An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria

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Abstract

Throughout the history of the human race, man's ability to engage in complex and intelligent communication with his fellowmen has remained a key distinguishing factor between man and other animals. Thus, the role that communication plays in human societies cannot be overemphasized. Consequently, from the most primitive to the most advanced, every human society has had to rely on some system of communication including distant communication (telecommunications). Perhaps, this is why it has been said that communication networks make society a reality.¹

The Nigerian telecommunications sector, has witnessed revolutionary growth in the last decade. This revolution has presented some challenges and opportunities to both the regulator and players in the sector. This research paper aims to critically examine the regulatory framework in the Nigerian telecoms sector, and the level of protection it gives consumers of telecom services. In the course of this paper, criticisms and commendations would be made where necessary, and suggestions will be proffered to help maintain or improve on the quality of services in the sector, in the overall best interest of the consumer.

Keywords: Telecommunications, Consumer, Protection, Service Providers

1. Introduction

Understanding the concept of who a consumer is; usually is a convenient starting point in a paper of this nature. This is important because the consumer is at the centre of this research paper and the relevance of the findings made in this paper would be lost unless it is applied to the benefit of the consumer.

President John F. Kennedy in his famous statement to the American Congress asserted that: "Consumers, by definition, include us all. They are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group... whose views are often not heard".²

The Consumer Protection Act,³ which is the foremost Nigerian legislation on Consumer Protection, defines the term consumer, "as an individual, who purchases, uses, maintains or disposes of products or services." The above definition obviously embraces the two schools of thought, on this subject matter. This is because the definition goes beyond the restrictive meaning of a consumer based on contract, and extends to include non-contractual persons (end-users). Monye,⁴ agreed with the above position when she asserted that: "In general, in product liability cases, the term consumer extends to contractual consumers; ultimate users as well as any person who is adversely affected by a product or service."

While several other definitions of the term consumer abound, the above-cited definitions represents the sense in which the term is used in this paper.

2. What is the Basis or Aim of Consumer Protection?

The consumer because of his purchasing power is supposedly the king of the market place. However, the reality today is that the consumer has become the victim of many unfair and unethical tactics adopted in the market place, by the producers of goods and services. This is what consumer protection seeks to correct.

Thus, the central theme of consumer protection is the adjustment of the relationship in terms of power between the consumers and producers of goods and services. This presupposes a re-conceptualization of the legal rights and obligations of the parties given the gross power disparity between the individual consumer and the institutional producer. The other concern of Consumer Protection is the mechanisms of enforcing the legal rights

¹ G. A. Alabi, *Telecommunications in Nigeria*. University of Pennsylvania – *African Studies Center*, 2012.

² "John F. Kennedy: *Special Message to the Congress on Protecting the Consumer's Interest.*" Presidency.ucs.edu. Retrieved May 20, 2013.

³ Section 32, Consumer Protection Act, Cap C25 Laws of the Federation of Nigeria, 2004

⁴ Felicia N. Monye, *The Consumer and Consumer Protection in Nigeria: Struggles, Burdens and Hopes.* An inaugural lecture delivered at the University of Nigeria, Nsukka. P.6

of the consumer and the obligations of the producer, if the protection of the consumer of the products or services is to have a true meaning.¹

The view expressed above, was re-echoed by Messrs² Eze, Eluwa and Nwobodo, when they asserted that: There is a global recognition of the fact that there exists real and perceived imbalance of power relations between the producers and consumers of goods and services. This imbalance of power, as noted by several scholars in the field of marketing and business in general appears always to the advantage of the producers, who are strengthened by the traditional legal maxim "caveat emptor" (buyer beware) and the ever growing free market philosophy, which seems to put the producers at

On her part, Monye³ states that:

liberty to do whatever they want.

One elementary, though important question that may be asked is whether it is necessary to give or advocate a special protection for consumers. Cannot it be postulated for instance, that the consumer should take care of his own affairs? In other words, is it necessary for the law and policy to shift from the sphere of caveat emptor to caveat venditor? One can say with reasonable certainty that the above questions have been overtaken by events. On the part of the government, this assertion is buttressed by the various measures (laws, agencies etc.) often put in place to take care of consumer issues. This shows a conviction about the need for consumer protection.

