



# Research Report on Consumer Protection In Ghana:

A Review of Consumer Protection in the Mobile Telecommunication Sector in  
Ghana

In partnership with



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<sup>1 1</sup> This is a student consumer advocacy group in the University of Ghana, Legon. Their objective is to support existing effort of raising awareness not only among students but the general public as a whole.

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# Executive Summary

The objective of this research is to review the existing laws on Consumer Protection in Ghana today and discuss generally the thematic areas of the Draft Consumer Protection Policy to see the extent to which the Draft Policy adequately protects the Ghanaian Consumer vis a vis the existing laws.

The research revealed that the draft policy was modelled around the United Nations Guidelines for Consumer Protection so the provisions are far reaching and very ambitious. It is recommended that if these provisions in the draft are adequately implemented then the consumers will be adequately protected. The research also identified some portions of the existing laws in Ghana that needs to be repealed if the consumer is to be adequately protected

It is also aimed at discussing a particular sector, the Telecommunication, to help develop a get an understanding and later a practical advocacy plan for consumers within the sector in Ghana.

The research found out mobile telephony has gained an increasing penetration and pace in Ghana's socio-economic development. The improvements in content and value added services through value added technologies have been very instrumental in the growth of subscription and use of mobile phones in Ghana.

The research identified that service providers are imposed with some obligations. These obligations are important not only to ensure adequate revenue mobilization to the state but to fair competition, commensurate prices of products and services of service providers and also guarantee the safety, right of privacy and protection. The research established that the obligations of service providers to the State partly influence the business relationship between service providers and their subscribers. Some important examples of the influence by the obligations of service providers to the State, through the relationship expressed above, can be identified in the weight and kinds of tariffs charged on services provided to subscribers.

Using a qualitative approach, data was collected from the key players of the industry using interview technique and secondary sources. The study focused on the national laws and policies governing the operations of mobile network service providers in Ghana, obligations of service providers and the determinants of tariffs, effects of obligations and tariffs on subscribers,

violations and crime in the telecom sector, the effects of corporate policies and internal regulations of mobile network operators on subscribers and Consumer Rights, Responsibilities, Protection and Advocacy. This chapter would state how existing various groups ensure consumer protection in telecommunication subsector and the perception of subscribers and the State on the performance of these services of network providers i.e. abuse on subscribers.

Even though there was no comprehensive report on violations and crime in the sector affecting consumers, the study identified some of the types of fraud in the telecommunication industry which ranges from those that are reported in fixed line services and mobile line services. Some of the fraud includes subscription fraud, prepaid fraud, PBX hacking, Mobile phone cloning, SIM box fraud, stealing of mobile handset and also mentions the stealing of mobile handset or phone and changing the SIM card is a widely known practice in Ghana.

The study revealed that the NCA, until quite recently, have been lackadaisical with the responsibilities of ensuring consumer protection in line with its mandate. They have introduced public awareness campaign through the publication of literature, collaborating with the network operators and the Security agencies to arrest perpetrators of mobile crimes, and penalizing service providers for abuse of their service such low quality service and a few others. Many individuals have critically pursued actions to ensure their protection and have advocated for their consumer rights through forums and media to outlet to get the NCA at work and for the service providers to address the complaints. Corporate social responsibilities, security policy in fraud detection and prevention are discussed. However, the study argues consumer advocates should devote some interest into the corporate policies and internal regulations of network operators or service providers in order to ensure adequate application of principles in their internal policies, processes and engagement with external stakeholders, especially the subscribers.

## **Recommendation**

On the particular case report on the telecommunication sector, the study recommends the need for consumer forums, strengthening public awareness on salient issues in the industry, holding the NCA to task and among others.

## **Suggested Solution**

In general the study established the solution for effective implementation of consumer laws in Ghana. This will have to be a combination approach of both top – down and bottom-up approaches or the adoption of the c-governance theory by Ms. Joehida Quaye.

# Part One

## Chapter One

### 1 Background

The earliest known statement on consumer protection made apart from Lord Atkins' ruling in the celebrated case of *Donoghue vs. Stevenson* was made by John F. Kennedy in 1962 when he was the President of the United States of America. In his congressional speech which he delivered then he outlined four consumer rights; the right to safety, the right to be informed, the right to choose and the right to be heard.

In his definition of a consumer, John F. Kennedy said 'consumers by definition include us all. They are the largest economic group, affecting and effected by almost every public and private economic decision, yet they are the only important whose view are often not heard.'

In his view the basic four rights means;

1. The right to safety-to be protected against the marketing of goods which are hazardous to health or life;
2. The rights to be informed-to be protected against fraudulent, deceitful or grossly misleading information, and to be given the facts one needs to make an informed choice;
3. The right to choose-to be assured access, wherever possible, to a variety of products and services at competitive prices;
4. The right to be heard-to be assured that consumer interests will receive full consideration in the formulation of government policy, and fair and expeditious treatment in its administrative courts.

This speech opened a lot of doors for consumers across the world and eventually became the basis for principles on consumer protection. In 1981 the draft guidelines for consumer protection were submitted to ECOSOC in response of request stated above. Following extensive and detailed discussions and negotiations, the United Nations Guidelines on Consumer Protection were adopted by a consensus resolution of the United Nations General Assembly on the 9<sup>th</sup> day of April, 1985. It was amended on the 26<sup>th</sup> day of July, 1999 by the addition of the section on 'Sustainable Consumption'.

The United Nations Guidelines on Consumer Protection now has the following as its thematic areas:

- A. Physical safety of goods.
- B. Promotion and protection of consumers' economic interest.
- C. Standards for the safety and quality of consumer goods and services.
- D. Measures enabling consumers to obtain redress, education and information programmes.
- E. Measures relating to specific areas like;
  - i. Food
  - ii. Water
  - iii. Pharmaceutical
- F. Promotion of sustainable consumption(as amended)

It is important to note that the influential non-governmental global organisation on consumer protection, CONSUMER INTERNATIONAL (C.I), was involved in the preparatory work for the original guidelines as well as the subsequent amended clause on sustainable consumption. The C. I. continues to champion consumer rights across the world. It is in this direction that they requested the CONSUMER ADVOCACY CENTRE in Ghana to submit this report on the state of consumer protection in Ghana for further action in Ghana.

### **1.1 Country Profile - Ghana**

According to focus Africa, Ghana is situated at the Western part of Africa with a total area of 238,533 sq km. The land boundaries stretches to nearly 2,094 km and the costal lines stretch to nearly 539 km. Ghana is surrounded by Togo to the east, Burkina Faso to the north, Ivory Coast to the west and the Gulf of Guide to the South..

The country is divided into ten regions namely Ashanti, Brong-Ahafo, Central, Eastern, Greater Accra, Northern, Upper East, Upper West, Volta and Western. Ghanaians have democratically and consecutively elected a President and members of Parliament since 1992.

Ghana is well endowed with natural resources, has twice the per capita output of the poorer countries in West Africa. The major sources of foreign exchange are gold, cocoa production timber and oil and gas. The domestic of economy of Ghana continues to revolve around subsistence agriculture that accounts for 36% of GDP and employs 60% of the work force.

The industries contribute to 23% of the GDP of Ghana. This sector is mainly composed of the mining & quarrying, manufacturing, electricity and water & construction sub-sectors. The Service sector is the fastest growing sector and contributes to about 24.3%. This is the most diversified sector made up of wholesale - retail trade, restaurants & hotels, infrastructure services, financial services, community, social & personal services as well as private non-profit services.

The Ghana Investment Promotion Centre records have shown that since 2002 the Direct Foreign Investment (DFI) inflow into Ghana increased in 2003 by 81% against 138 projects registered in 2002, involving US\$ 65.37 million. The analysis further showed that investment in the Services Sector had topped the charts with US\$ 69.23 million in 39 projects was followed by Manufacturing US\$ 21.94 million in 12 projects. The rest were General Trading with US\$ 11.66 million in 24 projects, Agricultural Sector with US\$ 8.37 million in 12 projects, Tourism with US\$ 4.01 million in 19 projects, Building & Construction with US\$ 1.94 million in 10 projects and Export Trade with US\$ 1.22 million in 6 projects.

From the above, it is obvious that a lot of economic activities go on in Ghana and the consumer is usually stranded in the middle of the forces of demand and supply.

## **1.2 The Need For Consumer Protection In Ghana**

According to the Ministry of Trade and Industry of Ghana, since the end of the Uruguay Round of Multilateral Trade Negotiations in 1994 and the establishment of the World Trade Organisation (WTO) in January, 1995, there has been an upsurge in world trade in merchandise

and service among member states arising from the trade liberalisation negotiated during the Uruguay Round of Multilateral Trade Negotiations.

The trade liberalization, globalisation, e-commerce, relentless advertisement among others had led to the Ghanaian market being opened to greater competition and subsequent influx of goods and services, and with it trade malpractice. These have exposed consumers to health and safety needs, among others hence the need to protect the Ghanaian consumer.

Also, Ghana is a member of the United Nations, which adopted the United Nations Guidelines for consumer protection (UNGCP). The document was drafted by ECOSOC and was adopted by the General Assembly in 1985 by Resolution A/C.2/54/L.23 This document remained the most important document on consumer protection and it is important that any country which has its citizens at heart should take it serious and implement it.

Consequently, the development of a consumer protection policy was made an integral component of the Ghana Trade Policy. It is important to note that the current draft policy was modelled around the UNGCP. The goal of the consumer protection policy is to set a framework for establishing a legal, institutional, and social infrastructure that enhances the welfare, health, safety and economic interest of consumers and also empowers them to assert their rights in the marketplace.

### **1.3 Urrtent Regime Of Consumer Protection In Ghana**

The current consumer protection regime consists of legislative and regulatory provisions scattered in several pieces of legislation. A brief examination of the regime taking into account the policy, legal and institutional framework leads to the general conclusion that it is inadequate. This inadequacy is attributable to several factors, the most significant of which is the absence of a comprehensive policy and law on consumer protection.

Other general features of the current regime are the absence of an effective institutional arrangement aimed specifically at promoting the interest and welfare of consumers, and the general lack of awareness on the part of consumers and other market participants on the rights of consumers; not even of the limited protection under existing legislations such as the Sale of Goods Act of 1962, Food and Drugs Board Law of 1992, General Libelling Rules of 1992,

Public Utility Regulatory Commission Act of 1997, National Communications Authority Act of 1996 and the Standards Decree of 1973 among others.

Consequently, a person must resort to several existing laws and regulations to establish the framework for protecting the interest and welfare of consumers in Ghana.

According to the draft policy, the current legal and institutional arrangement for protecting consumers exhibit four distinctive shortcomings, namely:

- a. Gaps in the legislative and regulatory framework
- b. Lack of adequate and effective legal regime and ineffective existing laws
- c. Lack of effective and relevant institutions specially tailored to protect consumers.
- d. Lack of easy and cost effective redress mechanisms

Moreover, in the current environment, there is the general perception among consumers that justice is out of reach for them when they have grievances. These grievances, in view of the deficiencies and fragmented nature of the current consumer protection regime, makes it necessary an urgent need to design and establish a more effective, cohesive, and effective consumer protection regime. It is in this direction that the Ministry of trade and industry drafted the comprehensive policy to create a well coordinated protection for the consumer.

#### **1.4 Objectives Of The Research**

- 2. To identify if the legislative and regulatory framework gap discovered in the previous research as well as in this particular research has been filled by the draft policy.



3. To specifically study the telecommunication sector of Ghana which attracts a large number of both urban and rural consumers and see to what extent the existing government policies affect them thereby affecting the end-user i.e the consumer.
4. To compile the list of probono organisations, private and public legal aid services interested in protecting the consumers in Ghana.
5. To present a case study of the situation in a specific sector in so far as consumer protection, the legal institutional framework, violations and crime are concerned in the country. However, the case study in the course of intended analysis for Part Two sought the following objectives;
  - a. Identified the national laws and policies governing the operations of mobile network service providers in Ghana.
  - b. The effect of these policies and laws on their operations; particularly, their obligations to the State and the consumers.
  - c. Identified and analyse the kinds of corporate policies and internal regulations of network service providers and their effects on subscribers.
  - d. Identified the kinds of violations and crimes in their services and how they affect subscribers.
  - e. Identified the various consumer advocacy groups and how they protect consumers.

## **1.5 Research Methodology**

The methodology adopted for this research was purely a qualitative approach and is generally and specifically categorised. Specifically in this sense refers to consumer protection in the case of the telecommunication sector as captured in the part two of the report.

Generally, part of this research looked at the existing laws and how effective they are as far as the consumer is concerned. The research was done partly on the field and partly by the desk. Primary field data was collected using questionnaires to tease out information from consumers to see how protected they feel and their willingness to seek redress. We also conducted a focus group discussion amongst students of the University of Ghana Consumer Advocacy Group. However, the greater part of the part one research was a desk research which largely depended on secondary data.

The team designed questionnaires generally on human and consumer rights as well as the services of the providers. The research as earlier stated was identified and then identified the population from which we to make our samples to satisfy the consumer groups that were interested in the research. It was decided to include in the population size both gender above 18 years. The sampled size reflected both the poor and the rich and those whose economic status was uncertain because we met them on the street of Accra. The research location within Accra and as a cosmopolitan capital it reflected the various shade of the Ghanaian population.

The data collection was limited within Accra due to lack logistics, resources, personal, finance and time. However, to collect our sample from the population above-mentioned, the team was sure of getting a wide range of ideas on the subject-matter. Information was collected most of our replies directed through direct interviews using the questionnaires, telephone conversations, social media etc. The focus group discussions were very useful due to lack of time and the mental alertness of the group. There were 10 people in each group and there was a total made up of two (2) groups at different locations and at different times.

An observation was made on those questionnaires that we put in an envelope and address to potential respondents among the working class could not be returned even after persistent demand. Our best respondents were those we found from door-to-door, on the street, social media and members of the focus group discussions.

The existing laws which were generally identified are as follows

**a. Laws Regulating Banking and Financial Services**

- Banking Act, 2004 (Act 673)
- Long Term Saving Scheme Act, 2004 (Act 678)
- Financial Institutions (Non- Banking) Law, 1993 (Pndc L328)

- Insurance Law, 1989 (Pndc L227)
- Securities Industry Law, 1993 (Pndc L333)
- Venture Capital Trust Fund Act, 2004 (Act 680)
- Electronic Banking Act
- Non- Banking Financial Institutions Law, 1993 (Pndc L328)
- The Banking Act, 2004 (Act 673) Replaced Bank Of Ghana Act, 2002 (Act 612)

#### **b. Laws Regulating Contracts and Goods**

- Contract Act, (Act 25)
- Sale Of Goods Act, 1963(Act 137)
- Hire Purchase Act, 1972(Nrcd 292)
- Standards Authority Act, 1973 (Nrcd 175)
- Foods And Drugs Law, 1992(Pndcl 305b)
- Weights And Measures Act, 1975(Nrcd 326)
- General Labeling Rule, 1992 (Li 1541)
- Protection Against Unfair Competition Act, 2000 (Act 589)
- Export And Import Act, 1995 (Act 503)
- Export And Import (Amendment)Act, 2000 (Act 585)

#### **c. Laws Regulating Transactions in Immovable Property**

- Mortgages Decree, 1972 (NRDC 96)
- Conveyancing Decree, 1973 (NRCD 175)
- Home Mortgage Finance Law, 1993 (PNDC L329)
- Rent Control Law, 1986 (PNDC 138)
- Rent Control Law, 1986(Amendment)Act (PNDC 138)

#### **d. Laws Regulating Public Utilities (Electricity, Water and Tele-Communication Services)**

- Public Utilities Regulatory Commission Act, 1997 (Act 538)
- Water Resources Commission Act, 1996 (Act 522)
- Energy Commission Act, 1997 (Act 541)
- National Communications Authority Act, 2008 (Act 769)
- National Information Technology Act,2008(Act 771)

- Electronic Communications (Amendment) Act, 2009 (Act 786)
- Electronic Transmissions, Act, 2008 (Act 772)
- Electronic Communication Act, 2008(Act 775)
- Electronic Communications Regulations, 2011(L.I. 1991)

**e. Laws Regulating Health Delivery and Services**

- Traditional Medicine Practice Act, 2000 (Act 575)
- Ghana Health Services And Teaching Hospitals Act, 1996 (Act 525)
- National Health Insurance Act, 2003 (Act 650)
- Pharmacy Act, 1994 (Act 489)
- Medical And Dental Decree, 1972 (NRCD 91)
- Private Hospitals And Maternity Homes Act, 1958 (No. 9 Of 1958)

**f. Laws Regulating Hospitality Service**

- Accommodation And Catering Enterprises Regulations, 1979 (LI 1205)

**g. Laws Regulating Professional Services**

- Chattered Accountants Act, 1963 (Act 170)
- Professional Bodies Registration (Restoration) Decree, 1979 (AFRCD 27)
- Legal Profession Act, 1960 (Act 32)

In the case of the Part Two which dealt with the case study of the telecommunication subsector by using a qualitative approach, the team tapped the data, purposively, from a random selection of major stakeholders in the subsector. In order words, the major stakeholders are assumed to represent the total reflection of the experiences of operators, policy implementers and users of the services provided in the subsector. This limits it to any unexpected quantitative demand considering the size of the users of mobile telecommunication in the country. Therefore, the limitation to the size of the population for this research is as a result of the consideration of time and resources. It therefore not only relied on primary information through the approach stated above but also secondary information from online sources, published works and legal documents.

The sampled elements in the population under study specifically included the Ministry of Communications – for laws governing mobile service providers in Ghana and the relationship between the Ministry and the service providers; the National Communications Authority (NCA) – for laws governing mobile service providers in Ghana and the relationship between them and the service providers; and the mobile network service providers –MTN, AIRTEL, TIGO, EXPRESSO, VODAFONE, GLO, AIRTEL, SMSGH and RANCARD SOLUTIONS- for their experiences with the laws and violations against their operations. The sample also includes all advocacy organisations who have practically taken some actions on the various concerns in the subsector.

It adopted the interview technique and a focus group of selected subscribers – senior management staff of network service providers, middle-line clients to services offered by network service providers, policy makers and regulators, consumer advocacy groups and student's subscribers, respectively. A limitation to the data collection process was heavily felt when it came to getting information from the service providers. Some service providers like MTN were very hesitant in providing the information requested. Their reason included the fact that the answers for some of the questions would require that the interview guide/questionnaire go through many departments for the necessary answers. Other service providers totally refused to release information or cooperate with researchers. However, some relevant information was harnessed from their public websites.

## **1.6 Significance Of The Research**

Generally, the significance of the research is ensure, reliable and accurate information of the state of consumer protection in Ghana which would be an informed basis for actions of implementations by the relevant stakeholders. The significance of the study is also to help develop effective tools of advocacy and legal assistance for ensuring the protection of the rights of consumers irrespective of their economic activities. It is to help develop in the future a progressive and mutual business relationship between goods and service providers and consumers and add to the body of knowledge on consumer protection and advocacy in the various sectors of the Ghanaian economy. By so doing, the study will seek to know the various advocacy groups or agencies in Ghana and how they protect consumers.

