E-mail – dpccdelta@yahoo.com

Ebonyi State

Public Complaints Commission Nigeria

Plot 11, Off Ogoja Road, By All Saint Church

P.M.B. 065, Abakaliki.

Tel –08058921393, 08035337019

E-mail – pcc.ebonyi@yahoo.com

Edo State

Public Complaints Commission Nigeria

Plot 43, Boundary Road, GRA,

PMB, 1233, Benin City.

Tel – 08058119119

E-mail – pccedostate@yahoo.com

Enugu State

Public Complaints Commission Nigeria

Federal Secretariat Complex

Independent Layout, P.M.B. 1439, Enugu.

Tel – 08051425371

E-mail – pccenugu@yahoo.com

Ekiti State

Public Complaints Commission Nigeria

Egbewa GRA Extension, Off NTA Road,

P.M.B. 5334, Ado Ekiti.

Tel – 08054572524/08068901100

E-mail – pccekiti@yahoo.com

Gombe State

Public Complaints Commission Nigeria

B.C.G Area, Gombe-Biu Road,
PMB 80, Gombe.

Tel – 08035905598

E-mail – pccgombe@yahoo.com

Imo State

Public Complaints Commission Nigeria

Orlu Road, Secretariat Complex,
P.M.B. 1333, Owerri.

Tel – 08034745295

E-mail – imopcc@yahoo.com

Jigawa State

Public Complaints Commission Nigeria

Federal Secretariat Complex,
Ground Floor, PMB 7028, Dutse.

Tel – 08068384329

E-mail – pubcompcomdut@yahoo.com

Kaduna State

Public Complaints Commission Nigeria

No. 9 Yakubu Gowon Way, P.M.B. 2015, Kaduna.

Tel – 08120472109

E-mail – pcckad@yahoo.com

Kano State

Public Complaints Commission Nigeria

Federal Secretariat Complex,
Katsina Road, P.M.B. 2161, Kano.

Tel – 08054072002/08034062444

E-mail – pcckano@yahoo.com

Katsina State

Public Complaints Commission Nigeria

No. 14, Kabir Usman Road/Goriba Road,

P.M.B. 2113, Katsina.

Tel – 08065532326

E-mail – pcckatsina2010@gmail.com

Kebbi State

Public Complaints Commission Nigeria

Emir Usman Haruna Road, Rafin Atiku,

P.M.B 1093, Birnin Kebbi.

Tel – 08026582718

E-mail – pcckebbi@yahoo.com

Kogi State

Public Complaints Commission Nigeria

Opposite Deputy Governor's Office,

Beside Township Stadium, P.M.B. 1104, Lokoja.

Tel – 08056211719/08088995044

E-mail – publiccomplaintscommissionlokoja@yahoo.com

Kwara State

Public Complaints Commission Nigeria

Ahmadu Bello Way, GRA, P.M.B, 1499 Ilorin.

Tel – 08056566086

E-mail – pccilorin@yahoo.com

Lagos State

Public Complaints Commission Nigeria

Gate Glass House, National Assembly Complex,

Tafawa Balewa Square. P.M.B. 003,

New Federal Secretariat, Ikoyi.
Tel – 08034019581/08067308214
E-mail – Pcclagos2@yaoo.com

Nasarawa State
P.M.B. 81, Lafia.
Tel – 08028504725
E-mail – pcclafia@yahoo.com

Niger State
Public Complaints Commission Nigeria
Federal Secretariat Complex,
Augustus Aihomu Road, 2nd Floor, Right Wing,
P.M.B. 98, Minna.
Tel – 08034435676
E-mail – pccminnaniger@yahoo.com

3. National Human Rights Commission

North East
Zonal Headquarters
No.4, Bama Road,
Opp. University Teaching Hospital,
Maiduguri.
Telephone: 076-230360
Hot Line: 08076974382

North-West
Zonal Headquarters
Plot 313, New Hospital Road,
Opp. Aminu Kano Teaching Hospital,
Gyedi-Gyedi,
Kano.
Telephone: 064-668729

Hot Line: 08075383187

North-Central

Zonal Headquarters,
Plot 12677, Laminga,
Lierty Dam Road, Rikkos Village
Opp. National Civic Registration Center,
Jos - Plateau State.

Telephone: 08033296152

Hot Line: 08072449323

South-East

Zonal Headquarters
No 3, Ezeagu Street,
New Haven, Enugu.