Aside from this, some other reasons adduced by writers as the basis for consumer protection include the following:

- 1 Complexities of consumer products, due to advancement in technology, means the ordinary consumer lacks the expert knowledge to appreciate these products⁴ or services e.g. internet banking (italics mine).
- 2 The nature and extent of protection afforded a consumer by a society, depicts the level of economic, political, social and legal development of that society⁵.
- 3 Consumers are at a clear disadvantage in terms of information and negotiating power, product safety, product quality and pricing.⁶

The points above are, some of the cogent reasons, which highlight the need to protect the vulnerable position of the consumer from being exploited by producers of goods and services in Nigeria.

3. The Legal Framework for Consumer Protection in Nigeria

The importance of affording protection for the consumer has been accorded global recognition. This informed the decision of the United Nations to come up with a guideline for consumer protection as far back as 1985. The UN Guideline for consumer protection was adopted by the General Assembly on 9th April 1985 and was amended in 1999.

The Guideline serves as a model for governments to follow; thus, enabling them to formulate legislations and policies, which would address consumer, concerns and protect their interests. In this respect, the UN Guideline for consumer protection recognizes the following as legitimate rights of the consumer, which must be guaranteed by governments.

- 1. Right to satisfaction of basic needs,
- 2. Right to safety,
- 3. Right to choice,
- 4. Right to information.
- 5. Right to consumer education,
- 6. Right to redress,
- 7. Right to representation, and

³ F. N. Monye, Op. cit P.7

¹ Benedict Bakwaph Kanyip: *Consumer Protection in Nigeria – Law, Theory and Policy*: Abuja, Rekon Books Limited. 2005. P. 331.

² Eze, K. O., Eluwa N, and Nwobodo B, The Nigerian Consumer @ 50 (2010) available at http://mzweekly.com/cover-cover/the-nigerian-consumer-50/

⁴ See Ross Cranston, Consumers and the Law (London: Weildenfeld and Nicolson, 1978). P. 234

⁵ F. Belobaba, Cited by F. N. Monye, Op cit P.8

⁶ Ibid

8. Right to a healthy environment

The Nigerian state in 1992 under the General Ibrahim Babangida regime followed the example of the UN by promulgating the Consumer Protection Council Decree (Decree No. 66 of 1992) now Consumer Protection Act (CPA) Cap C. 25 LFN 2004. The above legislation establishes the Consumer Protection Council, which is the apex body, which offers protection to consumers in Nigeria.

Apart from establishing the Council, the Act also forms the bedrock of the legal framework for consumer protection in Nigeria. Aside from the CPA, there exist other legislations, which establish regulatory bodies, which carry out activities, in different sectors of the Nigerian economy, which aim ultimately to secure the best interests of the Nigerian Consumer. The Nigerian Communications Act (NCA) is one such legislation.

4. The Regulatory Framework in the Nigerian Telecoms Sector

The Nigerian telecoms sector today, is Africa's fastest growing and largest telecoms market. With an active mobile subscription base of over 116 million lines, and tele-density penetration of over 80%,¹ serious investors indeed cannot ignore the sector. In fact, the sector has proven to be the beautiful bride, boasting of a foreign direct investment (FDI) portfolio in excess of 25 billion dollars.² However, the situation was not always this beautiful, about two decades ago. The present positive scenario is the result of a conscious government policy, to liberalize the sector. The liberalization policy of the Babangida administration did not yield much result. However, the vigorous pursuit of this policy by the Obasanjo administration, after the return of democratic governance in 1999, broke the strangle hold of the state owned company (NITEL) on the Nigerian telecoms sector, through the involvement of private players. In the pre-liberalization era, Nigeria with a population of about 100 million, could only boast of about 500,000 telephone lines, with total investment in the sector standing at a paltry 50 million dollars.

The Nigerian government, conscious of the role telecommunications can play in national development, made a commitment to ensure that telecommunications facilities and services are expanded rapidly.³ The government equally conscious of the fact that, the regulatory framework in existence at that time (Nigeria Communication Commission Decree of 1992), could not propel the desired development in the sector, came up with the Nigerian Communications Act (NCA) 2003.

5. The Nigerian Communications Act (NCA)

As we earlier highlighted, prior to the enactment of the Nigerian Communications Act (2003) and the deregulation of the sector, the Nigerian telecoms sector was grossly under-developed. This made the Obasanjo administration to push for private participation in the sector, through the deregulation of the sector, and the enactment of a new legislation (the NCA, 2003) to support the policy.

The NCA (2003) which repealed the Nigerian Communications Commission Decree of 1992 is a well thoughtout legislation. The Act, which establishes the NCC,⁴ and transformed the Nigerian telecoms sector, has been lauded⁵ by legal experts as one of the most progressive laws in Nigeria. The Act provides an elaborate and comprehensive legal regime for the licensing and control of telecom service providers in the Nigerian market. The NCA gives wide-ranging powers to the NCC, which is headed by an executive vice chairman,⁶ to enable the commission discharge its duties without any bureaucratic hindrances.