# Chapter Two

## Review Of The Existing Laws And Organisations

### 2 Introduction

This section reviews the existing laws that deal with the Physical safety of goods and distribution facilities, Food, Water and Pharmaceuticals. This particular review is very important. This is because the United Nations Guidelines for Consumer Protection (UNGCP) choose Physical safety of goods and distribution facilities as one of its major thematic area. It also requested that countries should make it that in ‘advancing consumer interests, particularly in developing countries, Governments should give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals.’<sup>2</sup>

Subsequently, the current draft policy on consumer protection which was modelled around the United Nation Guidelines on Consumer Protection also made provisions for these thematic areas.

For the purposes of this analysis we would combine these thematic areas in discussing and reviewing the existing laws.

#### 2.1 Approach

Our strategy is to review the existing laws on consumer protection vis a vis the draft policy on consumer protection. This is to enable us to critically examine if the draft policy adequately protects the Ghanaian consumer.

We would then make observations and recommendations.

In our research, the following laws captured our attention as far as our first areas of discussions are concern;

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<sup>2</sup> Refer to section of the UN Guideline on Consumer Protection

1. The Sale of Goods Act, 1962 (Act 137)
2. Hire Purchase Act, 1974 (NRCD 292)
3. Standards Authority Act, 1973 (NRCD 175),
4. Foods And Drugs Law, 1992 (PNDC Law 305b)
5. Food And Drugs Act, 1996 (As Amended)
6. Weights And Measures Act, 1975 (NRCD 326)
7. Ghana Standard Authority (Food, Drugs And Other Goods)
8. General Labeling Rule, 1992 (LI 1541)
9. Pharmacy Act, 1994 (Act 489)
10. Export And Import (Amendment) Act, 2000 (Act 585)
11. Export And Import Act, 1995 (ACT 503)

## 2.2 Physical Safety Of Goods And Distribution Facilities, Food, Water And Pharmaceuticals

### 2.2.1 Introduction

This section discusses four (4) major thematic areas of the draft consumer protection policy vis a vis the existing law in Ghana as far as these thematic areas are concerned.

We have decided to combine these four thematic areas because of the relationship they have in their definitions in Ghana today. The existing legal definitions created a relationship between the above-mentioned thematic areas.

**Food** is defined in the Food and Drugs Law 1992 (PNDC LAW 305B) as amended and called Food and Drugs (Amendment) Act, 1996, as including “salt and an article manufactured, sold or represented for use as food or drink for human or animal consumption, chewing gum, **water** and an ingredient of the food, drink, chewing gum or **water**”. This means that in Ghana water is recognized as food.

From the above one can conveniently say that the Food and Drugs Act makes provisions for Goods, Food, Drugs or Pharmaceuticals and Water. We would discuss later other laws with similar provisions.

**Goods** are defined in the consumer protection draft policy as follows;

- a. ‘Anything marketed for human consumption; Any tangible object not otherwise contemplated in paragraph (a), including any medium on which anything is or may be written or encoded; Any literature, music, photograph, motion picture, game, information, data, software, code or intangible product;’
- b. ‘A legal interest in land or any other immovable property, other than an interest that falls within the definition of ‘service’ in this section; and Gas, water and electricity;’

### **2.2.2 Discussions**

With the above definition in mind, it very obvious to say that the Food and Drugs Law 1992, (PNDC LAW 305B), as amended and called Food and Drugs (Amendment) Act, 1996 is one of the significant laws in Ghana as far as consumer protection is concerned. The Act regulates standard, quality and safety of goods in Ghana.

Section 1 of the Food and Drugs Law 1992 (PNDC LAW 305B) as amended and called Food and Drugs (Amendment) Act, 1996, prohibits against the sale of unwholesome food as follows; it states that a person commits an offence if that person sells or offers for sale a food, that has in or on it a poisonous or harmful substance, that is unwholesome or unfit for human or animal consumption, that consists in whole or in part of a filthy, putrid, rotten, decomposed or diseased substance, that is adulterated, that is injurious to health, or that is not of the nature, substance or quality prescribed by standards.

It further states that in determining whether an article of food is injurious to health, regard should be had not only to the probable effect of that article on the health of a **person consuming** it, but also on the probable cumulative effect of articles of substantially similar composition on the health.

Section 3 of the Act, made provisions specifically on the deception of consumers and says that a person who manufactures, labels, packages, sells or advertises a food in a manner that



is false, misleading or deceptive as regards its character, nature, value, additives, substance, quality, composition, merit or safety, commits an offence.<sup>3</sup>

### **2.2.3 Observations And Comments**

If a law says an act is an offence, it connotes criminality and the offenders face prosecution and if they are found culpable they are either imprisoned or fined. The problem here is that if the offender goes to prison, the consumer only goes home to nurse his or her injury that if he or she survives the harmful act, in otherwise if the offender is fined, the money goes to the state and the consumer goes home, that is any which way there is no direct fund to protect or enhance the healing process if the product is not of a good quality, wrongly labeled or advertised among other as per section 3 of the Act.<sup>4</sup>

The only window of opportunity for the consumer under the circumstances is to institute a civil action through the court. This is where the problem even gets bigger; this is because it is trite knowledge that in Ghana legal fees are usually high.

Consequently, how many ordinary Ghanaians will have the desire and the resources to hire a lawyer to fight over low quality tin of milk? It is also true that the only ‘technical knowledge’ that the consumer has when it comes to food is his tongue, if the food did not taste the way the consumer expects it to taste or the way it looks. In other words, if the food looks good and taste good the consumer may not protest but it might be a very dangerous food. A typical example of this imported frozen chicken.

### **2.2.4 Solution From The Draft Policy**

The draft consumer protection policy prescribed that Government would establish a Consumer Protection Authority with powers of a High Court. The Authority would have regional, municipal and district fora for redress. It would also strengthen the existing institutions like the FDB, PURC, GSA among others and create sub-offices at strategic locations in the country.

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<sup>3</sup> Food and Drugs (Amendment) Act, 1996

<sup>4</sup> Ibid section 3

It is recommended that the creation of the authority should redefine the role of the existing institution to avoid duplication of work.

Government will establish district arbitration bodies and small claims courts where items with specific value to be stated in the up and coming consumer protection law could be taken to those courts for redress. All of which will be controlled by the Authority.

Government will also establish compensation mechanisms by the business community, funds could be created for compensation. This is very crucial because most of the country's existing laws created the offences, making violation a crime with direct compensation to consumers.

The following prescriptions were also made;

1. Government will support and promote private sector initiatives to improve customer care and responsiveness.
2. Government will harmonize, simplify, and strengthen compensation mechanisms of regulatory bodies.
3. Government will encourage the private sector to establish mandatory guaranty and warranty rules and schemes.
4. Government will institute measures to improve the responsiveness and quality of service delivery by the public sector to clients as part of public sector reforms.
5. Government will support service providers to formulate charters on complaints handling including Citizens' Charters that clearly articulate the rights and responsibilities of all parties.

Admitting that the law is not the only tool for the protection of the consumers but it remains the most significant mechanism for redress if the enforcement is effective.

### 2.2.5 Standards

The Food and Drugs Act, makes provision for the standards of goods in sections 4 and 5 and states;

“Where a standard is prescribed under an enactment for food, a person who manufactures, labels, packages, sells or advertises food in a manner that the food is likely to be mistaken for food of the prescribed standard commits an offence.”

Section 5 says that “a person who sells to the prejudice of a purchaser a food which is not of the nature, substance or quality of the article demanded by the purchaser commits an offence”.

Under section 2, food offered as a prize or intended for human or animal consumption which is offered as a prize or a reward in connection with an entertainment to which the public is admitted whether on payment of money or not, or a prize or a reward given away for advertisement purposes or in furtherance of a trade or business, as if the food were exposed for sale by the organizers of the entertainment or the person offering or giving away the food.

If the food is adulterated either in part or in whole, or it is damaged, the poor quality of the food has been concealed in any manner; or a substance has been substituted wholly or in part; or the substance has been added to, or mixed or packed with the food to increase its bulk or weight or reduce its quality or strength or to make it appear better or of greater value than it is; or it contains an additive not expressly permitted by the Regulations for the food concerned, or is in excess of the quantity permitted; or a constituent of the or quality of the article demanded by the purchaser commits an offence.

### 2.2.6 Comment

Under Section 7 of the Act, the law prohibits the sale of food under unsanitary conditions. It states that a person who sells, prepares, packages, conveys, stores or displays for sale a food under unsanitary condition commits an offence. Food shall be **stored** and **conveyed** in a manner that preserves its **composition, quality** and **purity** and minimizes the dissipation of its nutritive properties from climatic and any other deteriorating conditions.

After critically examining the Food and Drugs Act, section 8 of the Act, which proscribes for food unfit for human consumption, it is obvious that the penalty section, which is section 8(3) is necessary to be repealed, particularly section 8(3) (ii). This is because the law states under section 8(1) that a person who sells, or offers or exposes for sale, or has in possession for sale, or deposits with or consigns to any other person for the purpose of sale, a food intended for, but unfit for human or animal consumption commits an offence.

Where food in respect of which an offence has been committed was sold to the person charged by any other person, that other person also commits an offence.

If further states that;

(3) Where a person is charged with an offence under paragraph (b) of subsection

(1) or under subsection

(2), it is a defence for that person to prove

(a) that notice was given to the person to whom the food was sold, deposited or consigned that the food in question was not intended for human or animal consumption, or

(b) that, at the time when the food was delivered or dispatched to that person,

(i) it was fit for human or animal consumption, or

(ii) that person did not know, and could not with reasonable diligence have ascertained that the food was not fit for human or animal consumption.

### **2.2.7 Recommendation**

Firstly, it is recommended that the above-mentioned sections in the Food and Drugs law be modified or repealed. This is because consumer protection issues in Ghana today are human

rights issues and this defence is a slap in the face of the objectives and visions of the draft policy. That the dignity safety of human beings cannot be hanged on **lack of knowledge** where an offender could be successful in his defence in the court of law after feeding human beings with unwholesome food, he can escape by proving that he did not know that the food was not fit for human consumption.

Secondly, section 8(1) which created the offence called the item which is the subject matter of the offence ‘food’ intended for, but unfit for, human or animal consumption. It is not safe for Ghanaian if this defence remains on our laws.

The section 9 of the Act further states the following penalties and defences;

A person who is found guilty of an offence under section 1,2,3,4,5,6,7 or 8 is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment, not exceeding two years or to both the fine and the imprisonment and is liable, in the case of a continuing offence, to a further fine of twenty-five penalty units for each day during which the offence continues.

It further stated that in proceedings of an offence under the sections referred to in subsection (1), in respect of a food containing an extraneous matter, unless the presence of the extraneous matter has rendered the food injurious to health, it is a defence for the accused to prove that the presence of that matter was an unavoidable consequence and forms part of the process of preparation or collection of that food.

Those in proceedings for an offence consisting of the advertisement for sale of food, it is a defence for the accused to prove that the publication was received and made in the ordinary course of business of the accused as a publisher.

Once again it is our view that the defence section 9(3) is porous and needs review if not a total repeal.

### **2.2.8 Functions Of The Food And Drug Authority**

The Authority shall advise the Minister on matters relating to the administration, implementation of this Act, also advice the Minister on measures for the protection of the health of consumers, and with the co-operation of the Ghana Standard Authority ensures adequate and effective standards for food and drugs in the country. As a function the Authority must monitor through the District Assemblies and other agencies of State compliance with this Act; advise the Minister on the preparation of effective Regulations for the implementation of this Act among others.

One of the major function of this Act is the authority to enter premises through the delegated power of the President accordance with article 195 (2) of the Constitution; the so authorized may do the following;

- (a) enter any premises where the officer believes an article to which this Act applies is prepared, preserved, packed, stored or conveyed, and examine the article and take samples and examine anything that the officer believes is used or is capable of being used for the preparation, preservation, packaging, storing or conveying of the article;
- (b) open and examine a receptacle or package which the officer believes contains an article to which this Act applies;
- (c) examine the books, documents, or any other records found in a place mentioned in paragraph (a) which the officer believes contains an information relevant to the enforcement of this Act and make copies of them or take extracts from them;
- (d) seize and detain for the period that the officer considers necessary an article by means of or in relation to which it is believed a provision of this Act has been contravened.
- (e) May by a warrant break open a container or door of premises where food may be kept for storage or sale; but this power shall be exercised only after the owner or a responsible person in occupation of that premises is present and refuses to open the container or door on being asked to do so.

Under the Act, the Minister is mandated on the advice of the Authority to order the closure of any premises where food is manufactured, prepared or sold, if the Authority has reason to believe that the food is exposed to the risk of contamination and the Minister may make a further order appropriate in the circumstances.

Also, the Minister may, by legislative instrument, prohibit the importation, manufacture, exportation, advertisement or sale of a drug, cosmetic, device or chemical substance specified in the instrument.

It must also be noted that the courts have the power to order a license to be cancelled.

### **2.2.9 Pharmaceuticals**

In so far as the use of pharmaceuticals are concerned the following laws are have been recognized;

1. Pharmacy Act, 1994 (Act 489)
2. Foods and Drugs Law, 1992 (PNDC Law 305b)
3. Export and Import Act, 1995 (Act 503)
4. Export and Import (Amendment) Act, 2000 (Act 585)

It is important to start that the Food and Drugs Act among others made provision for drugs or pharmaceuticals. In section 11 of the Act, 'Prohibited sale of drugs and other chemical substances', a person commits an offence if that person sells a drug, cosmetic, device or chemical substance which has in or on it a substance that may cause injury to the health of the user when the article is used according to the directions on the label accompanying the article, or for a purpose and by a method of use that is customary or usual, consists in whole or in part of a filthy, rotten, decomposed or diseased substance or of a foreign matter likely to cause injury, is adulterated, or is prepared, preserved, packed or stored under insanitary conditions.

### **2.2.9.(1) Standards For Drugs**

Some level of adequate protection is given within the Law for the user of a drug in the country with respect to labelling. The Food and Drugs Act proscribes in section 8 that where a standard is prescribed for a drug, cosmetic, device or chemical substance, a person who labels, packages, sells or advertises any other substance in a manner that is likely to be mistaken for that drug, cosmetic, device or chemical substance commits an offence unless the substance is the drug, cosmetic, device or chemical substance in question and complies with the prescribed standard.

Moreover, where a standard has not been prescribed for a drug or chemical substance but a standard for the drug or chemical substance is contained in any of the publications specified in the First Schedule of the Act, a person who labels, packages, sells or advertises any other substance or article in a manner that it is likely to be mistaken for such drug or chemical substance commits an offence.

Another level of protection is guaranteed against the deception over standards to the user or purchaser. For instance, a person who labels, packages, sells or advertises a drug or chemical substance for which a standard is not prescribed, or for which a standard is not contained in a publications specified in the First Schedule, commits an offence unless the drug or chemical substance is in accordance with the professed standard under which it is labeled, sold or advertised, and does not resemble, in a manner likely to deceive, a drug or chemical substance for which a standard has been prescribed or which is contained( in a publication specified in the First Schedule.

Prohibition on disposal of chemical substance is provided for under section 13 where a person commits an offence if that person uses or disposes of a chemical substance in a manner likely to cause contamination of food or water for human or animal consumption, injury to, or be dangerous to the health of a person or an animal.

Under section 14, the Act provides for Deception of consumers. A person commits an offence if that person labels, packages, sells or advertises a drug, cosmetic, device or chemical substance in contravention of a provision of the Regulations, or in a manner that is false, misleading or deceptive as regards its character, constitution, value, potency, quality, composition, merits or safety.



Section 15 has prohibited advertisement a person shall not advertise a drug, cosmetic, device or chemical substance to the general public as a treatment, preventive or cure for a diseases, disorders or abnormal physical states specified in the Second Schedule.

Section 16 is significant as it controls the manufacture of drugs, a person shall not manufacture for sale a drug or chemical substance unless, the process of manufacture is carried on or is supervised by a pharmacist or a person approved by the Authority as having specialist knowledge in the article to be manufactured, and the conditions under which the manufacture is to be carried on are in the opinion of the Authority suitable to ensure that the article will be safe for use. Applications for approval under subsection (1) shall be made to the Authority and may be granted by the Authority subject to the conditions determined by the Authority. Approval under this section shall be granted in consultation with the Minister responsible for Industries.

In general terms, sections 18, 19, 20, 21, 22, 23 and 24 are further ensure safety of drugs or pharmaceuticals in Ghana It is not allowed in Ghana to under the Act to manufacture, prepare, sell, supply, export or import a drug, cosmetic, device or chemical substance unless the article has been registered with the Authority. Where a person imports a drug, cosmetic, device or chemical substance as a finished product, it must be registered and the said drug shall be accompanied by a quality assurance certificate issued by the competent drug control authority of the exporting country. Where the above-mentioned items are manufactured in the country, it shall be accompanied by a certificate of quality issued in respect of it by the Ghana Standards Authority. The Authority however, has the power suspend or may cancel a licence issued under the Act, if it discovered that the information submitted in respect of the registration changes or is found to have been inaccurate.

Finally, the Food and Drugs Act proscribes that a person shall not in the course of business carried on by that person manufacture, sell, supply or distribute any drug or chemical substance for the purpose of clinical trial test of drugs on animals unless a clinical trial certificate or animal trial certificate has been issued for it by the Authority. That a person who carries out a clinical trial test of a new drug on humans or animals in the absence of documentary evidence that human or animals pharmacodynamic and pharmacokinetic studies on health volunteers have been properly carried out, commits an offence.

In section 24, the Act request that herbal and homeopathic drugs should be registered. It states that a person shall not manufacture, prepare, supply, sell, distribute, export or import any herbal medicine or homeopathic drug unless the herbal medicine or homeopathic drug has been registered with the Authority.

### **2.3 The Sale Of Goods Act, 1962 (Act 137)**

The Sale of Goods Act, Act 137 of 1962 is one of the best laws in Ghana as far as Physical Safety of Goods is concern. This is because when we talk of Physical safety of goods and distribution facilities we are concern about is that goods supplied to the consumers in Ghana should be of good quality, standard safe for the consumption of the c consumer. It also connotes that products are safe for either their intended or normally foreseeable use.

Section 1 of the Sale of Goods Act states that a contract of sale of goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price, consisting wholly or partly of money. That where, by virtue of one or more contracts, a person has agreed for value to bail goods to a bailee on such terms that the property in the goods will or may at the option of the bailee pass to the bailee then that person is deemed to have agreed to transfer the property in the goods to the bailee, and the bailor shall be deemed to be the seller and the bailee shall be deemed to be the buyer.