Telephone: 042-256211

Hot Line: 08072763456

South-West

Zonal Headquarters 3rd Floor,
Old National Assembly Building,
Glass House,
Tafawa Balewa Square,
Lagos.

Telephone: 01-8506708

Hot Line: 08054707559

South-South

Zonal Headquarters
Plot H, Block 157, N0 203, Bonny Street,
Port Harcourt,
Rivers State.

Telephone: 084-240123

Hot Line: 08056513203

B. Regulatory Agencies

1. Consumer Protection Council (CPC)

Headquarters

Plot 1105, Dar-es-Salaam Street

Off Aminu Kano Crescent

Wuse II, Abuja.

Website: www.cpc.gov.ng

Email: cpcnigeria@yahoo.co.uk

Call Centre: 07002255272

Hotlines: 08056002020, 08056003030

Regional Offices

Lagos Office

No. 18 Ilupeju By-Pass,

Ilupeju, Lagos

Email: cpc.lagos@yahoo.co.uk

CPC North-East Zonal Office

Makama New Extension,

Federal Low Cost,

adjacent to Federal Inland Revenue Service,

Bauchi, Bauchi State

Email: cpcnortheast@yahoo.com

CPC North-West Zonal Office

Justice MammanNasir House,

Nogogo Road Katsina,

Katsina State

Email: nwestzone@yahoo.com

CPC South-East Zonal Office

Opposite Government House,
Onitsha Road,
Anambra State

Email: cpcsoutheast@yahoo.com

CPC South-South Zonal office

Plot F/9 Abacha Road,
GRA Phase 3,
Port Harcourt,
Rivers State

Email: cpcsouthsouth@yahoo.com

CPC South-West Zonal office

Finance Complex
State secretariat Oshogbo,
Osun state

Email: cpcsw@yahoo.com

CPC North-Central Zonal office

Opp W.T.C Minna,
Niger State.

Email: cpcnorthcentral@gmail.com

2. Nigerian Communications Commission (NCC)

Head Office

Nigerian Communication Commission
Plot 423, Aguiyi Ironsi Street
Maitama,
Abuja, Federal Capital Territory.

Tel: 234-9-4617000

Fax: 234-9-4617514

Email: ncc@ncc.gov.ng

Zonal Offices

Enugu Office

Nigerian Communication Commission

No 2, Ugwuoba Street,

Off Ezilo Avenue,

Independent Layout, Enugu,

Enugu State.

Tel: 234-42-250435, 257776, 251538, 257629

Fax: 234-42-250435

Ibadan Office

Nigerian Communication Commission

No 19, Oshuntokun Avenue

Old Bodija, Ibadan, Oyo State.

Tel: 234-2-8104303

Fax: 234-2-8103997

Kano Office

Nigerian Communication Commission

No. 1, Sokoto Road,

By AuduBako Secretariat,

Nasarawa GRA,

P.M.B 3212, Kano State.

Tel: 234-64-947822, 319999

Fax: 234-64-328855

Lagos Office

Nigerian Communication Commission

9A Bankole Oki Street,

Behind Ikoyi Club, Ikoyi, Lagos.

Tel: 234-1-72093224, 2690603, 2690712

Fax: 234-1-2690750

Port Harcourt Office

No. 23A, Igbodo Street,
Behind First Bank Aba Road,
Old GRA, Port Harcourt,
Rivers State.

Tel: 234-84-233055, 573006

Fax: 234-84-239942

3. Standards Organisation of Nigeria (SON)

Abuja State Office,

Standards Organisation of Nigeria,
No. 8, Darioa Street,
Wuse, Zone I, Abuja.

Abuja Office,

Standards Organisation of Nigeria,
14A Missouri street,
Off Colorade close, Near Minister Hill,
Maitama, Abuja FCT

Abia State Office,

Standards Organisation of Nigeria,
(Bank of Industry Building),
1, Asa Road/Constitution Crescent,
Aba, Abia State.

Yola State Office,

Standards Organisation of Nigeria,
2nd Floor, Federal Secretariat Complex,
Jimeta,

Yola, Adamawa State

Uyo State Office,

Standards Organisation of Nigeria,
3rd Floor, Federal Secretariat Complex,
(Room 323 – 325),
P.M.B. 1074, Abak Road,
Uyo, Akwa Ibom

Awka State Office,

Standards Organisation of Nigeria,
19, Umushi Street,
Off Ifite Road,
Awka, Anambra State

Bauchi State Office,

Standards Organisation of Nigeria,
No. 5, Sa'aduZungur Road,
Opposite Polycon Guest Inn, G.R.A.,
Bauchi, Bauchi State.