Each of the 158 sections of the Act is carefully tailored to empower the commission to achieve its major objective of facilitating private sector participation in telecoms service delivery in Nigeria. It was in the discharge of its duties that, the commission carried out a license bidding process in 2001, which saw the entry of two companies (ECONET wireless Ltd, and MTN Nigeria Ltd) into the Nigerian telecoms market.

6. The Nigerian Telecoms Sector and Consumer Protection

The Nigerian telecoms sector has had a long history of consumer dissatisfaction, which dates back to the pre-

¹ Last official industry data as of May, 2013. See Daily Sun Newspaper of 21st May, 2013. P.53.

² Ibid.

³ Abimbola Tooki, 'A New Dimension to Nigeria's Telecom Revolution,' Business World Newspapers, April 11th, 2011.

⁴ The NCA (2003) in Section 3, establishes the Nigerian Communications Commission, which is the regulatory authority.

⁵ Daily Sun Newspaper, May 21, 2013. P.53

⁶ Section 5 NCA

liberalization era, where the state-run Nigerian Telecommunications Plc (NITEL), was notorious for its poor quality of services.¹ Even with the total liberalization of the sector, the situation has not changed much. The resilience shown by poor quality of services and other consumer issues in the Nigerian telecoms sector is, quite confounding.

Regulatory schemes in the market place are necessitated by market failures. When markets fail, it becomes necessary for regulatory authorities, to deploy their policing powers to protect consumers from suffering any harm resulting from such market failures. It is however saddening to note that, the Nigerian consumer of telecoms services, has not enjoyed adequate protection from the regulatory authority in the telecoms sector. The Nigerian Communications Commission and the Consumer Protection Council have failed in protecting consumers of telecom services in Nigeria.

The Nigerian consumer for a very long time had to put up with terrible services from telecom service providers, despite the high and extortive tariffs the consumer was being charged for these poor services. Thus, while Nigerian consumers groaned under the weight of poor services such as dropped-calls, absence of service resulting from network failures, deductions for un-rendered services etc., the telecom companies were smiling to the bank, and were posting huge profits.

This sad experience had negative effects on the Nigerian consumer, and resulted in huge losses to the Nigerian economy at large. The hapless consumers of this poor telecom services, were pushed to carrying two or more phones with different networks at every given time. Instead of making efforts to plough, back some of their profits into the market, to improve their services, these telecom service providers embarked on bogus reward schemes, which could not be verified. Many Nigerian consumers became victims of these sham schemes, which were designed to increase the subscriber base of these companies.

It was this plight of the Nigerian consumer that made the new Director General of CPC, Mrs. Dupe Atoki, to pledge her commitment towards ensuring adequate protection of the rights of Nigerian Consumers.² Mrs. Atoki stated that:

The Zonal Council workers are the foot soldiers of the organization (CPC). She further stated that; they need to be well informed and trained but, unfortunately, the institution which should police the regulatory organizations and protect the rights and interests of consumers is only known among elites in Abuja and Lagos, even as consumers in most other places are left to the unfortunate fate of being cruelly treated by service and goods providers, because the impact, awareness and effectiveness of the consumer protection council (CPC) is not well publicized.³

The total disinterest by these telecom companies, in the welfare of the Nigerian consumer, can easily be seen in the way they operate their 'customer care centres' An aggrieved customer who calls the customer care centre of his service provider, to complain about their services, would most likely not be able to access the customer care centre. In the event where he is fortunate enough to get through to the center, he will be subjected to a long period of waiting, while he is bombarded with unsolicited jingles advertising the products and services of the telecom provider. Even in very exceptional instances where the customer gets to speak with a customer care representative, he the customer would hardly get any meaningful assistance from such a representative.

While the Nigerian consumer bears the heavy burden of poor services and high tariff from his telecom service provider, the NCC does little or nothing to protect the consumer's interest. In the rare cases where the regulatory authority imposes fines on the telecom companies, the fine would be collected by the NCC, which suffered no loss from the poor services of these companies. After putting up with these poor services and ill-treatment for so long, it appears the Nigerian consumer of telecom services, has finally decided to take his fate in his own hands. Recently, telecom service consumers under the aegis of Consumers Empowerment Organization of Nigeria (CEON) and the United Consumers Association of Nigeria (UCAN), have demanded the sum of N1.5 trillion about (10 billion dollars), from the four global system for mobile communication (GSM) operators in Nigeria.⁴ The two bodies condemned the NCC for pocketing the proceeds from fines paid by the telecom operators, instead of distributing it to the subscribers who are directly affected by the worsening services of these

¹ Petroleum (Special) Trust Fund, Overview of the National Rural Telecommunications Programme (Abuja: PTF, 1998) p. 5, which stated that the call completion rates for Nitel for local, long distance and international call were 45%, 50% and 60% respectively, while some problems with its national network include: slow repair of faults, delayed provision of service, and insensitivity to customers' needs and wants of its subscribers.