#### **2.3.1 Comment And Observation**

At this point one may ask why should an ordinary consumer should be concerned about the intricacies of a contract? This is because in our everyday life we enter all kinds of contract without even knowing that our acts are contractual and for effective protection of the consumer education and information will enhance the implication of their rights and thereby empower the consumer. An informed consumer is an empowered one.

A contract can be in writing, it can be by oral agreement or by conduct. Section 3 of the Act emphasis that contract of sale of goods may be made in writing or by word of mouth or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

Whenever a consumer walks into a shop to buy a good, the display of the goods alone is not contractual it is just an invitation to treat, but as soon as the consumer picks up the good and ask for the price with the intention to buy it, the consumer is technically making a contractual ‘offer’. If the shop owner mentioned the price of the goods and ‘accepts’ the money there is a complete contract between the buy and the seller. This is because by this innocent act all the essential of a valid contract is satisfied ie;

1. OFFER
2. ACCEPTANCE
3. INTENTION TO CREATE LEGAL RELATIONSHIP
4. CONSIDERATION (AMENDED BY THE CONTRACTS ACT, 1960 (ACT 25))
5. IT SHOULD NOT BE AGAINST PUBLIC POLICY

At this point if the good as supplied to the consumer is not physically safe, it is not of good quality, it is not of the rights standards the seller is in breach of the contract and can be held liable in the court of law or otherwise.

It is important to note that there are situation where the consumer need not follow the essentials of a valid contract before liability is grounded eg, if a law made a conduct a strict liability the moment the offender engages in the act, he or she is liable e.g most of the provisions in the Food and Drugs Act, Act, are strict liability.

One of the major issues which need to be addressed is the popular phrase which meets most Ghana consumers when they enter into shops to buy goods is the phrase

**‘goods sold are not returnable’**

Both the seller and the consumers need to be educated on the different forms of abuses that the consumer can suffer from and the above phrase a one. Judging from the contractual obligation on the seller or suppliers of goods the have there responsibility to ensure the physical safety goods sold. It is therefore illegal for anybody to restrict the consumer from returning goods that the consumer found to be unsafe.

Our laws are explicit on the terms and conditions under which goods could be returned.  
For example;

Section 50(1) point out that where goods are delivered to the buyer and he rejects them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he rejects them. That after the buyer has intimated to the seller that he rejects the goods the seller is entitled to have the goods placed at his disposal:

Provided that where the buyer has paid the price or any part thereof he may retain the possession of the goods until the seller repays or tenders the amounts he has received from the buyer.

Under the law, the buyer may not reject goods which he has accepted and that the acceptance of a part of the goods does not deprive the buyer of any right to reject any other part unless the contract is not severable.<sup>5</sup>

Also the Act states that the buyer is deemed to have accepted the goods when he intimates to the seller that he accepts them; or he does not, within a reasonable time after delivery of the goods, inform the seller that he rejects them; or he wrongfully refuses or neglects to place the goods at the disposal of the seller after notifying the seller that he rejects them.<sup>6</sup>

In the final analysis law actually encourages the return of the goods if the consumer or the buyer so wishes.

The flexibility in the law is good for the Ghanaian consumers because it would encourage the return of unwholesome, low quality and goods discovered to be of a certain defects to be returned.

One of the major concerned of the United Nations guidelines on consumer protection can be found at clause 12 of the Guideline which states that:

“Government should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute

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<sup>5</sup> See section 51(1) Sale of Goods Act, 1962

<sup>6</sup> Ibid, section 52

another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.”

Specifically under sections 8, 9, 10, 11, 12 and 14 of the Sale of Goods Act, Act 137, it states that there is a fundamental obligation on the seller to deliver the goods. In all the good should be of good quality, it should be safe and of good standards. In a sale of specific goods the fundamental obligation of the seller is to deliver those goods to the buyer.<sup>7</sup>

Secondly, in a sale of unascertained goods the fundamental obligation of the seller is to deliver to the buyer goods substantially corresponding to the description or sample by which they were sold. Therefore the Act has a general provision which states that ‘any provision in a contract of sale which is inconsistent with, or repugnant to, the fundamental obligation of the seller, is void to the extent of the inconsistency or repugnance.’<sup>8</sup>

In a contract for the sale of specific goods there is an implied condition on the part of the seller that the goods are in existence at the time when the contract is made.<sup>9</sup> Hence, in section 10 of the Act, there is an indication that there is an implied undertaking as to the title of the goods such that in a contract of sale there is an implied warranty on the part of the seller that he will have a right to sell the goods at the time when the property is to pass.

However, the provisions of subsection (1) of section 10 are not affected by any agreement to the contrary where the goods are of descriptions which are supplied by the seller in the ordinary course of his business. Also under section 11, in a contract for the sale of goods by description whether or not the sale is by sample as well as by description, there is an implied condition that the goods shall correspond exactly with the description. In a contract for the sale of goods by sample, whether or not the sale is by description as well as by sample there is an implied condition that the goods shall correspond exactly with the sample.<sup>10</sup>

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<sup>7</sup> See, section 8 Sale of Goods Act

<sup>8</sup> Ibid, section 3(3)

<sup>9</sup> Ibid Section 9

<sup>10</sup> Ibid section 12

The law states that where the seller delivers to the buyer a quantity of goods less than he contracted to sell the buyer may reject them but if he accepts the goods so delivered, he must pay for them at the contract rate.<sup>11</sup>

In subsection (2) of section 10, where the seller delivers to the buyer a quantity of goods larger than what he or she contracted to sell the buyer may not reject all the goods delivered by reason only of the excess in quantity but he or she may accept all the goods so delivered, paying for the extra goods at the contract rate, or he or she may accept the goods which should have been delivered and reject the remainder.

In the latter event the buyer may recover damages from the seller representing the cost, if any, of separating the goods which should have been delivered from the remainder.

Meanwhile the buyer is given some level of lawful strength in subsection (3) of section 10 where the seller delivers to the buyer the goods he contracted to sell together with goods of a different description not included in the contract— the buyer may accept all the goods so delivered, paying a reasonable price for the extra goods; or if the goods which the seller contracted to sell and has delivered are less than the quantity specified in the contract, the buyer may reject the whole; or the buyer may accept the goods included in the contract and reject the remainder.

In this event the buyer may recover damages from the seller representing the cost (if any) of separating the goods included in the contract from the remainder, and also damages (if any) in respect of the deficiency (if any) in the goods delivered. The goods which form the subject of a contract of sale may be either specific goods, identified and agreed upon before or at the time when the contract is made, or unascertained goods not being so identified and agreed upon.

There may be a sale of goods to be manufactured or grown or acquired by the seller after the making of the contract. There may be a sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

It is stated in section 16 of the Act that if no time is fixed for the delivery of the goods, they must be delivered within a reasonable time.

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<sup>11</sup> Ibid section 14 (1)

### **2.3.2 Protection Of Goods In Transit**

The importance to sections 38, 39, 40, 41, 42, 43 and 44 of the Sale of Goods Act is that it discusses goods in transit and states that when the buyer of goods becomes insolvent an unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in course of transit and may retain them until payment or tender of the price. A contract of sale is not rescinded by reason only that the seller has exercised his right of stoppage in transit.

If the consumer is defined to be the 'end user' user of the goods what responsibilities do those who would not directly consume the product but have to possess the good at one point. For example from the provision above, it shows that goods in transit could be affected by contractual obligations.

The Act further states that goods are in course of transit from the time when they are delivered to a carrier or other bailee until the buyer takes delivery of them from the carrier or bailee. If the buyer obtains delivery of the goods before their arrival at the appointed destination the transit is at an end. If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer that he holds the goods on his behalf and continues in possession of them as bailee for the buyer, then subject to subsection (4), the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer. But If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them the transit is not deemed to be at an end even if the seller refuses to receive them back.

In the case of a chartered ship, when goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the case whether they are in the possession of the master as a carrier, or as agent for the buyer. Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, the transit is deemed to be at an end.

Where part delivery has been made to the buyer the remainder of the goods may be stopped in transit unless the part delivery has been made under such circumstances as to show an agreement to waive the right of stoppage in transit.

An unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

The right of an unpaid seller to take possession of goods which he has stopped in transit is subject to a particular lien (if any) of the carrier or other bailee in respect of freight due on the goods, but takes priority over any other lien.

Where notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, the seller is bound to give instructions within a reasonable time to the carrier or other bailee with respect to the redelivery of the goods to the seller or his order, and the carrier is bound to deliver the goods according to those instructions. The expenses of such redelivery as well as of the original carriage must, as between the seller and the carrier, be borne by the seller.

Where an unpaid seller exercises his right of stoppage in transit over goods which are lost or damaged, or which deteriorate, in transit, then, as between the seller and the buyer, the proceeds of any policy of insurance respecting the goods shall be payable —

(a) to the seller if the insurance was effected by him and he exercises his right of stoppage in transit before the loss, damage or deterioration occurs;

(b) to the buyer, in any other case.

Where a seller has a right of lien or stoppage in transit over goods —

(a) if the seller assents to a resale or other disposition by the buyer he loses his right of lien or stoppage in transit;



(b) if the buyer resells the goods or documents of title thereto in such circumstances that the resale is effective to pass a title, under section 32 of this Act or otherwise, the seller loses his right of lien or stoppage in transit;

(c) if the buyer disposes of the goods or the documents of title thereto otherwise than by way of sale, in such circumstances that the disposition is effective under section 32 of this Act or otherwise, the seller may exercise his right of lien or stoppage in transit subject to the rights of any person claiming by or under such disposition as aforesaid.

Under section 53, where the seller wrongfully neglects or refuses to deliver the goods to the buyer, in accordance with the terms of the contract, or where the buyer rejects the goods delivered by the seller having the right so to do, the buyer may maintain an action against the seller for damages for non-delivery.

Under section 54 where the measure of damages in an action under section 53 of this Act is the loss which could reasonably have been foreseen by the seller at the time when the contract was made as likely to result from his breach of contract.

Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the market or current price and the contract price — if a time has been fixed for delivery, or if the seller repudiates the contract before the time of performance, and the buyer does not accept the repudiation, at the time or times when the goods ought to have been delivered; in any other case, at the time or times of the refusal to deliver the goods. In this section a time is not deemed to have been fixed for delivery by reason only that the goods are to be delivered within a reasonable time.

Finally, in section 55 of the Act, a seller is guilty of a breach of his fundamental obligation or of a condition or warranty of the contract the buyer may maintain an action against the seller for damages for the breach complained of or may set up a claim to such damages in diminution or extinction of the price.

### **2.3.3 Foods And Drugs Law, 1992 (Pndc Law 305b)**

## **2.4 Introduction**

The Food and Drugs Law is conscious of consumer protection made provisions for foods and drugs. It covers prohibition against sale of unwholesome, poisonous or adulterated food; food offered as prizes, deception of consumers; standards of foods; prohibition against sale of food not of nature, substance or quality demanded; manufacture of food under supervision; sale of food under insanitary conditions; food unfit for human consumption; penalty and defense under this part and closure of premises where there is risk of contaminated food.

Further, it prohibits against the sale of drugs under certain circumstances, cosmetics, devices and chemical substances, standards for drugs, among others. Disposal of chemical substances in a certain manner that is prohibited; deception of consumers; prohibited advertisement; control of manufacture of drugs; restriction of importation, manufacture of drugs, etc; Registration of drugs; etc; Quality certificate on imported drugs; License for registering drugs, Renewal of registration and licenses; Drugs not to be distributed as samples; Clinical trials and tests; Registration of herbal and homeopathic drugs; Registers and Penalties.

In 1996 the Food and Drugs Law 1992 was amended and called Food and Drugs (Amendment) Act, 1996, to provide for the fortification of salt and deception of consumers.

This law makes it mandatory to only sell, distribute, store, deliver, export salt only if it is fortified with potassium iodide. It also defined salt officially as food.

The section on 'Deception of Consume'r says that a person who manufactures, labels, packages, sells, or advertises any food in a manner that is false, misleading or deceptive as regards its character; nature, value, additives, substance, quality, composition, merit or safety commits an offence.

### **2.4.1 Discussions**

Section 1 of the Act establishes the Ghana Standards Authority with the aims of establishing and promulgating standards with the object of ensuring high quality of goods produced in Ghana, whether for local consumption or for export; promoting standardization in industry and commerce; promoting industrial efficiency and development; and promoting standards in public and industrial welfare, health and safety. But the the functions and powers of the Authority in section 3 are as follows;

- (a) to prepare, frame, modify, or amend specifications and promulgate standard specifications;
- (b) to promote research in relation to specifications; and to provide for the examination and testing of goods, commodities, processes, and practices, and for those purposes the Authority may establish such laboratories and other facilities as it thinks fit;
- (c) to prohibit the sale or manufacture of foods in the national interest;[As substituted by Standards (Amendment) Act, 1979, (AFRCD 44) ]
- (d) to maintain the necessary machinery to ensure that goods prepared and manufactured for export are distinctly marked for export only, and to provide for the issue of a certificate to the effect that goods comply with the known requirement of standards in the country to which they are or about to be consigned, before the export of such goods is permitted;
- (e) to prohibit the importation into Ghana of foods which have not been certified by the Authority as complying with its standards;.[As substituted by Standards (Amendment) Act 1979, (AFRCD 44)]
- (f) to provide for the registration, and regulation of the use of standard marks;
- (g) to undertake and encourage educational work in connection with standardization;
- (h) to collect and disseminate information relating to standardization and related matters, including the publication of reports, pamphlets, booklets, journals, and any other publication;
- (i) to develop and maintain a collection of library materials and a museum collection relating to standardization and allied matters;
- (j) to assist government departments, local authorities and other public bodies in the preparation of any specifications required by them;
- (k) to co-operate with representatives of any industry, or with any government department,

local authority, or other public bodies or persons with a view to securing the adoption of standards;

(l) to co-operate with any persons, associations, or organizations outside Ghana having similar functions with a view to furthering the functions of the Authority;

(m) to solicit and accept for the purposes of the Authority any money, land, or other property from any local authority, organization, or person by way of grant, subsidy, donation, gift, subscription or otherwise;

(n) to become a member of or affiliate to any international body concerned with standardization or any related matter;

(o) to endorse any international or other overseas specifications as suitable for use in Ghana, so, however, that any such endorsement shall not have the effect of making the specification a standard specification under this Act;

(p) to appoint agents of the Authority in Ghana or any other country for such purpose as it determines;

(q) to establish branch offices of the Authority in Ghana;

(r) to institute training schemes for its staff either in Ghana or elsewhere in furtherance of its aims;

(s) enact bye-laws to prescribe or regulate as the case may be.

#### **2.4.2 Rules of the Authority under section 9**

The Authority may from time to time make, alter, and rescind rules not inconsistent with this Act for all or any of the following purposes:—prescribing the manner in which specifications may be declared to be standard specifications; regulating the promulgation of standard specifications; by providing for the amendment or revocation of any standard specification and regulating the procedure in relation thereto;

‘the treatment, processing and manufacture of goods; the packaging, labeling, advertising and selling of goods; and the size, dimensions, and other specifications of packages of goods; prescribing standards of composition, purity, or other property of goods; regulating the issue of licences for using standard marks, prescribing terms and conditions upon or subject to which, such licences may be issued; and providing for and regulating the renewal, suspension, or revocation of licences; prescribing methods of proving the existence or non-existence or the terms and conditions of any licence or consent issued or given under the Act;’

The authority shall also prescribe the sale price or methods of fixing the sale price of copies of standard specifications or any other publications for the purposes of this Act; prescribe matters in respect of which fees are to be payable under this Act or under rules made under this section, the amount of the fees, and the persons liable to pay them; authorizing the refund or remission, in such circumstances as may be specified in rules.

### **2.4.3 Licences to use Standard Marks under Section 12**

Any person desiring to use any standard mark in connection with any goods, commodity, process, or practice, may make application to the Authority in such manner as the Authority may determine or as may be prescribed. The Authority may, if it is satisfied that the goods, commodity, process, or practice with respect to which the applicant desires to use a standard mark conforms to a standard specification, grant to the applicant a licence to use a standard mark.

The licence so acquired shall exist for a period of only one year and any such licence shall be deemed to have been renewed from time to time for periods of one year, unless specifically revoked. The licensee shall, if and whenever required by the Authority so to do, submit a sample for examination or testing or submit any information as the Authority may require.

In section 8, the fact that any goods, commodity, process, or practice conforms, or is alleged to conform to a standard specification, or the fact that a standard mark is used in connection with any goods, or commodity, shall not give rise to any claim against the Government or the Authority.

In section 21 of the Act, it is an offence to make any statement or representation, whether in writing or not, or uses any mark, which conveys or is likely to convey the impression that any goods, process, or practice complies with a standard specification when it does not do so; or makes any statement or representation, whether in writing or not, or uses any mark with reference to any goods, commodity, process, or practice, which conveys or is likely to convey the impression that a person who is not licensed to use a standard mark with reference to such goods, commodity, process, or practice is so licensed or is otherwise entitled to use a standard mark; also, without the authority of the Authority, and for the purpose of gain or profit (whether by means of sale or otherwise) makes any statement or representation, whether in writing or not, whereby comparison is made in respect of any goods, commodity, process, or practice, with the standard provided for by any standard specification, unless he proves that he acted without intent to defraud; or having been licensed to use a standard mark, uses the standard mark after the revocation of his licence so to do, or otherwise than in accordance with the terms and conditions of his licence.

## **2.5 Eights And Measures Act, 1975 (Nrcd 326)**

### **2.5.1 Introduction**

Physical safety of goods demands that provisions are made towards weights and measures. This Act makes provision for unit of measurement to be used throughout Ghana and shall be the units known as the International System of Units. It makes provisions for International System of Units in section 2, 'Measurements to be made in International System of Units'. All measurements shall be made by reference to the International System of Units or their multiples or sub-multiples. The Act proscribed that no other units of measurement or their multiples or sub-multiples shall be used.

It makes provision for Primary Standards, Secondary Standards, and Tertiary Standards, Working Standards, Verification of Standards, Keeping of Standards. It also makes provision for Weights and Measures for use in Trade and Industry, Marking of Weights and Measures with Denomination, Stamping, Verification and Issue of Certificates, Lead, Pewter and Iron Weights, Mode of Filling Measures of Capacity, Custodian of Weights and Measures,

Inspectors of Weights and Measures, Duties of Inspectors, Powers of Entry and Seizure, Offences Relating to Trade and Industry.

The Commissioner shall procure or cause to be prepared and maintained such copies of the Secondary Standards as he may think fit and shall cause such copies to be verified as Tertiary Standards of mass and measure.

Any person who uses in trade or industry, or has in his possession for use in trade or industry, any weight, measure or instrument for weighing or measuring—which is false or unjust; or which is not authorized to be used, which is not marked or certified in conformity with section 10 of the Act or which is not verified, stamped, certified or authenticated in conformity with section 11 or 12; or in respect of which a certificate of verification is not in force.