Benue State Office,

Standards Organisation of Nigeria,
No.37, J.S. Tarka Road,
(Old Barracks Road),
P.M.B. 102068,
Makurdi, Benue State

Maiduguri State Office,

Standards Organisation of Nigeria,
38, Baga Road,
Maiduguri, Borno State.

Calabar State Office,

Standards Organisation of Nigeria,
No.10, Bishop Moynagh Avenue,
State Housing Estate,
Calabar, Cross River Stat

Benin State Office,

Standards Organisation of Nigeria,
Block D1, 2nd Floor, Federal Secretariat Complex,
Benin – Auchu Road,
Aduwawa, Edo State.

Enugu State Office,

Standards Organisation of Nigeria,
Emene,Enugu,
Enugu State.

Gombe State Office,

Standards Organisation of Nigeria,
Old Secretariat,
Dukku Road, Gombe.

Owerri State office,

Standards Organisation of Nigeria,
Old State Secretariat,
Okigwe Road,
Owerri, Imo State.

Kaduna State Office,

Standards Organisation of Nigeria,
44, Kachia Road, Kudenda,
Kaduna, Kaduna State

Kano State Office,

Standards Organisation of Nigeria,
5th Floor, Federal Secretariat Complex,
Katsina Road,
Kano, Kano State

Katsina State Office,

Standards Organisation of Nigeria,
Katsina State Investments,
House 61, IBB Way, Katsina.

Kebbi State Office,

Standards Organisation of Nigeria,
2nd Floor, State Secretariat Complex,
Birnin Kebbi, Kebbi State

Lokoja State Office,

Standards Organisation of Nigeria,
Lokongoma Phase I,
Along Lokoja – Okene Road,
Lokoja, Kogi State

Kwara State Office,

Standards Organisation of Nigeria,
5, AhmanPategi,
Opposite Kingstone Hotel, G.R.A.,
Ilorin, Kwara State.

Lagos State Office 1,

Standards Organisation of Nigeria,
11, Kofo Abayomi Street,
Victoria Island, Lagos.

Lagos State Office 11,

Standards Organisation of Nigeria,
Plot 13/14, Northern Business strict,
Victoria Arobieke Street,
Off Admiralty Way,
Lekki, Lagos.

Minna State Office,

Standards Organisation of Nigeria,
Bosso Road,
Opposite Day Secondary School,
P.M.B. 166,
Minna, Niger State

Ogun State Office,

Standards Organisation of Nigeria,
No. 191, Iganmode Road,
Opposite Ansar-ur-deen Comprehensive College,
(Premises of Gateway Industrial Technical Company Limited),
Otta, Ogun State.

Ondo State Office,

Standards Organisation of Nigeria,
Quarter 65, Alagbaka,
Opposite Central Bank,
Akure, Ondo State.

Osun State Office,

Standards Organisation of Nigeria,
2, Ladipo Street, Off Gbongan Road,
P.M.B. 4411,
Osogbo, Osun State.

Ibadan State Office,

Standards Organisation of Nigeria,
21, Osuntokun Avenue, Old Bodija,
P.M.B. 5615,
Ibadan, Oyo State

Jos State Office,

Standards Organisation of Nigeria,
10, Rayfield Road, Bukuru,
P.M.B. 02102,
Jos, Plateau State

Port Harcourt State Office,

Standards Organisation of Nigeria,
8, Aba Road,
Port Harcourt, Rivers State.

4. National Agency for Food and Drug Administration and Control (NAFDAC)

Corporate Headquarters Abuja

Plot 2032 Olusegun Obasanjo Way, Wuse Zone, 7, Abuja.
Tel: 09-6718008
Email: nafdac@nafdac.gov.ng
Website: www.nafdac.gov.ng

Lagos Head-Office

3/5 Oshodi Expressway, Oshodi Lagos
Tel: 01-4524259
Email: nafdac@nafdac.gov.ng

Abuja North Central Zone NAFDAC Headquarters,

Plot 2032, Olusegun Obasanjo Way,
Wuse Zone 7, Abuja.