### **2.5.2 Discussions**

It is interesting to note that the Act makes provisions for offences relating to packaged goods. It states that any person who sells goods whether on his own behalf or on behalf of another shall, if the goods are packaged or put into containers or are similarly prepared for exhibition or sale, cause both the gross and the net weights or measures to be declared on the package or container.<sup>12</sup> It states that any person required under this section to have the weight or measure of goods declared on the package or container who refuses or neglects to do so as required by this section shall be guilty of an offence and liable on summary conviction to imprisonment.

Moreover, any person who sells goods, whether on his own behalf or on behalf of another, by weight or measure, shall upon being so required by the person to whom the goods are delivered and in the presence of the last-mentioned person— if the goods are sold by weight, weigh the goods; or if the goods are sold by measure, measure the goods or any person required under this section to weigh or measure any goods who refuses or neglects to do so as required by this section shall be guilty of an offence and liable on summary conviction or fine.<sup>13</sup>

Where in any trade the transaction or dealing is to be determined by weight or measure and the trader in respect of such trade is not in possession of the weights, measures or instruments for

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<sup>12</sup> See Section 19, Weights And Measures Act, 1975 (NRCD 326)

<sup>13</sup> Ibid section 20,

weighing or measuring necessary for such trade, he shall be guilty of an offence and liable on summary conviction or a fine.

The issues of Fraud, Forgery, Offences by Inspectors and Offences by Bodies of Persons, Seizure and Forfeiture, Evidence as to Possession, Conversion among others are treated in the law<sup>14</sup>.

It further states that every person who knowingly makes, sells or uses, or knowingly causes to be made, sold or used, any unjust weight, measure, or instrument for weighing or measuring; or forges or counterfeits, or causes or procures to be forged or counterfeited, or knowingly assists in forging or counterfeiting, any stamp or mark used for stamping or marking any weight, measure or instrument for weighing or measuring; or knowingly sells, disposes of or exposes for sale any weight, measure or instrument for weighing or measuring with any forged or counterfeit stamp or mark thereon; or with intent to defraud, alters any weight, measure or instrument for weighing or measuring stamped or marked in accordance with this Act; or commits any fraud in the use for trade or industry of any weight, measure or instrument for weighing or measuring, shall be guilty of an offence and liable on summary conviction to imprisonment not exceeding two years or to a fine.

Where any weight, measure or instrument for weighing or measuring is found in the possession of any person carrying on trade or industry, or in or upon the premises of any person which (whether a building or in the open air, and whether open or enclosed) are used for trade or industry, that person shall be deemed for the purposes of this Act, unless the contrary is proved, to have that weight, measure or instrument for weighing or measuring in his possession for use in trade or industry.

The Commissioner may by legislative instrument make regulations prescribing or making provision for anything which under this Act may be prescribed or provided for by regulations, and prescribing the fees to be charged for stamping, marking or verifying weights, measures and instruments for weighing or measuring; modifying, amending or revoking any of the provisions of the Schedules to this Act; otherwise for carrying into effect the principles and purposes of this Act.

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<sup>14</sup> See Section 22,23,24,25,26,27,28,.29 and 32, Weights And Measures Act, 1975 (NRCD 326)



## **2.6 Export And Import Act, 1995 (Act 503)**

### **2.6.1 Introduction**

Goods, Services and Technologies are exported and imported on daily basis in Ghana. It is therefore important to see how far the current regime is taking care of the consumers as far as these areas are concerned.

### **2.6.2 Discussions**

In section 9 of the Export and Import Act, 1995 (Act 503), it states that for the purpose of ensuring that the quality, quantity, price and other specifications of import goods are in conformity with the particulars on the Import Declaration Form, invoice and any other document relevant to goods, all commercial imports shall be subject to destination inspection of the goods at the port or point of clearance in the country. [As substituted by Export and Import (Amendment) Act, 2000 (Act 585) s.2]

The above is likely to be strengthened by the prescriptions of the draft policy (when finally adopted) on the physical safety of goods which states that Government of Ghana will promote the adoption of appropriate production and distribution and safety measures, including: Safety regulations, mandatory standards and voluntary standards, enforcing the maintenance of safety records, improvement of road transportation and other networks to enhance quick distribution and delivery to avoid contamination in transit.

The law provides the assurance that existing institutions with shall be provided with information and educational materials to educate those responsible for bringing goods to the market, ensure that safety information is conveyed to consumers in a language they understand including **Braille and/or internationally understood symbols and signs** wherever necessary, introduce or strengthen the mechanisms for the immediate confiscation and destruction of improperly labeled, hazardous and dangerous products, promote the development of a modern business and trading environment with market facilities that take into account health, welfare and safety of both sellers and consumers, encourage the development of a nationwide network of foodstuff warehousing, storage, and wholesaling facilities, review existing laws and

strengthening the enforcement mechanisms.

Finally the Government will regulate the hawking of prepared food, perishable goods and drugs, in open markets, in transport vehicles and other unapproved places by authorized persons.

## **2.7 Food And Water**

According to the draft policy Food and Water are basic commodities which are necessary for the very survival of human beings. It is therefore crucial for Government to ensure that citizens have access to sustainable potable and wholesome water as well as food.

It is important to note that as principles underlining the policy stipulate provision of water and food to consumers are a human rights issue. It therefore stands to reason that the lack of provision of sustainable wholesome water well as Food will amount to violation of human rights.

It is also worthy to note that Ghana has a water policy by the Ministry of Water Resources, Works and Housing. Some of the policy prescriptions proscribed that Government will ensure effective implementation of the Water Policy, and ensure that water bodies and sources are protected from various human activities, to promote the development and implementation of educational and information dissemination programmes which will include community participation on the sustainable use of water and review, strengthen and ensure the effective implementation of the existing Water Use Regulations, 2001 (L.I. 1692).

# **Part Two**

## **Chapter Three**

Promotion And Protection Of Consumers' Economic Interests Through Fair Trading Practices, Standard Form Contracts, Consumer Credit Contracts, Product Information And Labeling, Electronic Commerce, And Imported And Resold Technology And Commodities.

### **3 Introduction**

This particular section discusses seven (7) thematic areas of the above-mentioned policy. The purpose of treating them under one umbrella is due to the fact of them closely inter-related and therefore convenient to do so. The concept of promotion and protection of consumers' interest through fair trade practices will involve the concept of fair trade, fair terms of contracts, contracts in general, unfair trading, advertising, electronic commerce among others. It will be prudent to take holistic look at them to see if we can codify all the related laws in one document which will enhance easy accessibility and understanding.

#### **3.1 Discussions**

The draft policy of consumer protection defines unfair trade practices as a trade practice which, for the purposes of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or deceptive practice including the making of false declaration, presentation, statements on labelling, among others.

Based on this definition will discuss the following laws under these thematic area.

1. Protection Against Unfair Competition Act, 2000 (Act 589)
2. Export And Import Act, 1995 (Act 503)
3. Contract Act, 1960 (Act 25)
4. Sale Of Goods Act, 1962 (Act 137)
5. Hire Purchase Act, 1972 (N.R.C.D. 292)

6. Weight And Measures Act, 1975(N.R.C.D) 326
7. Labeling Act
8. Electronic Transaction Act 772
9. Standards Act, 1973 (NRCD 173)

The United Nation Guidelines on consumer protections provides for the promotion and protection of consumer' economic interest states that:

‘Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business which could adversely affect the economic interests of consumers and the exercise of choice in the market-place and to protect their interest by intensify their efforts to prevent practices which are damaging to the economic interests by ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards.’

The UNGCP also recommended that Governments should do the following:

- a. Encourage consumer organizations to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds. And provide them with the means for the enforcement of such measures.
- b. Adopt or maintain policies that make clear the responsibility of the producer and to ensure that goods meet reasonable demands of durability, utility and reliability.
- c. Encourage fair and effective competition in order to provide consumers with the greater range of choice among products and services at the lowest cost and ensure adequate availability of reliable after-sales service and spare parts.

- d. Consumers should be protected from such contractual abuses as one-side standard contracts, exclusion of essential rights in contracts, and unconscionable conditions of credit by sellers.
- e. Marketing and sales practices should be guided by the principle of fair treatment of consumer and provide accurate information necessary to enable consumers to take informed and independent decisions as well as codes of marketing and other business practices to ensure adequate consumer protection.

Strengthened by these Guidelines the Draft Policy On Consumer Protection in Ghana adopted the above-mentioned guidelines to protect the Ghanaian Consumers. It is worth mentioning that the existing laws in already have wide ranging provisions tailored to the protection of the consumer. The up and coming consumer protection law will seek to harmonize the laws and improve them.

The discussion below looks at some of the existing laws and with the aim to review them.

### **3.2 Protection Against Unfair Competition Act, 2000 (Act 589)**

#### **3.2.1 Introduction**

Protecting the economic interest of consumers may take many forms. Consumer Protection from Unfair Trading Regulations are very crucial in the fight for consumer rights. They introduce a general prohibition against unfair commercial practices, prohibitions against misleading and aggressive practices that affects the consumer directly. The above-mentioned law was enacted in the year 2000 to complement the Criminal and other Offences Act, 1960(Act 589) among others.

#### **3.2.2 Discussions**

It is common knowledge that business work towards their profit and may not necessarily consider the welfare of the consumer. The consumer therefore becomes vulnerable as a result of competition between the various businesses. They resort to all kinds of methods just to

maximize profits. For example, a deceptive and dishonest advertising as well as exploitation in various ways against the consumer.

It must be noted that the current draft policy on consumer protection is silent on competition. This is because the Ministry of Trade and Industry has decided to develop a separate policy on competition.

The existing law on competition *supra* however made provisions for the following;

Under the law provisions was made for passing off or creating a situation whereby it become an unfair competition where a particular business would in the normal course of business will engage in activities that causes or likely to cause confusion with respect to another person's enterprise or business.

It states that any act or practice in the course of industrial or commercial activities that is contrary to honest practices constitute unfair competition.

The law made provision for the following principles;

- Passing off someone's business as your or similar acts.
- Acts that risk damage to good will or reputation to another enterprise
- Act of misleading the public through advertising, promotion, quality, quantity, origin
- Prices of product and services, conditions of sales or service, lack of proper disclosure etc
- Stealing or use of trade secrets without the consent of the rightful owner of the information shall all constitute unfair trade practice or competition.

It is important to note that these are all offences that may ground imprisonment or a fine or both.

### **3.2.3 Recommendation**

It is recommended that this Act should be part of the up and coming consumer promotion Act with the following with the including of the following; Bait advertising- where products advertised at a specified price without disclosing that the trader may not be able to supply them.

In circumstances of bait and switch –where consumers are invited to buy one product only to find out on arrival that they are persuading to them to buy a different one or that before they can get the advertised one, they may need to add other products. Falsely stating a product will only be available for a very limited time to persuade the consumer to make an immediate decision

Provision against making consumer pay for the cost of their adverts or advertising a good quality product and offer poor quality product upon arrival at the shop with the excuse that they have run out of the quality one and claiming to offer a competition or prize promotion without awarding the prizes described among others or may offer a single prize just to lure more customers.

In Ghana then mobile phone Operators and Banks are known to engage in these activities.

### **3.3 Hire Purchase Act, 1972**

#### **3.3.1 Introduction**

The Hire Purchase Act and the Sale of Goods Act made provisions for hire purchases in Ghana among others. The Hire Purchase arrangement protects the consumer directly as the goods. It is a system whereby the seller of goods supplies the goods to the buyer at a given price which is usually stated in the agreement and the buyer then pays for the goods on instalment basis. It is actually a credit transaction so documentation is very important.

#### **3.3.2 Discussions**

Before any agreement is made the seller or owner shall state orally and in writing to the prospective buyer or hirer (otherwise than in the agreement referred to in section 1) the price at which the goods may be purchased by him for cash (in this Decree referred to as the "cash price") and the hire-purchase price or total purchase price, as the case may be.

Under section 3 of the Act, every agreement shall contain a statement of the cash price and the hire-purchase price or total purchase price, as the case may be, of the goods; the amount of each instalment by which the price is to be paid and the date or the mode of determining the date upon which each instalment is payable; a description or list of the goods to which the agreement relates sufficient to identify them; a notice, which is at least as prominent as the rest

of the contents of the agreement, in the terms set out in the First or Second Schedule to this Decree. A copy of the agreement shall be delivered or sent to the hirer or buyer within 14 days after the making of the agreement. If the court is satisfied in any action that a failure to comply with any of the requirements specified in paragraphs (b) and (c) of subsection (1) and subsection (2) has not prejudiced the buyer or hirer and that it would be just and equitable to dispense with the requirement, the court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purpose of the action.

Under section 8, the owner or seller shall not enforce any right to recover possession of protected goods from the hirer or buyer otherwise than by action. If the owner or seller recovers possession of protected goods in contravention of subsection (1), the agreement, if not previously terminated, shall be terminated, and the hirer or buyer shall be released from all liability under the agreement, and shall be entitled to recover from the owner or seller, in an action for money had and received, all sums paid by the hirer or buyer and any security given by him in respect thereof; and any guarantor shall be entitled to recover from the owner or seller, in an action for money had and received, all sums paid by him under the contract of guarantee or under any security given by him in respect thereof. Notwithstanding subsection (2) of this section, the court may, upon application by the hirer or buyer, make an order for the return of the goods to the hirer or buyer and for the re-scheduling of payments due under the agreement.

### **3.3.3 Hire Purchase And The Sale Of Goods Act**

In section 68 of the Sale of Goods Act, the law makes a special provision as to the ‘Determination of Hire-Purchase Contracts’ which states that a buyer may, at any time before the final payment under a hire-purchase contract falls due, and notwithstanding anything in the contract; determine the contract by returning the goods to the seller.

On the termination of a contract of hire purchase, whether by the seller lawfully retaking the possession of the goods from the buyer, or under the provisions of subsection (1) or otherwise, then, without prejudice to any liability which has accrued before the termination, the buyer shall be liable to pay to the seller the amount, if any, by which one-half of the hire-purchase



price exceeds the total of the sums paid and the sums due in respect of the hire-purchase price immediately before the termination.

Where a hire-purchase contract has been determined under this section, the buyer shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure.

It is also provided in the Act that before any hire-purchase contract is entered into in respect of any goods, the seller shall state in writing to the prospective buyer the price at which the goods may be purchased by him for cash and shall also state the cash price to the purchaser orally.

This provision is very important. This is because the consumer will then have the ability to compare the cash price to the hire-purchase price and make an informed decision. This means that if the buyer has inspected the goods or like goods and at the time of his inspection tickets or labels were attached to or displayed with the goods clearly stating the cash price, either of the goods as a whole or of all the different articles or sets of articles comprised therein; or if the buyer has selected the goods by reference to a catalogue, price list, or advertisement, which clearly stated the cash price either of the goods as a whole or of all the different articles or sets of articles comprised therein.

A seller shall not be entitled to enforce a hire-purchase contract or any contract of guarantee relating thereto or any right to recover the goods from the buyer, and no security given by the buyer in respect of money payable under the hire-purchase contract or given by the guarantor in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the buyer or guarantor by any holder thereof, unless the requirement specified in subsection (1) has been complied with, and - a note or memorandum of the agreement is made and signed by the buyer and by or on behalf of all other parties to the agreement, and

It is important to explain that the note or memorandum contains a statement of the hire-purchase price and the cash price of the goods to which the agreement relates and of the amount of each of the instalments by which the price is to be paid and of the date or the mode of determining the date upon which each instalment is payable, and contains a list of the goods to which the agreement relates sufficiently to identify them, and the note or memorandum contains a notice which is at least as prominent as the rest of the contents of the note or memorandum, in the terms prescribed in the First Schedule to this Act, and a copy of the note or memorandum is delivered or sent to the buyer within fourteen days of the making of the agreement.

The Act under section 13 made provision for ‘Implied Terms.’ It ensures that, notwithstanding any agreement to the contrary, in every hire-purchase or conditional sale agreement there shall be implied that the hirer or buyer shall have and enjoy quiet possession of the goods; that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass; that the owner or seller will have a right to sell the goods at the time when the property is to pass and that the goods will be reasonably fit for that purpose. It is noted that a breach of the implied terms by the owner or seller shall give the hirer or buyer a right to damages in respect of such breach or to such other remedy as the court may think appropriate.

### **3.4 Standard Form Contracts And Consumer Credit Contracts**

#### **3.4.1 Introduction**

These areas of the policy discussed how a contract which takes the above-mentioned forms sometimes violates the rights of consumers.

A contract is any legally binding agreement made between two or more people. The terms of the contract usually put legal obligations on the parties to the contract and a breach of which could ground serious liabilities in law.

However, sometimes the consumer finds him or herself in a situation whereby he is forced to sign document which are by nature difficult to amend on the spot. Eg the standards form contracts.

#### **3.4.2 Discussions**

In the draft policy the term ‘credit’ means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment or a ‘credit’ is the trust which allows one party to provide resources to another party where that second party does not reimburse the first party immediately.

Credit contract means a contract under which credit is or may be provided, where interest charges, credit fees and a security interest may be taken under the contract.

The context of the draft policy provides that Standard form contracts are legally binding agreements between two parties to do certain things, in which one side has all the bargaining power and uses it to write the contract primarily to his or her advantage. An example of a standard form contract is a standardized contract form that offers goods or services to consumers on essentially a "take it or leave it" basis without giving consumers realistic opportunities to negotiate terms that would inure to their benefit.

When this occurs, the consumer cannot obtain the desired product or service unless he or she acquiesces to the form contract. In the circumstances, the contracts when entered into take away normal standard consumer rights and thereby create an imbalance of rights between consumer and provider.

The prescription by the draft policy states that Government will provide in the upcoming consumer protection law provisions that include the following;

A provision making it compulsory for thorough explanation of terms and conditions of the standard form contract ;Terms and conditions that should be boldly written and not hidden or reduced beyond a specific font, provisions that will force seller and service providers to draw the attention of the consumer to terms of the contract and explain the terms of the contract without which the consumer cannot be held responsible or provisions not irrevocably binding the consumer to terms and conditions of a contract which he had no real opportunity of becoming aware upon the conclusion of the contract.

Due to the very nature of consumer credit contracts, consumer mostly find themselves at the receiving end and as a result suffer some abuses. For example, the draft policy identified that limited or no information is given to consumers as to their rights when it comes to consumer credit contract. They are sometimes billed unfairly among others. It is provided in the draft policy that Government will include consumer credit laws in the up and coming consumer protection law.

### **3.4.3 Comment And Recommendation**

It is recommended that the up and coming consumer protection law should make provisions covering, initial disclosure. Every creditor under a consumer credit contract must ensure that

disclosure of key information concerning the contract is thoroughly discussed and made available to the consumer or the debtor before the contract is signed. It is also recommended that Continuing disclosures, Disclosure of agreed changes as well as Request disclosures are made.

Additionally, provisions should be made for consumer's Right to cancel consumer credit contract, Unreasonable credit fee or default fee, Recovery of payment; independent legal advice among others.

### **3.5 Contract Act, 1960 (Act 25)**

#### **3.5.1 Introduction**

The Standard form contracts and consumer credit contracts are largely part of written contract. However, consumers enter contract in almost every purchase of a good or service. It is therefore important to discuss the law of contract at this stage.

The Contract Act, 1960 (Act 25) was enacted to amend the law of Contract and to replace certain Imperial enactments. One of the significant amendments to the law of contract is to give rights and responsibilities to third parties who may not be part of the original contract. The original position in the common law is that only parties to a contract have the right to enforce it. For example section 5 states that any provision in a contract made after the commencement of the Act which purports to confer a benefit on a person who is not a party to the contract, whether as a designated person or as a member of a class of persons, may, subject to the provisions of this Part, be enforced or relied upon by that person as though he were a party to the contract. The law under subsection (1) does not apply to—(a) a provision in a contract designed for the purpose of resale price maintenance, that is to say, a provision whereby a party agrees to pay money or otherwise render some valuable consideration to a person who is not a party to the contract in the event of the first-mentioned party selling or otherwise disposing of any goods, the subject matter of the contract, at prices lower than those determined by or under the contract; or a provision in a contract purporting to exclude or restrict any liability of a person who is not a party thereto.

In section 6 of the Act there is a provision for the 'Rights of Third Party' not to be altered, etc., Without His Consent but Subject to Equities. It states that where under the provisions of section 5 of this Act a person who is not a party to a contract is entitled to enforce or rely on a provision

in the contract no variation or rescission of the contract shall prejudice that person's right to enforce or rely on the provision if he has acted to his prejudice in reliance thereon, unless he consents to the variation or rescission; and any party against whom the provision is sought to be enforced or relied on shall be entitled to rely on or to plead by way of defence, set-off, counterclaim or otherwise any matter relating to the contract which he could have so relied on or pleaded if the provision were sought to be enforced or relied upon by the other party to the contract.

Another significant amendment to the Act of contract is found in section 8 it for certain contracts to be valid despite lack of consideration. It states that a promise to keep an offer open for acceptance for a specified time shall not be invalid as a contract by reason only of the absence of any consideration.

That a promise to waive the payment of a debt or part of a debt or the performance of some other contractual or legal obligation shall not be invalid as a contract by reason only of the absence of any consideration.

For sections 9 and 10 states that the performance of an act or the promise to perform an act may be a sufficient consideration for another promise notwithstanding that the performance of that act may already be enjoined by some legal duty, whether enforceable by the other party or not and that no promise shall be invalid as a contract by reason only that the consideration therefore is supplied by someone other than the promise.

### **3.5.2 Comment And Recommendation**

This Act has given greater protection to the Consumer who usually describes as the end-user to have the right to redress. This is because they can assert their rights under the law as third parties.

It is recommended that the Act should be amended to include unfair contract terms this will go a long to further protect the consumer. For example provisions should be to the effect that a contract term must be individually negotiated to avoid significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer.

Where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the terms of the contract, the consumer must be given enough time to get and independent advice.

On the issue consideration, this is a major move from the common law position which renders a contract an enforceable for lack of consideration.

It is our opinion that the consumers will be more protected as far as this provision in the Ghanaian law is concerned.

### **3.5.3 Imported And Resold Technology And Commodities**

Ghana as a developing country depends heavily on import commodities. Trading is becoming more sophisticated that at times it is difficult to specifically locate where a particular was manufactured or the exact place where a particular technology originated from. This particular thematic area focuses attention on how best to protect the consumer from suffering as a result of this phenomenon. The policy recommended that the Government will pass a comprehensive legislation to regulate the production of resold technology and commodities

### **3.5.4 Consumer Redress And Representation Measures**

Another thematic area of the policy is consumer redress and representation measures. This is where the consumer seeks redress. Today in Ghana the major redress avenue for peeved consumers is to resort to the law court which is very expensive. The Chief Justice of has recently launched the Alternative Dispute Resolution (ADR) programmes which are attached to the various law court in Ghana. Where in the near future will be a compulsory first place of conflict resolution.

The context of the policy identified the lack of clearly-defined redress and compensation mechanisms and processes, Non-availability of legally-binding guaranty and warranty

schemes, lack of awareness of consumers about where and how to obtain redress, lack of standard procedures for establishing claims.

It therefore saw the need to have a comprehensive legal framework for consumer protection that addresses issues of consumer rights and responsibilities and also spells out transparent unambiguous rules, processes, and procedures for redress.

To achieve this, Government proposed to establish and maintain legal and administrative structures that will formal or informal procedures that are expeditious, fair, inexpensive and accessible. These procedures according to the draft policy will take particular account of the needs of low-income consumers, physically disadvantaged, and the large illiterate community. It also proposed to establish a **Consumer Protection Authority** with enough powers to adjudicate.

The **Authority** will receive complaints from the general public and will have the powers equal to the High Court. It will have Regional and District offices so as to be closer to the consumers for quick redress. Government will also strengthened the existing institutions assisting consumer and establish small claim courts throughout the country. It will also promote **Alternative Dispute Resolution (ADR)** mechanisms to enhance speedy delivery of justice which has started already.

Also, promote voluntary redress and compensation mechanisms by the business community, private sector initiatives, harmonize, simplify, and strengthen compensation mechanisms of regulatory bodies,

encourage the private sector to establish mandatory guaranty and warranty rules and schemes and support service providers to formulate charters on complaints handling including Citizens' Charters that clearly articulate the rights and responsibilities of all parties.

### **3.6 Advertising Of Products And Services Education And Information, Consumer Choice**

Currently, Ghana does not have a comprehensive approach to advertisement. It has laws scattered in statutes. However, there is a bill before Parliament seeking to harmonize advertisement in Ghana to protect consumers among others.

The draft policy observed that in their urge to highlight the benefits or superiority of their particular product over competing products, the Ghanaian advertising scene depicts the following: the exaggeration of the potential and the benefits of products; false claims which tend to mislead consumers; lack of high sense of social and moral responsibility; lack of decency, and appreciation of cultural values; misuse of children in advertisement.

The Government of Ghana therefore seeks to regulate and supervise the advertising industry with a view to ensuring truthful and ethical advertising.

Subsequently, Government will carry out a review of existing legislations and enact appropriate laws to regulate advertising practices in Ghana and develop appropriate systems and mechanisms for enforcing advertising standards and codes of practice. It will also institute appropriate measures to discourage the misuse of children in advertising.

**Consumer choice** is one of the relevant rights that the consumer has and countries across the world including Ghana are making sure that this right is protected though this right comes with responsibility.

#### **3.6.1 Comment And Recommendation**

It is recommended that the incoming law on consumer protection creates specific provisions on the right of the consumer to choose, e.g. the right against unsolicited good and/ or services; the right to choose suppliers of goods; the right to cancel advance reservation; the right to return goods; the right to have access to independent advice; right against bait and or pyramid/ marketing and other deceptive marketing schemes. It must be noted that all these rights come with responsibility on the part of the consumer.



It has been observed with concern an emerging trend in Ghana where viable looking businesses are created in very expensive buildings with beautiful furnishing that ‘create’ investment opportunities in various products with very high returns and end up duping unsuspecting members of the public.

### **3.7 Promotion Of Sustainable Consumption And Sustainable Environment**

This concept is not taken seriously by most developing countries because of its inability to have an immediate effect on the consumers. It connotes the concept of intergenerational equity where nations have the responsibility to make sure that they consume resources in such a manner that the generations yet unborn are not left with depleted resources, in otherwise the present generation should know that the generations after them also do have the right to consume safe and quality product. It includes meeting the needs of the present and the future generations.

The draft policy of Ghana provided for sustainable consumption throughout the policy as prescription for most of the thematic areas and shows how seriously the Government of Ghana is taken the issue of sustainable consumption.

#### **3.7.1 Recommendation**

It is recommended that a multi-sectorial approach is used to sustain the environment. This is because research has revealed that nations leave this responsibility on the Ministries of Environment alone. Inconsideration of this fact, the new global world will not be enough. The new trend should have the informed consumer and other advocacy groups on board.

### **3.8 International Cooperation**

The draft policy stated that International cooperation could take the form of multilateral and bilateral cooperation as well regional cooperation and cooperation among international consumer associations or groups. The Government of Ghana will develop, review, maintain or strengthen, mechanisms for the exchange of information on national policies and measures

in the field of consumer protection; Cooperate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Also, Government will develop or strengthen information links regarding products which have been banned, withdrawn or restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products among others, and will ensure that policies and measures for consumer protection are implemented in conformity with international trade obligations.

### **3.9 Suggested Solution To Existing Laws**

In general the study established the solution for effective implementation of consumer laws in Ghana. This will have to be a combination approach of both top – down and bottom-up approaches or the adoption of the c-governance theory developed by Ms. Joehida Quaye.

#### **Discussions of the approaches**

- a. Top – down approach
- b. Bottom –up approach
- c. A combination approach with B bias
- d. C-governance theory approach

#### **3.9.1 Bottom-up approach**

Consumer based approach will be the most effective way where the consumers themselves are empowered to take on the fights for their rights.

#### **3.9.2 C-Governance theory approach**

The general observation is that Ghana has so many laws tailored towards the protection of the consumer. The main problem is the implementation of the laws. It is in this direction that we are recommending the c-governance approach propounded by JOEHIDA QUAYE as one of the implementation models that can help the consumer.

This theory advocates that implementing and regulatory agencies for consumer rights should be premised on c-governance, which is the advance form of e-governance model.

The regulating and civil society organizations are supposed to ensure compliance with standards relating to products and services in our respective communities – thus community becomes the defacto jurisdiction for operations of both the regulator and civil society. In a way, the community reflects the expectations and aspirations of the general public to obtain healthy and sustainable products/services. Therefore community governance (c-governance) is the efficiency system requirement of our time – we move directly to the operational spots from our homes and solve the specific consumer's problem. This is necessitated by the digital revolution and evolution, which is precipitating development of the country's economy.

Fiscal decentralization and modernization of revenue management and administration is also a factor of PFM that include Project, Programme and Procurement Implementation (3PI) Information Management System is to ensure that MMDAs control substantial own revenue flows to enhance their capacity to actually perform the roles they have been authorized to play, while they remain accountable to local citizens for public goods and services that they deliver. The 3PI, Government Contract Portal is a web-based designed to increase transparency and a major plank in the MMDAs to achieve its mandate; and bring transparency and accountability to the planning, procurement contracting, monitoring and implementation process of public projects and programme.

One of the bottlenecks in the Ghana's middle income development process is lack of fiscal space for financing infrastructure delivery plan. This is exacerbated by the implementation and governance of the Single Spine Salary Structure (4S). The IMF has cautioned Ghana over its ballooning wage bill, which if untamed will increase the country's debt to levels that pose a risk to its transformation agenda and middle income development process. Therefore, the strategic outcome of it is now Government policy to link pay to work and productivity in the public service; and reduction of government appointee or bureaucracy or weaning-off subvented agencies from government budgeting.

This enjoins employers to pay for work done and compensate for increases in productivity of employees. In line with the Labour law, Government is to henceforth pay only for work done.

In order to implement these policy directives, a national framework to link pay to work and productivity index in the public service is to be developed by the Ministry.<sup>15</sup>

Our survey identified and mapped out more than 20 MDAs with each land asset almost half the size of the Airport Commercial District should form the basis for PUSI. The innovation is c-governance, where knowledge repository must be maintained, and value innovation, blue ocean strategy, and 3P model, would be evolved to wean-off MDAs from excessive government budgeting and create sustainable wealth.

C-governance model will require that MDAs do not keep humongous and unproductive office structure – only knowledge management system. Staffs of MDAs can perform any assignment and responsibility using the state-of-the-art technology without large track of office space.

The importance of converting these redundant assets into wealth and capital lies at the core of the new MDAs infrastructure and productivity movement. In the next decade, considering innovation of MDAs, which creates new infrastructure based on ICT, and knowledge management system – by way of avoiding redundant or unproductive assets in favor of productivity space makes c-governance concept inevitable. E-governance has been the success.

Currently, we are witnessing the leading edge of mobile learning (m-learning), which offers modern ways to support learning process through mobile devices, such as handheld and tablet computers, MP3 players, smart phones and mobile phones. M-learning brings strong portability by replacing books and notes with small RAMS, filled with tailored learning contents. M-learning focuses on the mobility of the learner, interacting with portable technologies, and learning that reflects a focus on how society and its institutions can accommodate and support an increasingly mobile population. In the same way the implantation agencies could be revolutionized to respondent directly to the needs of the consumer directly from the community and not from an office space only. With community becoming more mainstreamed to consumer, this adaptation will foster mobile and c-governance; as creation tool like Microsoft Office can be done online (Business Finder, 2014 January 9).

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<sup>15</sup> Section 168 (2) & (4) of the Labour Act of 2003, Act 651

Effectively, this model is going to be based on the essential need for all workers to see their offices as their homes, access information online, go to perform their operational duties in field teams and submit report online for decision-making.

## **Part Three**

# **Reported Case Consumer Protection In The Telecommunication Industry**

### **Introduction**

This part under chapter one seeks to discuss the existing legal and institutional framework of telecommunication service providers. Thus the national laws and policies governing the operations of mobile network service providers in Ghana, obligations of service providers and the determinants of tariffs and the effects of obligations and tariffs on subscribers. Chapter two identifies and discusses some of the violations and crime in the industry. The chapter three looks at some of the corporate policies and internal regulations of mobile network service providers and the effects of these corporate policies and internal regulations on subscribers. It mentions some of the challenges of the policies and internal regulations.

The chapter four is very crucial to the study such that it tackles the whole aspect of state of the consumer protection in the telecom industry of the country. It therefore establishes consumer rights, responsibilities, protection and advocacy in the subsector. This chapter would state how existing various groups ensure consumer protection in telecommunication subsector and the perception of subscribers and the state on the performance of these services of network providers i.e. abuse on subscribers. Chapter Six makes specific conclusions and recommendations for the sake of this case study. However, these recommendations may generally cut-across other consumer-related areas.

# Chapter One

## 1 The Legal Institutional Framework And Policies

In line with article 21 clause (1) (a) of the 1992 Constitution of Ghana and other relevant provisions of the Law, the following Acts of Parliament such as the National Communications Authority Act, 1992 (Act 524); National Communications Regulations 2003 (L. I. 1719); the National Communications Act, 2008 (Act 769); National Information Technology Agency Act, 2008, (Act 771); Electronic Communications Act, 2008 (Act 775); the Electronic Communications (Amendment) Act, 2009 (Act 786); the Electronic Communications Regulations, 2011 (L.I. 1991); the Electronic Transaction Act (Act, 772); the Communication Service Tax Act, 2008 (Act 754), the Communication Service Tax (Amendment) Act, 2013, ' the Value Added Tax Act 1998, (Act 546) and the National Health Insurance Law serve as the framework and ensures the control, regulation and management of the telecommunication industry in Ghana. It is within these set of framework together with relevant international laws and principles that various levels and degrees of obligations are imposed upon service providers<sup>16</sup> including public telecommunication service providers and to which eventually affect users of their services, the subscribers. There are also rules and regulations such as the '*Guidelines for the Deployment of Communication Towers*' and others which seek to augment a down-level regulation of the operations of service providers. The National Telecommunication Policy and the Ghana ICT for Accelerated Development Policy serve as the two main national development policies which shape the direction of network and service providers towards their commitment in contributing to the country's development objectives.

That notwithstanding to the above laws and development policies, the Legal and Institutional framework is governed mainly by the Ministry of Communications and the National Communication Authority (NCA) as well as the Ghana Revenue Authority and the Ministry of Finance. The Court system, in so far as the Electronic Communications Tribunal and the Dispute Resolution Committee are concerned, also play an important role in the governance of the industry.

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<sup>16</sup> According to the Electronic Communications Act, 2008 (775), service provider means a person licensed under this Act to provide a public electronic communications service.

The National Communications Authority (NCA) in exercising its responsibilities contained in the governing laws may establish specific obligations and responsibilities for all licensed service providers. Given the nature and degree of each type of operator's licence, the obligations may vary according to the type of operating licence except not to ensure discriminatory treatment of one network or service provider to another in the same market.<sup>17</sup> Therefore, there is individual and class licences granted to service providers which goes with various degree of responsibilities.

Notwithstanding the fact that the responsibilities of the NCA in ensuring that these obligations imposed on network or service providers are accordingly carried, it can be argued that these obligations partly and strongly influence the business relationship between network or service providers and their subscribers. It is this particular factor which draws the attention of the research unto the relevant set of obligations imposed on service providers by the State. Some of these obligations even go to the extent of ensuring that in the course of the operation of service providers, rights and public interest are protected and guaranteed.

Important examples of some of the influences as a result of the obligations of service providers to the State, within the relationship expressed above, can be identified in the weight and kinds of tariffs charged on the services provided to subscribers.

Firstly, although the principles of supply and demand<sup>18</sup> and other market forces<sup>19</sup> are fundamentally recognised by the law, a service provider is obliged to provide rates that are fair and reasonable and shall not discriminate among similarly situated persons, including the service provider and anybody corporate with which it is affiliated except as otherwise provided in the law in accordance with section 25 (2) and (4) of the Electronic Communications Act, 2008 (Act 775)<sup>20</sup>. What this basically means is that, given the type of framework of development recognized by the fundamental law<sup>21</sup> where market forces holds a very strong influence and conditions an enabling-environment for businesses and prices of products, a

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<sup>17</sup> National Telecommunication Policy, 2005, pg 24

<sup>18</sup> See Section 25 (1), Electronic Communications Act, 2008 (Act 775)

<sup>19</sup> The market forces include but not limited to methods by the NCA to regulate cost of service by dominant service providers in accordance with the Act.

<sup>20</sup> This Act provides for the regulation of electronic communications, the regulation of broadcasting, the use of the electro-magnetic spectrum and for related matters. Among other exceptions, the law applies to electronic communication and broadcasting services.

<sup>21</sup> See 1992 Constitution of Ghana, Chapter 6, Directive Principles of State Policy, article 36 (2) (b)



service provider should endeavour to provide commensurate tariffs for the services rendered to the public in order that ordinary Ghanaians can afford them unless otherwise in a circumstance addressed by the law in section 25 (2) and (4) of the Act for a price regulation regime and cost ceiling for the services provided by telecom companies to their subscribers.

Secondly, in section 25 (a) of the Electronic Communications (Amendment) Act, 2009 (Act 786), service providers are obliged to charge a minimum rate of US\$0.19 per minutes for international incoming electronic communication traffic. The Government is to retain 32% of this charge. However, what the law stipulates specifically under section 1. 25A (3) of this same amendment Act is that a network operator shall not charge its customers a higher fee for its services because of the minimum rate of international incoming electronic communication traffic. This obligation is enforced here in section 25A (4) where the law states strongly that where it is established that the network operator has increased the fees for its services because of the minimum rate for international incoming electronic communication traffic, that operator is liable to pay the Authority a penalty. In furtherance to enforcing this particular section of the Act, if the network operator is to charge a lesser rate than the US\$0.19 per minute, then the network operator will be liable to pay twice the difference between the specified rate of US\$0.19 and what was actually charged.