Kaduna North West Zone

Federal Secretariat, Zaria Road,
P.M.B 2059, Kaduna

28. National Insurance Commission (NAICOM)

Headquarters

Plot 1239,
Ladoke Akintola Boulevard,
Garki II,
PMB 457 Garki,
Abuja, Nigeria.
Tel: 092915101
Website: [www. naicom.gov.ng](http://www.naicom.gov.ng)

Lagos Control Office
Alagbon, Ikoyi Road,
PMB 80144,
Victoria Island,
Lagos, Nigeria
Tel: +234-1-7406590, 9515654,
73477644, 2133189

Enugu Zonal Office
C1 Presidential Road,
P.O. BOX 2304, Enugu,
Enugu State.
Tel: +234-042-7406590 9515654

Kano Zonal Office
3rd Floor
No. 37, Murtala Muhammad Way,

Opposite Daula Hotel Kano,
Kano State.
Tel: +234-064-667283

6. Central Bank of Nigeria (CBN)

Central Bank of Nigeria,
Plot 33, Abubakar Tafawa Balewa Way
Central Business District,
Cadastral Zone,
Abuja, Federal Capital Territory,
Nigeria
<http://www.cbn.gov.ng>
E-mail: info@cenbank.org

Abuja, ABU - Branch

Zaria Street, Garki II,
P.M.B. 0187, Garki, Abuja
Tel: +(234) 09 2342132-4, 234332-6
Fax: +(234) 09 23435363

7. National Health Insurance Scheme (NHIS)

Headquarters

Plot 297, P.O.W.
Mafemi Crescent,
Off Solomon Lar Way,
Utako District,
Abuja, Nigeria
Website: www.nhis.gov.ng

Benin Zonal Office

No. 1H, omo-Osagie,
Off Gabriel Igbinedion Way,
Opposite Benin Golf Course, GRA
Benin City

Enugu Zonal Office

23, Umuoji Street,
Independence Layout, Enugu

Ibadan Zonal Office

15B, Paul Hendrickse Road (Tolulope Walls),
New Bodija Estate, Ibadan

Ilorin Zonal Office

State Ministry of Health Premises,
Fate, Ilorin

Kaduna Zonal Office

No. 2, Waziri Drive,
Off Alkali Road,
Kaduna,

Lagos Zonal Office

Lagos
443 Herbert Macaulay Way,
Yaba, Lagos,

Maiduguri Zonal Office

13 Damboa Road,
Opposite State School of Nursing
Maiduguri, Borno

8. Economic and Financial Crimes Commission (EFCC)

Head Office

No. 5, Fomella Street,
Off Adetokunbo Ademola Crescent,
Wuse II, Abuja, Nigeria.
E-mail: info @ efccnigeria.org
Website: www. efccnigeria.org

Zonal Offices

Lagos Office

No. 15A, Awolowo Road,
Ikoyi, Lagos,
Nigeria.

Port Harcourt Office

6A Olumeni Street
Old GRA,
Port Harcourt,
Rivers State Nigeria.

Enugu Office

Plot 106 Federal Government Collage Road
Independence Layout,
Enugu,
Nigeria

Kano Office

No 2 Hajj Camp Road,
Kano State,
Nigeria

Gombe Office

No. 4 EFCC Street,
New G.R.A, Gombe,
Gombe State,
Nigeria

Professional Bodies

1. Pharmacists Council of Nigeria (PCN)

Head Office

Plots 7/9, Idu Industrial Area,
P. M. B. 415, Garki, Abuja.

Email: info@pcnng.org; admin@pcnng.org; pcnig@yahoo.ca

Lagos Zonal office

Medical Compound, Off Edmund Crescent,
P. M. B. 2007, Yaba,
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08033157804

lazo@pcnng.org; lao@pcnng.org

South East Zonal office

8, Temple Avenue, Enugu,
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08035990340
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South South Zonal office

Along Ring Road II,
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Uyo, Akwa Ibom State
08033053467
sszo@pcnng.org

South West Zonal office

Plot 1, Kolapo Ishola G.R.A.