Therefore, a network operator who fails to submit information relating to the above within 14 days as requested by the Authority is liable to pay a penalty. There is no doubt that the purpose for this limitation to the fee is not only meant to generate revenue for the Authority on behalf of the people of Ghana but most importantly to ensure that service providers render reliable, fast and convenient services which relies on international incoming calls and data to their subscribers.

The third important example could be found also in the Communication Service Tax (Amendment) Act, 2013, where subscribers and network or service providers are imposed with a certain tax obligation. In this case, subscribers of services rendered by service providers are obliged to pay a rate of tax of 6% together with the actual charges of the services. This means that the tax shall be paid together with the electronic communications service charge which is paid to the service provider by the user/subscriber and in the case of electronic communications

service received from a source outside the country the tax shall be paid to the Commissioner-General by the user/subscriber who received the service.

It is important to note in this case that the electronic communication services required to be levied includes also the supply of any form of recharges which are mostly used by all subscribers. Moreover, this charge which is taxed at 6% on electronic communication services excludes the Value Added Tax (VAT) and the National Health Insurance Levy (NHIL) which are also paid now at a rate of 17.5% by the consumer in the usage of the service. The law enjoins communication service providers to file a tax return to account for the tax.

Having examined on one side the network or service provider with respect to its obligations to the State which influences its relationship with subscribers within the context of tariffs and levies, it is also important to present the case on the other side that there are also some obligations of the NCA, representing the State, to subscribers that goes to influence the business relationship between subscribers and service providers. For instance, a reference to article 27 of the Electronic Communications Act, 2008 (Act 775) shows that there is a duty on the part of the NCA to consult consumers/subscribers. It states that “The Authority shall establish and maintain effective arrangements for consultation with consumers on the performance of its functions. The Authority shall create a mechanism for dealing with complaints or concerns of consumers of telecommunication services and shall bring the complaints or concerns to the attention of network operators and service providers.”

In article 28, the Authority is to “prepare a Consumer Code on its own or in conjunction with the Industry Forum which shall include procedures for reasonably meeting consumer requirements the handling of customer complaints and disputes and for the compensation of customers in case of a breach of the Consumer Code, and the protection of consumer information.” The Consumer Code may provide for the provision of information to customers on services, rates and performance, the provision of technical support to customers and repair of faults, advertisement of services, and customer charging, billing, collection and credit practices. The NCA is obliged to even publish the ‘Consumer Code’ on its website. A detail of this obligation is treated in Chapter three where the issue of consumer right, responsibilities and advocacy were discussed.

## **1.1 Obligations Of Service Providers And The Determinants Of Tariffs**

The importance that the research attaches to this particular sub-chapter is due to the fact that apart from the earlier expressed obligations of service providers to the state which go to influence the business relationship between service providers and subscribers, there are also many obligations imposed on network or service providers by the relevant laws which deserves to be discussed to stimulate the thought and direction of future effort of consumer protection and advocacy in the country. There are obligations as part of requirements under the Electronic Communications Act, 2008 (Act 775) for network or service providers in the telecom industry. Given the complexity of the industry and the wealth it generates, the State, through the National Communications Authority and other agencies ensures that there is high level obligation in order not to regulate directly in the interest of just its own sake but instead to ensure maximum satisfaction to the people who subscribe the services.

According to section 3 of the Electronic Communications Act, 2008 (Act 775), *‘except as otherwise provided under this same Act, a person shall not operate a public electronic communications service or network or provide a voice telephony service without a licence granted by the Authority.’* It is stated that any person who wishes to operate a network or provide a voice telephony service shall apply to the Authority in the manner specified in Regulations made under this Act.

The licence granted in this regard by the NCA carries some form of obligations on the service provider such as informing the NCA the network and services the licensee intends to operate or the networks to which licensee’s network can or cannot be connected, the duration of the licence, the geographical and subscriber targets. The service provider is obliged to provide universal service and access, certain information to the Authority for regulatory and statistical purposes and to make public non-proprietary information. The service provider is obliged to provide rural service and services to Persons with Disabilities (PWDs) and other social responsibilities. The service is obliged to make payment of a licence fee.

The service provider is imposed with some obligations that relates to interconnection of networks and inter-operability of services, data protection and avoidance of harmful interference. Some also range from infrastructure sharing, the control of anti-competitive conduct on the part of the licensee, the provision to the NCA of documents and information for

the performance of its function and the publication by the service provider of its charges and other terms and conditions of doing business.

The service providers are obliged in the licence to ensure the regulation of prices and the quality of the services. The technical standards, the allocation to and use of by the service of numbers, the transfer and the renewal of licence and change of ownership in the shareholding of the licensee, prescriptions regarding national defence and public security and other restrictions on some of or all the conditions and modification of the duration of the licence is ensured by the NCA for service providers to oblige.<sup>22</sup>

In the case of individual license holders, any written request by the President of Ghana and subject to the Constitution, the service provider shall co-operate or collaborate with the President in matters of national security and observe the conditions of its licence and regulations that relate to the licence. The service provider with individual license is to file a report with the NCA on the quality of its service as measured against the quality of service performance indicators set by the NCA and publish other reports that the NCA may authorise. The service provider is to also publish its statements of charges and prices and respond quickly and adequately to the complaints. They are to file with the NCA samples of user agreements with end-users and any amendments of the agreements for the provision of public electronic communications service and not impose unreasonable or discriminatory conditions or limitations on the resale; provide and contribute to universal service and universal access in accordance with policies established under the National Electronic Communications Policy, amendments to the Policy and any other policies that the Ministry may establish; not impair or terminate the electronic communications service provided to a user during a dispute, without the written approval of the Authority; disconnect terminal equipment which is attached to an operator's network in contravention of this Act and which is unsafe to the user, is not in compliance with international standards or poses a risk of physical harm to the network; provide number portability when required to do so and in accordance with the requirements specified by the Authority; and provide dialing parity to other operators and service providers in accordance with requirements specified by the Authority.

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<sup>22</sup> See section 3 and 4 of the Electronic Communications Act, 2008 (Act 775)

In relating to those obligations with respect to the sale or transfer of shares, the Electronic Communications Act, ensures that a person with significant interest in a network operator or service provider does not sell, transfer, charge or otherwise dispose of that interest or any part of that interest in the network operator or service provider, unless notice is given to the Authority 30 days before the proposed transaction. Subscribers to a service provider and the rarely the economy of the country may be affected as a result of a transaction of the network or service provider with other network or service provider.

For the purpose of ensuring unwarranted disruption of services to subscribers and shocks in the economy, network operators or service providers are obliged to first give notice to the NCA before it cause, permit or acquiesce in a sale, transfer, change or other disposition of a significant interest. It also relates to when it wants to issue or allot any shares or cause, permit or acquiesce in any other re-organisation of that network operator's or service provider's share capital that results in a person acquiring a significant interest in that network operator or service provider or a person who already owns or holds a significant interest in the network operator/service provider increasing or decreasing the size of that person's interest.<sup>23</sup>

In the case of operating submarine cables and other related matters, the service provider is obliged to seek approvals or permits from the local authority and also the NCA.

Obligations to service providers with Class Licence can be found in section 7 and 8. For instance, in section 7 which covers services purposely for the operation of value added services, resale of electronic communications capacity or services by private operators to the public, networks for wholesale, private line or public distribution and domestic telephone service. The NCA may consider other services appropriate for this licence.

When it comes to ensuring consumer protection, the obligations of operators of electronic communication networks and communications service stated clearly in section 8 (1) restricts the service provider not use or permit another person to use or disclose confidential, personal

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<sup>23</sup> See section 5 of the Electronic Communications Act, 2008 (Act 775)- 'Obligations with respect to individual licenses'

or proprietary information of a user, another network operator or service provider without lawful authority unless the use or disclosure is necessary for the operation of the network or service; the billing and collection of charges; the protection of the rights or property of the operator or provider; or the protection of the users or other network operators or service providers from the fraudulent use of the network or service. The network operator or service provider is obliged to disclose lists of its subscribers, including directory access databases, for the publication of directories or for other purposes that the Authority may specify and authorize.

It is worthy to note that a licence shall be revoked on the making of a winding up order by the Court or the Registrar-General and also could be amended in written agreement with the state Authority.

For the purpose of ensuring reliability and satisfaction of the users of the services of the service providers, the network operator or service provider is to comply with guidelines and standards established by the Authority or another relevant law to facilitate interconnection generally to other network operators or service providers. Where two or more networks or service providers have endeavored to conclude an agreement with regard to the charges and the technical and other terms and conditions for the elements of interconnection, a copy of the agreement should be submitted within seven days after the conclusion to enable the Authority to determine whether the agreement complies with the guidelines established under this Act. The service providers are to submit to the Authority for prompt resolution a failure to conclude an agreement or disputes as to price and any technical, commercial or other term or condition for interconnection. In such circumstance, they are bound by a decision made by the Authority in the resolution.

- a. **Road Works** - Network operators are also obliged to obtain written permission and ensure detailed plans from relevant authority when installation or removal of a facility over a road, public ground, on the shore or bed of the sea.
- b. **State of Emergency** - Under a state of emergency as stipulated in section 99, a network operator shall give priority requests and orders for transmission of voice or data that the President considers necessary in the interest of national security and defence. Under section 100, network operators or service providers of electronic communications networks or

services are required to intercept communications, provide any user information or otherwise in aid of law enforcement or national security upon written requests through an executive instrument orders by the President.

- c. **Tariffs** - A service provider shall provide rates that are fair and reasonable and shall not discriminate among similarly situated persons, including the service provider and anybody corporate with which it is affiliated except as otherwise provided in this Act. The determinants of the tariffs for electronic communication services are;
  - a. Principles of Supply and Demand (*See section 25 (1), ECA Act 775*)
  - b. Fair, Reasonable and non-discriminatory (*See section 25 (3), ECA Act 775*)
  - c. Minimum rate of International incoming electronic communication traffic (*See section 25A, ECA Amendment Act, Act 786*)
  - d. Communication Service tax

## **1.2 Obligations of network operators with respect to the Electronic Communications (Amendment) Act, 2009 (Act 786)**

The obligations of network operators with respect to The Electronic Communications (Amendment) Act, 2009 (Act 786) is crucial to the business relationship service providers have on their subscribers. This amendment Act ensures that there is a limitation to the charges by network operators on international incoming traffic. For instance, it ensures that network operators charge the minimum rate of US\$ 0.19 per minute of which the Government is to retain 32%.

However, what the law stipulates specifically under section 25A (3) is that a network operator shall not charge its customers a higher fee for its services because of the minimum rate of international incoming traffic. In section 25A (4), it states strongly that where it is established that the network operator has increased the fees for its services because of the minimum rate for international incoming electronic communication traffic, that operator is liable to pay the Authority a penalty.

Moreover, if the network operator is to charge a lesser rate than the US\$0.19 per minute, then the network operator will be liable to pay twice the difference between the specified rate of US\$0.19 and what was actually charged. A network operator who fails to submit information, relating to the above within 14 days, as requested by the Authority is liable pay a penalty.

### **1.3 Obligations of service providers in accordance with the Communication Service Tax, 2008 (Act 754) and Communication Service Tax (Amendment) Act, 2013.**

The communication service tax, otherwise known as the ‘Talk tax’, is levied on charges (including recharges) payable by a user of an electronic communications service other than private electronic communication services.<sup>24</sup> The tax is levied both on charges of electronic communication services supplied by service providers to users in the country on one hand, and on the other hand charges payable on electronic communication service received by users from sources outside the country. It means that the user of a service is to pay this tax together with the service charge payable to the service provider. But in the case of electronic communications service received from a source outside this country, the tax shall be paid to the Commissioner-General by the user who received the service.

The obligation in this case is for the service provider to pay the tax charged on the consumers to the appropriate Value Added Tax Commissioner. Unless otherwise directed by the Commissioner in writing, a service provider shall file a tax return to account for the tax. This also means that an amount shown as the tax on a bill or invoice for electronic communications service usage is recoverable as tax from the person [in this case the service provider] who issued the bill or invoice whether or not the tax is chargeable on the electronic communications service usage, or the person who issues the bill or invoice is a person authorised to provide electronic communications service under the Electronic Communications Act, 2008 (Act 775).” For now the rate of tax is 6% of the charges for the use of the communication service.

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<sup>24</sup> The tax is paid by a user of public electronic communication services.



Meanwhile, the service providers like other businesses are obliged to the State in accordance with the Companies Act, 1963 (Act 179) in the filing of annual Audited Financial Report and perform other obligations with respect the timely changes of the law as and when necessary.

# Chapter Two

## Violations And Crimes

### 2 Introduction

Even though the general emphasis is that telecom fraud involves the theft of services or deliberate abuse of voice and data networks, his white paper defines telecommunication fraud as ‘the intentional and successful employment of any deception, cunning, collusion, artifice, used to circumvent, cheat or deceive another person, whereby that person acts upon it to the loss of his property and to his legal injury.’<sup>25</sup>

Globally, it is recognised that Subscription fraud, PBX Hacking, Account Take Over/Identity theft, VoIP hacking and Dealer fraud have become the top five fraud methods reported by telecom operators. The top five fraud types are also roaming fraud, wholesale fraud, premium rate service, cable or satellite signal theft and hardware reselling.<sup>26</sup>

Since 2011, fraud departments of telecom operators have reported 117% more cases per month. In Africa, for instance, it is estimated that 54, 469 cases are reported annually as compared to 197, 812 in Western Europe and 177,349 in North America.

In Ghana, telecom operators lose US \$40 billion dollars annually as a result of fraud and other violations on their services. Many of the cases are not captured in any public report about the state of fraud combating in the sector. But people account to some experiences on some occasions unknown numbers or a non-existing numbers are normally used or used to attempt to scam or deceive them. The Association of Mobile Telephony and Credit dealers of Medianet holds the view that scam on mobile telephony forms part of unfair labour practices or unfair business practices by the network operators. They argue that the airwaves which are used by the network operators belong to Ghanaians. Therefore, a situation where a network or service provider has been allowed a particular frequency within the range between 800MHz and 1100Mz and then allow any scam to fall within that range then that network should be held

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<sup>25</sup> Ibid pg.2

<sup>26</sup> CFCA, *2013 Global Fraud Survey*, 2013  
Visit: [www.cfca.org/fraudlosssurvey/](http://www.cfca.org/fraudlosssurvey/)

reliable. They argue that there is nothing holding up the network operators from cross checking from the public switch to detect many of the interception.

Other people in Ghana complain about receiving SMS messages telling them that they have won a raffle. The message would often request you to call a number. After calling the number, the credit on the SIM card is deducted. On other occasions, a number from an unknown destination, sometimes ending with xxxxxx7000 will call one's mobile device. A return call to the number will never be answered. However, this same number will be calling the device consistently. Any answer to the call will be a response programmed voice machine. Many people, including ASIMODE, regard this as a frustration to their business. The experience where a subscriber's credit is deducted by receiving a text message is seen as very unethical attitude. ASIMODE describes this in a sense that a subscriber tops up credit and when he or she receives some kinds of text message and his or her credit is deducted.

It is quite unfortunate that mobile phones are used in committing crimes. In the first place, it is suppose to be a device to transmit information from one place to the other or sharing information between persons in the community and in business but at the same time too manufacturers, thinking so high above a vision, have some features in the mobile phones unknown to many people. Having conducted or having done mobile research, there is a key which is known as the public key infrastructure in every mobile device and it has security features. Any message that is relayed to another person the authenticity of that message is captured by the security features. Actually, there are four (4) main features and authenticity or how to authentic the message is one and so a situation where people issue threat to their neighbors, the security investigates and they cannot track the perpetrators, it is surprising but I believe having disclosed this and if it is well monitored by the Police it they can be able to track down people who are behind somebody's crimes.

Just has in many parts of the world, in Ghana fraud in the telecommunication industry ranges from those that are reported in fixed line services and mobile services.

## **2.1 Fixed Network Fraud**

In an interview with some few technicians and managers in the industry, it has been noted that the evolution in fixed networks in Ghana, for example, the migration from circuit switched (TDM) to packet switched (IP), High Speed Digital Access (ADSL, Cable, Broadband

satellite), Soft switches rather than hardware switches, the emphasis switching to content rather than carriage, extending access to the SS7 signaling and supervision networks to operators and partners, and changes in numbering plans have provided fraudsters with new media and new opportunities to increase their presence in this area of the telecommunication industry. For others, PBX hacking has been identified to be one of the common fraud that affects the operations of fixed line service. It is executed with the motive on dial through for organized crime. There is also cramming, surfing, slamming and subscription fraud which they normally experience. But cramming, dialing a strange 9xx numbers and leave phone off the hook thereby tricking the other person someone into accepting the 9xx charges on someone's bill, is regarded to be common during the early 2000s when public telecom phone booth were introduced. Moreover, there are has been cases of physical attack on payphones, tapping of cable line. Some fraudsters prefer to attack SS7 where the concern is the attack on SCPs, STPs and SSPs. It eventually affects billing data, collect calls and PINS.<sup>27</sup>

## **2.2 Mobile Network Fraud**

With the development of the mobile service aspect of telecommunication, many users of telecom service in the country hold the view that they have experienced various types of fraud. These experiences are obvious because with the use of mobile service millions of people prefer to use wireless and portable device for their daily communication. Some technicians identify 'cloning' as a type of fraud in the industry. It requires the fraudster getting access to the Electronic Serial Number (ESN) and the Mobile Identification Number (MIN)<sup>28</sup>. For example, the fraudster copying the identity of a Samsung Galaxy 2 and transferring it unto another mobile telephone likes HTC. And so, even though the HTC is what is in use its real identity is Samsung Galaxy 2). However, access to Police report on reported cases of mobile crime with the expectation of getting information on 'cloning' remained futile. The study could not obtain any police report concerning mobile phone cloning and others which involves copying the identity of one mobile telephone unto another mobile telephone.

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<sup>27</sup> Steven Brown (2005), 'White Paper Telecommunication Fraud and Management', *Waveroad SecurIT*, pg 8

<sup>28</sup> Ibid pg 6-7

Another type of fraud in the industry is tumbling. In tumbling, the fraudster pretends to be from another service provider. Next, the fraudster modifies your mobile telephone to generate a random ESN and a random MIN from an Area Code of this service provider for each call.

Despite the existence of subscription fraud in fixed line services, it is very rampant in the mobile service as well, given the fact that the growing number of subscription in telecommunication service is in mobile service. In both fixed and mobile service, subscription fraud is noted to be the most prevalent. Fraudsters would normally subscribe to a network service posing as a credit worthy person or business. After gaining access to the network, (if for instance mobile -1G, 2G, 3G) through subscription and activation start calling international and national with the intent not to pay for the service. They obtain all privileges like roaming privileges and for the short period behave like good clients until he begins to abuse the service like roaming to a foreign network and cause high volume of calls in quick succession with the intent not to pay for the service. They would often use multiple phones in doing these calls.

The stealing of mobile handset or phone and changing the SIM card is a widely known practice in Ghana. It remains the easiest and very common action for the perpetrator to make some little money in Ghana. The mobile device becomes a used commodity at the Black Market for any new interested person to buy. Hardly do the perpetrators use the SIM Card any longer since it is a common knowledge the owner could trace the user of the phone when being utilized for receiving and making calls after the crime. The owner would often block the SIM at the nearest service provider branch.<sup>29</sup>

Prepaid Fraud is also a practice done to exploit prepaid services provided by service providers. In some cases, prepaid cards, PIN numbers and recharge codes at production and support services are stolen. Others also scan data on a rightful mobile device using prepaid services and duplicate the data on another prepaid mobile phone which sometimes may be stolen for use. So the other prepaid phone uses free prepaid credit without paying for the service and other levies on the charged on the service.

Roaming Fraud is also done in the mobile network service. It occurs when a roaming subscriber makes calls on another network as a visitor (roaming subscriber). The delay in time of the call

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<sup>29</sup> Group Observation and focus group discussion with mobile phone dealers at Tip-Toe lane, Nkrumah Circle

rate identification and notification to the home network is exploited by fraudsters. Others also use subscription fraud and stealing the mobile handset of roaming subscribers.

Recent developments in the country's telecom subsector have seen frightening cases of SIM box fraud. On July 2010, the NCA in Ghana embarked on an exercise with mobile operators to register all SIM cards. It was required that users of mobile telephony services register their SIM cards by a certain period. The motivation was partly to reduce fraud involving the use of the unregistered SIM cards. SIM Box fraud was one of those crimes that the exercise intended to help resolve. It occurs when individuals or organizations illegally terminate a voice call which is the preserve of registered licensed network operators, usually at lower cost than the approved rates. These are then used to channel national or international calls away from licensed international gateway operators and presented as local calls on unlicensed networks. These recent development is noted to be making the State and licensed mobile operators to lose millions of Ghana cedis.

An example is the reported arrest of a SIM Box syndicate who defrauded the state and the telcos an amount of GH¢7.2 million was in May 2011. These syndicate were identified to be operating between Oregon of the United States and Accra. The swoop was as a result of an anti-fraud collaboration between the National Communications Authority and licensed mobile operators in Ghana. The NCA holds the view that since then it has been able to make several arrests. For instance, in May 31 2012, the CID and the Fraud Manager of Vodafone with the assistance from the NCA arrested another group of fraudsters in some houses within some suburbs of Accra. The anti-fraud squad found and retrieved some electronic devices which included 25 servers installed with SIM boxes, 8 laptops, a quantity of Cisco routers and printers.<sup>30</sup>

A major SIM Box fraud syndicate was arrested for the third time in August 2012 where the syndicate was busted for routing international calls through the internet using voice over internet protocols and terminate the calls with a local phone number in Ghana to let it appear like a local call. The CID retrieved two hyper media SIM gateway equipment with each having the capacity to accommodate 160 SIM Cards. Other devices were antenna, SIM cards, two

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<sup>30</sup> Source: NCA <http://www.nca.org.gh/73/34/News.html?item=251>  
Date: 30<sup>th</sup> December 2013, Time:18:20pm GMT

modem hubs and other devices. Unfortunately, the caller becomes unaware of this action while the state and the licensed mobile operators lose revenue.<sup>31</sup>

### **2.3 Content And Value Added Services Fraud**

There has been a lot of development in content and value added services of mobile network and service providers. Few interviews with technical operators of mobile content applications companies indicate that some of the content and value added services including voice call services such as ring back tones or caller tunes, religious portal for receiving and reading texts from religious books, international, entertainment and sport have been tried by unknown people to exploit the facility on another device without payment. Other attempts have also been made on services such as credit transfer on the same network, mobile banking and payment of utility bills, insurance, and home and vehicle protection. What has gained greater interest to the youth in Ghana is the content for internet services. With access to internet on your mobile device the user can enjoy SMS Chat services such as WhatsApp, Facebook, 'Tigo Adanfo', 'BUZZ me' and many others. However, high subscription rate and competition in the industry has led to massive promotion of content to attract and maintain subscribers exposing the risk for internet fraud. Some of the promotion includes discounts on categories of calls like family, friends and peak times.

These improvements have led to the emergence of mobile content companies such as SMSGH, Rancard Solutions and others providing extension user services to subscribers of the main service providers. As a result of phishing and pharming which are known to be common on the internet, many of the mobile devices especially the smart phones or android types have become exposed to the risk of attacks and hacking of private data. The development in mobile content, have attracted high risk fraud and scam which often costs even more than costs of calls. Even though there are available Copyright laws in Ghana as well as the Electronic Transaction Act (Act, 772), the content in mobile communication devices may be abused to the detriment of the property owner of the content. In Ghana and very common in many places, content theft refers to file swapping networks for music and video and copying or sharing of software. It

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<sup>31</sup> See Subex Telecom Fraud Alert, July –September 2012

Visit <http://www.subex.com/pdf/subex-telecom-fraud-alerts-july-september-2012.pdf>

Date: 30<sup>th</sup> December 2013, Time:18:20pm GMT

also includes ripping CDs, VCDs and DVDs. Young people often exploit adult content which are freely available on the Internet. E-books, manuals and other copyrighted materials are hacked without the user not paying any fee to the copyright or online source.<sup>32</sup>

## **2.4 Fraud Detection And Prevention**

The basic step for the safety of the calls and privacy protection involves ensuring that mobile telecom operators have effective fraud management systems. This should be captured in a secured, well defined security policy aimed at checking internal fraud to mitigate switch, mediation and billing systems. It would not deal with internal fraud only but also external exploits because such a system when able to detect external attacks will reduce false subscriptions, illegal tapping, and many others.

One way of preventing fraud is through education and advocacy. ASIMODE have set an example with the launch an advocacy campaign under the theme '*Ensuring quality standards in the telecom industry*' because they realized that many of the standards such as the quality of service were declining. The quality of service falls short of what they expected in accordance with the communications licence. The organisation believes that basis for the issuance of the licenses which were given to them was for the service providers to deliver quality services.

## **2.5 Conclusion**

Despite the fact that there is lack of publicly accessed fraud report, it can be mentioned base on news reports and opinions from technicians and operators of the industry that fraud methods and types have been identified but yet to be entirely resolved in a collaborative and highly efficient detection and prevention approach, fraud analysts and investigators have taken a critical concern to emerging fraud methods and types. PBX Hacking, Subscription Fraud, VoIP Hacking, Dealer Fraud, Account Takeover or Identity Takeover are those that the CFCA have identify as the top five emerging fraud methods whiles the top 5 emerging fraud types includes

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<sup>32</sup> Brown (2005), 'White Paper Telecommunication Fraud and Management', *Waveroad SecurIT*, pg 4



International Revenue Fraud (IRSF), Roaming Fraud, Interconnect Bypass (e.g. SIM box), Premium rate service and Domestic Revenue Share (DSRF).<sup>33</sup>

The emerging trends and possibilities as mentioned earlier is attributed to the development of the industry alongside technological application to services provided by network operators.

ASIMODE and others recommends that there should be an established consumer forum. It should be a consistent forum that will address some of these key issues to lessen the confusion that is being created by the networks including but not limited to preventing fraud and crimes in the industry. By so doing, at least, people who have problems from the networks can have access to them.<sup>34</sup>

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<sup>33</sup> CFCA, 2013 Global Fraud Survey, 2013

Visit: [www.cfca.org/fraudlosssurvey/](http://www.cfca.org/fraudlosssurvey/)

<sup>34</sup> Recorded Interview with the President of ASIMODE on 2<sup>nd</sup> January, 2014

# Chapter Three

## Corporate Policies And Internal Regulations

### 3 Introduction

The effort of ensuring sustainability of mobile network operators, just like any other business, is deeply rooted as to how their corporate policies and internal regulations are carried for achieving the objectives of their business. To this extent mobile network operators or service providers in Ghana would devote and commit a lot of attention, resources and focus on its own policies and regulations at all levels of their business.

But as it was previously established in Chapter two of this Part, that the national laws and policies of the State goes to influence the operations of service providers in the telecommunication industry, this chapter will therefore devote its space to some corporate policies and internal regulations of mobile network operators in Ghana, but this time round its effects on subscribers and the challenges associated with the implementation to ensuring customer satisfaction and also in meeting some of their State obligations.

Prepaid Voice service may seem to be the dominant subscribed service for network operators. Most often, any potential subscriber who wants to use any of the services provided by the network operators must first and foremost subscribe to the use of a legally registered prepaid SIM card which is contained in a SIM pack. Apart from the SIM card, there are other useful items in the pack which includes a guide to the use of the SIM card, some useful universal emergency numbers and sometimes an advertisement of one or more value added service of the network operator. For example, the Airtel prepaid SIM pack has a guide on how to activate your service, how to top your line with Airtel Top Card, what to do if SIM card or cell phone is lost or stolen; useful information in case of an immediate activation inconveniences like text messaging; and useful universal emergency and network service numbers to the Police, Fire Service, Ambulance and Customer care centers, respectively. All the network companies similarly do have this basic information contained in the Starter pack of their SIM cards.

### **3.1 Rights and Responsibilities on Products and Services**

Considering the above subject and its associated legal implications, it can simply be deduced that the useful universal emergency numbers, for instance, as displayed on the SIM packs or Starter packs seek to comply with article 23 of the Electronic Communications Act, 2008 (Act 775). In carrying out these obligations, as a matter of fact, the network operators or service providers inform their subscribers about the networks provision and contribution to universal service.

In the course of the study, it was observed that it was very difficult to access the general terms and conditions or its web link to most of its value added service which would require the use of prepaid SIM Packs in order that the potential subscriber would be properly informed about the rights and obligations of the potential subscriber to the value added service being offered.

### **3.2 Fraud Management and Security Policies**

As a measure of curbing fraud in the industry, some network operators have the policy to collaborate with their subscribers and the NCA to detect fraud and consequentially arrest the perpetrators in order to reduce revenue losses. One of such policy measures is the introduction of a short code. For example, Airtel Ghana has introduced the short code – 919 for their customers to report SIM Box numbers. In a media release published on August 16<sup>th</sup> 2012, the Managing Director of Airtel Ghana, Philip Sowah says “Airtel Ghana has deployed state of the art systems at very high costs to actively detect SIM box on a real time basis to enable us block these numbers the moment we detect them on our network”. According to him, besides the internal systems put in place, Airtel Ghana in collaboration with other telecom operators provides information to the security agencies, the NCA and the MoC to assist in arresting these criminals from their hideout.<sup>35</sup>

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<sup>35</sup> Myjoyonline.com, ‘Airtel Ghana intensifies fight against Sim Box Fraudsters’, August 2012  
See: <http://business.myjoyonline.com/pages/news/201202/81645.php>  
Date Sourced: 30th December, 2013. 18:30 pm GMT

As have been mentioned earlier in other previous chapters, for instance in chapter five, about the significance of international laws to individual right and privacy. In the said dialogue between telecom operators in 2013, participants adopted some key principles based on internationally legally recognized laws and standards for human rights such as the Universal Declaration on Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. These international laws as well as the OECD Guidelines for Multinational Enterprises and the UN business and human rights ‘*Protect, Respect, and Remedy*’ framework<sup>36</sup> provided a framework for them to adopt the principles in their internal policies, processes and engagement with external stakeholders, especially the subscribers.

These principles below remain important to the operations of network operators to the extent their implementation does not cause them to violate domestic laws and regulations. The principles include that network operators;

1. Create and/or maintain relevant policies, with Board oversight or equivalent, outlining commitment to prevent, assess, and mitigate to the best of their ability the risks to freedom of expression and privacy associated with designing, selling, and operating telecommunications technology and telecommunications services;
2. Conduct regular human rights impact assessments and use due diligence processes, as appropriate to the company, to identify, mitigate and manage risks to freedom of expression and privacy – whether in relation to particular technologies, products, services, or countries – in accordance with the Guiding Principles for the Implementation of the UN ‘Protect, Respect and Remedy’ framework;
3. Create and/or maintain operational processes and routines to evaluate and handle government requests that may have an impact on freedom of expression and privacy to:
  - a. Ensure that government demands are reviewed by appropriately qualified and experienced personnel in order to assess their compliance with legal and due process. For demands for continuous access, such review will take place at the time of the initial request;

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<sup>36</sup> This was endorsed by the United Nations Human Rights Council in June 2011

- b. Establish in advance guidance to relevant personnel on how to interpret government demands as specifically as possible;
- 4. Adopt, where feasible, strategies to anticipate, respond and minimise the potential impact on freedom of expression and privacy in the event that a government demand or request is received that is unlawful or where governments are believed to be mis-using products or technology for illegitimate purposes which may include, if appropriate:
  - i. Reviewing the demand with the relevant authority in order to seek clarification or modification;
  - ii. Seeking judicial review (court-procedure), where available;
  - iii. Appealing to other relevant branches of the administration, such as regulators or governmental departments;
  - iv. Seeking alternative measures that would minimise or mitigate the practical impact on freedom of expression and privacy;
  - v. Engaging UN- or other supranational bodies and/or other governments/institutions for diplomatic support; and
  - vi. Engaging other stakeholders, such as media/NGOs, as appropriate, in support of freedom of expression and privacy;
- 5. Always seek to ensure the safety and liberty of company personnel who may be placed at risk;
- 6. Raise awareness and train relevant employees in related policies and processes;
- 7. Share knowledge and insights, where relevant and appropriate, with all relevant and interested stakeholders to improve understanding of the applicable legal framework and the

effectiveness of these principles in practice, and to provide support for the implementation and further development of the principles;

8. Report externally on an annual basis, and whenever circumstances make it relevant, on their progress in implementing the principles, and as appropriate on major events occurring in this regard;
9. Help to inform the development of policy and regulations to support freedom of expression and privacy including, alone or in cooperation with other entities, seeking to mitigate potential negative impacts from policies or regulations;
10. Examine, as a group, options for implementing relevant grievance mechanisms, as outlined in Principle 31 of the UN Guiding Principles for Business and Human Rights.

### **3.3 Corporate Social Responsibility**

Private sector business and establishment like the Chamber of Telecoms have been recognized according to the policy of government towards promoting ICT in the country. In the policy document '*The Ghana ICT for Accelerated Development (2003)*<sup>37</sup>', Government seeks to partner with stakeholders including the private sector to fulfill national goals in education, health, agriculture, governance and others. It is stated, for instance, that the Government will adopt strategies to modernize the country's educational system using ICTs to improve and expand access to educational, training and research resources. Over the period, private sector in the telecommunication industry has been rallied to play a role in the light of what has become known as corporate social responsibility. The principle of corporate social responsibility is generally respected and implemented by service providers, despite the fact that their overall aim is to maximize profit in the economy.

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<sup>37</sup> A policy statement for the realization of the vision to transform Ghana into an information-rich knowledge-based society and economy through the development, deployment and exploitation of ICTs within the economy and society

However, despite some of the relative contributions of service providers to the provision of social infrastructure and other so-called humanitarian assistance, consumer advocates such as ASIMODE have challenged the service providers on the amount of quota from their gains is committed to social development and in which specific area. How much and how strategic are their contributions? They argue, for instance in comparative terms with the churches, they believe the churches are doing better than the networks in terms of contributing to the course of national development. This is because, as they speculate, what is provided by the churches can be measured above what is provided by the telecom service providers considering the enormous wealth that is accumulated from the economy by the service providers and the kind of ownership which predominantly exist in the industry. Here is how ASIOMODE presents their case;

“...what they get from Ghanaians, what quota is used in the area of development? I believe the churches are doing better than the networks in terms of contributing to the course of national development. Because that of the churches can be measured but what about the networks how can you measure. What are the landmarks? ...So I am saying that what they get from the society they are not putting much for society to measure. So I am not seeing the best from them. I made a typical example to that of the mobile dealers and the mobile phone and credit dealers. Today, everywhere you go you can meet somebody selling mobile phones or you can meet somebody selling... what do you call it?...unh...credit; so at least, the networks whatever they are getting from us we should see the landmarks that this is what has been provided by Vodafone, this is what has been provided by MTN. In the area of some (referring to other humanitarian assistance), fine!...we know a lot of people have suffered very serious ailments where they have one way or the other paid token to them but at the same time they should leave some landmarks.”

# Chapter Four

## Consumer Rights, Responsibilities And Advocacy

### 4 Introduction

In chapter two where emphasis was made on the obligations of service providers to the State, the issue of consumer protection was not ignored. However this chapter is devoted to the issue of consumer protection and related matters. As a reminder to the previous chapter two, when it comes to ensuring consumer protection, the obligations of operators of electronic communication networks and communications service stated clearly in section 8 (1) restricts the service provider not use or permit another person to use or disclose confidential, personal or proprietary information of a user, another network operator or service provider without lawful authority unless the use or disclosure is necessary for the operation of the network or service; the billing and collection of charges; the protection of the rights or property of the operator or provider; or the protection of the users or other network operators or service providers from the fraudulent use of the network or service. The network operator or service provider is obliged to disclose lists of its subscribers, including directory access databases, for the publication of directories or for other purposes that the Authority may specify and authorize.

#### 4.1 Consumer Rights And Responsibilities

The National Communications Authority has a laid out policy on ‘Consumer Watch’ of which the rights of subscribers to services provided by mobile network operators are guaranteed. This forms part of the license conditions of the Electronic Communication Act 2008, (Act 775). The condition mandates service providers provide for consumer protection in order to ensure that the rights on telecom products and services are protected.<sup>38</sup>

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<sup>38</sup> See <http://www.nca.org.gh/40/124/Consumer-Rights.html?item=255>  
Date sourced: 31/12/2013 Time 18:30pm



Some of the rights includes the following;

1. The right to have access to basic telecommunication services at affordable and reasonable prices.
2. The right to choose from a variety of telecom services provided.
3. The right to have a variety of information to choose from services advertised.
4. The right to select preferred services.
5. The right to be informed about products and services in complete, accurate, simple and clear language.
6. The right to complain and to be heard about quality, delay, quantity and tariff with regard to the nature of the communication service provided.
7. The right to redress, to be given a fair settlement of just claims.
8. The right to consumer education on services being offered.
9. The right to request or access information on bills.
10. The right to be notified about planned interruption or termination of services.
11. The right to opt out of unsolicited electronic messages.
12. The right to privacy of information.
13. The right to enjoy universal access.
14. The right to receive compensation for mis- representation of products or services.