Ibadan, Oyo State

08033053469

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North East Zonal office

Along Murtala Mohammed Way,

Bauchi

08036097969

nezo@pcnng.org

North Central Zonal office

Umar Farouk Bahago Road

near School of Health Technology,

Minna

08033070173

nczo@pcnng.org

North West Zonal office

Olusegun Obasanjo House,

Yakubu Gowon Way,

Kaduna, Kaduna State

08035970158

nwzo@pcnng.org

Abuja Zonal Office

Olusegun Obasanjo House,

Yakubu Gowon Way,

Kaduna, Kaduna State

08035905222

abzo@pcnng.org

2. Medical and Dental Council of Nigeria (MDCN)

National Headquarters:

Plot 1102, Cadastral Zone B11,
Off Oladipo Diya Road, Behind Prince and Princess
Estate, Kaura District,
Abuja. Tel: 09-2902900
Email: medicalcouncil@yahoo.com.
Web portal address: www.mdcnportal.com
Website address: www.mdcnigeria.org

Lagos Zonal Office:

No 25, Ahmed Onibudo Street,
Victoria Island, PMB. 12611, Lagos;
Telephone: 01-8979432

Kaduna Zonal Office:

6, North Road, Via Abakpa NEPA Substation,
Red Cross Compound, Kaduna;
PMB.2275, Kaduna
Tel: 08035501266,062290479

Enugu Zonal Office:

2, Ogufere Street, Off Okpara Avenue,
G.R.A., Enugu;
Tel: 042-290079

Appendix C

Instruments For Focus Group Discussions And In-Depth Interviews

A. FOCUS GROUP DISCUSSION GUIDE FOR CONSUMER GROUP

- (i) **Salutation/Welcome** (by the FGD moderator and the note taker).
- (ii) **The moderator ensures that** participants sit in a circular form (already arranged)
- (iii) **Self-Introductions** by participants: (to be facilitated by the Moderator)
- (iv) **Purpose of the discussion:** (to be explained by the moderator)

(vi). **Consent for participation and use of tape recorder:** The moderator verbally asks the participants to re-affirm their consent to participate in the FGD. He also explains to them that for purposes of accurate documentation, the discussion will be on tape and shall also be documented on paper

(vii) **Ground rules/ climate setting:** The facilitators share the ground rules with participants and ensure that they are relaxed and ready to participate without fear.

Start Time:

Stop time:

Date:

Venue:

Discussion centred on the following issues is then initiated:

1. Are you aware of your rights and responsibilities as consumers?
2. Have you ever bought any fake or substandard product or service?
3. If you have had any such experience, what did you do? What was the outcome?
4. Are consumers protected in Nigeria?
5. Do you know any laws protecting the rights of consumers in Nigeria?

6. Do you know any agency, organisation or any other body working for the protection of consumers in Nigeria? Please name the ones you know
7. How would Nigerian consumers ensure that their rights are protected?
8. How adequate are the existing laws in consumer protection in Nigeria?
9. What should consumers do to protect their interests and ensure that they are not shortchanged by suppliers of products and services?
10. It is generally believed that many Nigerians do not seek redress in the event of violation of their rights, what are the reasons?
11. What are the effects of mass importation of products on consumer protection in Nigeria?
12. What steps can be taken to avoid abuse of consumer rights?
13. What should service/product providers and agencies do to ensure effective and speedy consumer redress?
14. What steps should the consumer take when he/she realises that he/she has been short changed?
15. What are the challenges facing consumers in the enforcement of their rights?
16. How can consumers in Nigeria be effectively protected?

B. IN-DEPTH INTERVIEW GUIDE FOR REGULATORS (CPC and NCC)

1. What are the major functions and activities of your agency?
2. Does your agency handle consumer complaints?
3. What strategies does your agency adopt in handling consumer complaints?
4. What are the locations of your consumer complaints units (if any)?
5. How accessible are your consumer complaints units?
6. How long does it take for a consumer complaint to be resolved by your agency?
7. What should agencies do to ensure effective and speedy consumer redress?
8. Can we have data on consumer complaints handled in the last five years?
9. What should be the relationship between regulatory agencies and voluntary consumer associations?
10. Do you have relationship or collaboration with any voluntary consumer organisation in Nigeria?
11. What is your relationship with other agencies performing consumer-related functions in Nigeria?

12. Is your agency familiar with consumer protection laws in Nigeria?
13. Discuss the ones applicable to your agency pointing out the shortcomings, if any.
14. What are the challenges facing your agency in the enforcement of consumer rights?
15. Do you have toll free lines for consumers to reach you in case of need?
16. What strategies has your agency put in place to ensure that consumers are protected?
17. Please share any other issues arising from your experience/past activities.

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