Issues of human rights as it widely known to be driven by two main directions, externally by international laws and internally by the domestic laws, cannot be left in considering factors which could necessarily draw the attention of subscribers and advocates for exerting their rights and responsibilities within the telecommunication sector. For this reason, critical issues relating to individual rights of protection and privacy which have become a responsibility not only on the part of the State but also network operators or service providers in their scheme of things deserves to be treated briefly here. Advocates of human rights in the telecommunication sector could see the relevancy of the result of a dialogue that ensued between telecom companies. This dialogue managed to develop some measures that a Government, in considering the role of network and service providers with respect to the protection of human rights, should ensure that they [service providers];

- a. Protect human rights, including ensuring that national laws, regulations and policies are consistent with international human rights laws and standards on freedom of expression and privacy;
- b. Define with care the balance between freedom of expression and privacy and other legitimate societal needs, such as national security, public safety, law enforcement and protection of children. This is not the role of companies;
- c. Communicate transparently about the laws, regulations and policies relating to freedom of expression and privacy, and their implementation;
- d. Assess laws and regulations periodically, addressing any gaps or need for changes, and basing new regulation on a full understanding of technologies and the global context of their use;
- e. Provide pro-active support to international companies headquartered in their territory in diplomatic dialogue with the governments of third countries where those companies have operations and where risks related to freedom of expression and privacy are emerging;
- f. Avoid mandating more restrictive standards for intermediaries than is the case with traditional media regarding freedom of expression or holding intermediaries liable for content and communications that they transmit or disseminate.

There is a saying that every rights do not exist in isolation they are guarded with responsibilities and therefore having highlighted some of the specific rights of subscribers, it would be significant to mention some of the specific responsibilities of the subscriber as stipulated by the NCA.<sup>39</sup>

These responsibilities specifically are;

1. Not rely solely on service providers' information and choice.

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<sup>39</sup> *ibid*

2. Read carefully terms and conditions on contracts, promos and adverts and understanding them before opting in.
3. Be abreast with service and product information
4. Compare price, quality standard and features make informed decisions before making or entering into a contract,
5. Provide proof of purchases or receipts and documents invariably obtained and kept safely.
6. Pay bills promptly to avoid disconnection.
7. Inform Service Provider about lost or stolen SIM Card.
8. Inform Service Provider about changes in personal circumstances such as change in name or address.
9. Keep receipts, cancelled contracts, bills and instruction. They will be useful in problem solving.
10. Desist from sending messages that are obscene, threatening or otherwise contrary to applicable laws or regulation.

## **4.2 Consumer Protection And Advocacy**

In line with the core mandate of NCA, it sees the importance to actively play its role in consumer protection. Firstly, it has been able to establish a publication called ‘Consumer Watch’ which is solely dedicated to consumers of telecommunication and with the objective of educating, enlightening and protecting the user of communication services in the country. With this publication, consumers would be informed about ongoing development in the subsector, empower them through information, bridge the gap between consumers and other stakeholders and give a voice to consumers that cannot reach their operators. The publication is done with simple and clear language and its editorial assures of accuracy.

Secondly, the NCA has developed a ‘Consumer Advice Leaflet’ which contains information to consumers about procedures for filing complaints, the rights of the consumer, the responsibilities of the consumer and contacts to various regions and department for national accessibility to consumer support. With respect to procedure when dissatisfied with services of my telecom services, the consumer is expected to contact the service provider whose services

or products is not satisfactory. The service providers are mandated to have Complaints Forms which must be available to subscribers. In certain circumstance where the issue is not satisfactorily resolved by the service provider, you may call the NCA's Corporate Affairs Division to lodge the complaint. The consumer advice leaflet also guides the consumer how to file the complaint, the specific kind of information in the complaint and the action which may be taken by the NCA given the nature of complaint.

Whereas the NCA could be acknowledged for issuing its first 'Consumer Watch' publication in October 2013, it could lightly be argued against why the long delay considering the extent of growth of the industry and most critically the expectation of launching a publication solely for consumers of telecommunication to capture not only mobile and fixed tariffs, quality of service on call drop rates but as well revenue mobilization and news of sanctions on operators who have violated the laws. This is because, even though it may be mandatory for the NCA to cover in its 'Consumer Watch' all other areas of the communications sector such as radio broadcasting as it is stipulated in the Electronic Communications Act, 2008 (Act 775), the extent of growth of telecommunication industry, especially mobile service, is significantly broad with subscribers and issues to deserve its separate 'Consumer Watch' publication. Additionally, it would also strengthen the commitment the consumers have in the work of the NCA.

Many individuals have critically pursued actions to ensure their protection and have advocated for their consumer rights through social media as well as the traditional electronic media. However, the Association of Independent Mobile Phone and Credit Dealers of Medianet (ASIMODE) have remained very instrumental in ensuring consumer protection. ASIMODE is an independent non-profit and non-governmental organisation established in October 2008 in Accra by privately owned retailers to present a concerted approach on competition and market issues in the mobile phone or mobile retail market. They are committed to the concerns of privately owned, retailers and are at the forefront in protecting their labour and economic rights. Its mission is to provide a service to independent leadership within the Ghanaian mobile landscape by providing a representative voice, helping to establish a favourable operating environment, providing a forum for discussion and information to assist members and their business. According to the President of the association, they have also been approaching issues

on consumer protection in comprehensive and holistic terms. Its vision and strategies have both significant cross linkages with both market practices and issues of governance in telecom industry.<sup>40</sup>

The association has been very responsible when it comes to the utilization of its resources towards ensuring that its members utilize the universal free numbers. For example, the free emergency numbers to the Police is used by its members to relay information since they consider mobile crime as a modern crime and so the need for a national service to help the Police in terms of combating modern crime. The association has also been relaying information to the National Security but presumably through non-free numbers and other means towards combating mobile crime in the country. They played a role to assist the security agencies in detecting some of those people who abused SIM cards for criminal activities. This crime known as SIM box fraud demands greater public support for the security agencies to identify its perpetrators.

Many people think that the 6% rate on electronic communication service, known as ‘the Talk tax’ is so high because they think that whatever tax is imposed on the networks eventually leads to the subscriber getting overburden with its overall effect. ASIMODE shares in this opinion. They hold the view that the subscriber pays the tax indirectly on behalf of the networks meaning that the subscriber have to bear the final pressure. Moreover, a similar opinion is expressed about the Value Added Tax (VAT) and the National Health Insurance Scheme (NHIS) levies. The 17.5% percent levy imposed on the importation of mobile handsets is considered not to be favourable to users of the service and the network operators. They believe the Government is assuming that mobile phone dealers are making huge monies which they think is not true. They disagree with the rate of tax and consider it as a disincentive to importers of mobile handsets and dealers of mobile phone credit retail business. They consider it to be affecting their business but because the mobile retailing business is reserved for Ghanaians that it has been their incentive in the business.

The tariffs by service providers have come under critic and sometimes opposition. People criticise the tariffs based on the belief that a subscriber is a stake-owner of the country’s air resources and so a situation where the same owner is abused then it calls for redress. They

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<sup>40</sup> Recorded interview with Nii Adjetey Sowah - President of ASIMODE  
See Appendix 4 - Interview Transcript with ASIMODE

would often complain about call rates and often claim the range is too high. However these criticism and opposition are stemmed not only from the real impact of the tariffs but also from the facts that they are aware about the fact that there is a provision by law that the tariffs which needs to be charged by the networks should be commensurable to the level of the lowest citizen. The NCA is held under public critic as well for their responsive to issues only when people have for long complained.

### **4.3 Conclusion And Recommendations**

The study observed that there are no general terms and conditions or web link to such information on prepaid SIM Packs to properly inform the rights and obligations of the potential subscriber to the service being offered, why

The study observed that there are internal measures by some network operators to curb SIM box fraud. However, it does this in collaboration with the Ghana Police Service.

ASIMODE and others recommends that there should be an established consumer forum. It should be a consistent forum that will address some of these key issues to lessen the confusion that is being created by the networks. By so doing, at least, people who have problems from the networks can have access to them.

Given the concerns raised by advocacy groups about safeguarding the human rights of consumers especially on their freedom of expression and the right to privacy<sup>41</sup>, it is recommended that telecom service providers should, to the extent that does not place them in violation of domestic laws and regulations, including license requirements and legal restrictions on disclosure:

11. Create and/or maintain relevant policies, with Board oversight or equivalent, outlining commitment to prevent, assess, and mitigate to the best of their ability the risks to freedom of expression and privacy associated with designing, selling, and operating telecommunications technology and telecommunications services;

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<sup>41</sup> The right to privacy is enshrined in the Universal Declaration of Human Rights (UDHR), Article 12, and in the International Covenant on Civil and Political Rights (ICCPR), Article 17. The right to freedom of opinion and expression is enshrined in the UDHR, Article 19, and the ICCPR, Article 19. Note that the principles in this document specifically address the right to freedom of expression specifically (i.e. not freedom of opinion).

12. Conduct regular human rights impact assessments and use due diligence processes, as appropriate to the company, to identify, mitigate and manage risks to freedom of expression and privacy – whether in relation to particular technologies, products, services, or countries – in accordance with the Guiding Principles for the Implementation of the UN ‘Protect, Respect and Remedy’ framework;
13. Create and/or maintain operational processes and routines to evaluate and handle government requests that may have an impact on freedom of expression and privacy to:
  - a. Ensure that government demands are reviewed by appropriately qualified and experienced personnel in order to assess their compliance with legal and due process. For demands for continuous access, such review will take place at the time of the initial request;
  - b. Establish in advance guidance to relevant personnel on how to interpret government demands as specifically as possible;
14. Adopt, where feasible, strategies to anticipate, respond and minimise the potential impact on freedom of expression and privacy in the event that a government demand or request is received that is unlawful or where governments are believed to be mis-using products or technology for illegitimate purposes which may include, if appropriate:
  - vii. Reviewing the demand with the relevant authority in order to seek clarification or modification;
  - viii. Seeking judicial review (court-procedure), where available;
  - ix. Appealing to other relevant branches of the administration, such as regulators or governmental departments;
  - x. Seeking alternative measures that would minimise or mitigate the practical impact on freedom of expression and privacy;
  - xi. Engaging UN- or other supranational bodies and/or other governments/institutions for diplomatic support; and

- xii. Engaging other stakeholders, such as media/NGOs, as appropriate, in support of freedom of expression and privacy;
- 
- 15. Always seek to ensure the safety and liberty of company personnel who may be placed at risk;
  - 16. Raise awareness and train relevant employees in related policies and processes;
  - 17. Share knowledge and insights, where relevant and appropriate, with all relevant and interested stakeholders to improve understanding of the applicable legal framework and the effectiveness of these principles in practice, and to provide support for the implementation and further development of the principles;
  - 18. Report externally on an annual basis, and whenever circumstances make it relevant, on their progress in implementing the principles, and as appropriate on major events occurring in this regard;
  - 19. Help to inform the development of policy and regulations to support freedom of expression and privacy including, alone or in cooperation with other entities, seeking to mitigate potential negative impacts from policies or regulations;
  - 20. Examine, as a group, options for implementing relevant grievance mechanisms, as outlined in Principle 31 of the UN Guiding Principles for Business and Human Rights.

The study observed that there are no general terms and conditions or its web link to most of its value added service which would require the use of prepaid SIM Packs in order that the potential subscriber would be properly informed about the rights and obligations of the potential subscriber to the value added service being offered.

The study revealed that as a measure of curbing fraud in the industry, some network operators have the policy to collaborate with their subscribers and the NCA to detect fraud and consequentially arrest the perpetrators in order to reduce revenue losses



## **Appendices**

# Appendix A

## A. List Of Probono Legal Service Providers In Ghana

1. LEGAL ASSISTANCE NETWORK-GHANA( GLAN) 0244-785314, 0302900703
2. FEDERATION INTERNATIONAL DE ABOGADAS(FIDA GHANA)
3. HUMAN RIGHTS ADVOCACY CENTRE(HRAC)
4. PROBONO NETWORK(PBLN)
5. AFRICAN WOMEN ASSOCIATION (AWLA)
6. LAWA (Ghana) ALUMNAE INCORPORATED(Mob: 233-20-8136809)
7. LEGAL AID SCHEME(LAS)
8. THE ARK FOUNDATION(THE ARK)
9. LEGAL RESOURCES CENTRE(LRC)
10. COMMONWEALTH HUMAN RIGHTS INITIATIVE(CHRI)
11. HELPLAW GHANA
12. HUMAN RIGHTS WATCH
13. ABANTU FOR DEVELOPMENT (ROWA) Tel: +233 302 816 113

## B. Private Consumer Advocacy Groups In Ghana

1. CONSUMER ADVOCACY CENTRE
2. THE CONSUMER PARTNERSHIP
3. CONSUMER RIGHTS PROTECTION AGENCY
4. UNIVERSITY OF GHANA CONSUMER ADVOCACY GROUP
5. INTERNATIONAL CENTRE FOR CONSUMER ISSUES AND ADVOCACY
6. CONSUMERS ASSOCIATION OF GHANA

## Appendix B

QUESTIONNAIRE BY THE ASSISTANCE NETWORK- GHANA TO BE  
ADMINISTERED ON THE SPINTEX ROAD AND OTHER AREAS OF ACCRA AND  
BEYOND

1. Name of person

.....  
.....

2. Age of person

.....

3. Residence of the  
person.....

4. Your level of education.....

Yes ☐

No ☐

5. What do you do / occupation?.....

6. Do you have any problem with mobile phone service providers?

Yes ☐

No ☐

7. If yes, what are the types of problems or challenges you face?

.....  
.....  
.....  
.....  
.....  
.....  
.....

Other problems?

(a) Are the problems personal?

(b) Are the problems business related?

(c) Do you face both personal and business related legal problems?

8. Have you sought legal assistance before?

Yes ☐ No ☐

9. Do you have easy access to lawyers?

Yes ☐ No ☐

10. Have you heard of consumer protection before?

Yes ☐ No ☐

If yes, how what is it?

.....  
.....  
.....  
.....

11. Have you ever returned goods bought before, if yes what was the reaction of the vendor

.....  
.....  
.....  
.....  
.....  
.....  
.....

12. Will you be willing to visit the office of any mobile phone service provider to discuss your problems?

Yes ☐

No ☐

If no, why? /Or if yes why?

.....  
.....  
.....  
.....  
.....

13. Have you heard of consumer rights before?

Yes ☐

No ☐

If yes, what is it?

.....  
.....  
.....  
.....  
.....

14. What rights do the consumers have as far as mobile phone service providers are concerned?

15. Which of the service providers do you patronize?

.....  
.....

16. How do you perceive the quality of the service you are receiving

.....  
.....

Yes ☐

No ☐

If yes why/if no why

.....  
.....

17. what advise will you give your service provider?

.....  
.....  
.....  
.....  
.....

18. Would you like to be educated on your rights?

Yes ☐ No ☐

# List Of Abbreviations

ADR- Alternative Dispute Resolution  
CAC-Codex Alimentarius Commission  
CPA- Consumer Protection Authority  
FDB- Food and Drugs Board  
GM- Green Marketing  
GPRS- Growth and Poverty Reduction Strategy  
GS- Ghana Standards  
GSA- Ghana Standards Authorities  
ICT- Information and Communications Technology  
IEC- International Electrotechnical Commission  
IPPC-International Plant Protection Convention  
ITU- International Telecommunication Union  
LI- Legislative Instruments  
MOTI- Ministry of Trade and Industry  
NAA- National Advertising Authority  
NCA- National Communication Authority  
NCCE- National Commission of Civic Education  
NCPA- National Consumer Protection Authority  
NEPAD- New Partnership for Africa Development  
NGO- Non Governmental Organization  
OIE- World Organization for Animal Health  
PURC-Public Utilities Regulatory Commission  
ISO- International Organization for Standardization  
SPS- Sanitary and Phyto-Sanitary  
TBT- Technical Barriers to Trade  
UN- United Nations  
UNGCP-United Nations Guidelines for Consumer Protection  
WTO- World Trade Organization

# References

- Australian Government, Australian Consumer Survey (2011)
- Consumers International, 'In search of good practices in Financial Consumer Protection', 2013
- Dowuona-Hammond C. and Atugubah R., *The Policy and Legal Framework for Consumer Protection in Ghana*, 2006
- Electronic Communications (Amendment) Act, 2009 (Act 786)
- Electronic Communications Act, 2008 (Act 775)
- Ghana Assembly Press, *Constitution of the Republic of Ghana*, Chapter Five – Fundamental Human Rights and Freedoms, 1992,
- Ghana ICT for Accelerated Development Policy, Ministry of Communications, 2003
- Horizon Research (2013), *Business and Consumer Behaviour, Prepared for the Sustainable Business Council in association with Fairfax Media*, 2013
- International Covenant on Civil and Political Rights (1966), Article 4 and Article 19. The UN Human Rights Committee, General Comment no. 34
- International Telecommunications Union (ITU) Constitution: Articles 34, 35 and 37
- Ministry of Communications, National Telecommunication Policy, 2005
- Ministry of Trade and Industry of Ghana (2013), *The Draft Policy on Consumer Protection*,
- Myjoyonline.com, 'Airtel Ghana intensifies fight against Sim Box Fraudsters', August 2012  
Visit: <http://business.myjoyonline.com/pages/news/201202/81645.php>
- National Budget, Ministry of Finance and Economic Planning (MOFEP) 2011
- National Budget, Ministry of Finance and Economic Planning (MOFEP) 2012
- National Budget, Ministry of Finance and Economic Planning (MOFEP) 2013
- National Budget, Ministry of Finance and Economic Planning (MOFEP) 2014
- National Communication Authority Act, 1996 (Act 524)
- National Communication Authority, *Consumer Watch*, October 2013  
Visit: [http://www.nca.org.gh/downloads/Consumer\\_Watch\\_October\\_2013.pdf](http://www.nca.org.gh/downloads/Consumer_Watch_October_2013.pdf)



OECD, *Guidelines for Multinational Enterprises* (2011 Edition), Commentary on Human Rights, Comment 38,

Telecommunications Industry Dialogue on Freedom of Expression and Privacy: Guiding Principles, Version 1 (2013).

United Nations (1985-2013), Implementation Report, United Nations Guidelines for Consumer Protection, [www.un.org](http://www.un.org)

Water Use Regulations, 2001 (L.I. 1692)

West D. (2001), *Telecom Fraud Management: A Strategic Perspective, The Benefits of Integrating Loss Prevention into Corporate Strategy*, ECTA Review  
Visit: <http://www.equinoxis.com/fraud-management-benefits.php>

### **Online Sources**

<http://www.nca.org.gh/40/124/Consumer-Rights.html?item=255>

[http://www.nca.org.gh/downloads/tariff/Tariff-Mobile\\_Operators\\_July\\_2013.1xls.pdf](http://www.nca.org.gh/downloads/tariff/Tariff-Mobile_Operators_July_2013.1xls.pdf)

<http://www.subex.com/pdf/subex-telecom-fraud-alerts-september-2013.pdf>