² Daily Sun Newspaper, 7th June, 2013. P.59.

³ Ibid.

⁴ Daily Sun Newspaper, April 25th, 2013. P.48

operators.¹ The consumers who relied on section 8(b) of the CPC Act, which allows a consumer to institute civil action against a producer of poor quality goods or services, for compensation, stated that they have commenced the process of initiating civil action against the telecom operators.² Though the steps taken by the consumer bodies are commendable, it must be noted that the responsibility of ensuring that the telecom operators live up to expectation, rests with the regulator and not the consumer.

We acknowledge that the Nigerian telecoms market is a challenging one. Operators in the Nigerian market face a number of challenges, ranging from poor or in some cases, total absence of critical infrastructure like power, policy somersault from government agencies, corruption, etc. However, these challenges do not excuse the level of shoddy services provided by these operators. It is believed that, these operators had done an assessment of the Nigerian telecoms market, before deciding to invest in it. It is also worthy of note that, the Nigerian telecoms market with its many challenges, presents even bigger rewards, than whatever challenges the operators may face in the market. One only need look at the huge profits these operators post to understand that the gains in the Nigerian market far outweigh the challenges.

7. The Advent of MNP

Before the advent of the mobile number portability (MNP) scheme, the Nigerian consumer of telecom services had very limited choices. This was because each of the telecom operators in the Nigerian market was given a specific national destination code (NDC), which was unique to each operator. Thus, each code served to identify a specific service provider. For instance, 0802 was the (NDC) of Econet Wireless Ltd (now Airtel), 0803 was for MTN, and 0804 allotted to Mtel³ while 0805 served as the national destination code (NDC) of Globacom⁴ Ltd.

As a result of the national destination code (NDC) issued to these operators, each subscriber on any of these platforms, was issued a subscriber identification module (SIM) card, with the prefix of the code issued to each operator. This meant that, when a customer subscribed to a particular network, the subscriber identification module (SIM) card or phone number, given to the customer, belonged to his service provider and not to him the customer. Consequently, if the customer was not satisfied with the services offered on the platform of his service provider, and wanted to leave, he could not leave with the number he was using on that network. He had to acquire a new sim card from another operator, in order to access the services on that new platform. Meanwhile, his family and friends could only reach him on his old contact number, which they are aware of.

The above scenario enslaved Nigerian consumers to all manner of poor services from telecom service providers. This made many Nigerian consumers carry more than one phone with different service providers, at every given time. The operators in the Nigerian market knew that they were assured of patronage, irrespective of the quality of their services or how they treated their customers.

With the commencement of the MNP scheme on April 22, 2013, some relief has come to the Nigerian consumer of telecom services. "What this is going to do is that competition would be different; customer services will improve because people would be sensitive to how they are approached by their network...".⁵ The MNP scheme has strengthened the consumer's position in the Nigerian telecoms sector, by offering him the opportunity to migrate from one service provider to another, without the fear of losing his original subscriber identification module (SIM) card. The executive vice chairman of the (NCC) echoed this sentiment when he asserted that: "With the launch of MNP, telecom consumers will no longer need to acquire new numbers in other to move from one network service provider to another."⁶

8. What is MNP?

The mobile number portability is a scheme launched by the NCC, Nigeria's national regulator of the telecoms sector. The scheme allows telecoms consumers to switch from one service provider to the other, without losing their telephone number.⁷ This means that the telephone numbers issued to customers by each network operator is, now the property of the customer, and not the operator.

⁴ Globacom is the only indigenous private operator in the Nigerian telecoms market. It was established by the billionaire investor, Mike Adenuga Jr.

¹ Ibid.

² Ibid.

³ Mtel was the mobile subsidiary of NITEL, the defunct state-run telecoms company of Nigeria.

⁵ Mr. Anthony Ojobo, Director Public Affairs in the Nigerian Communications Commission (NCC) made the statement while commenting on (MNP). See Daily Sun Newspaper, April 22nd, 2013. P.29.

⁶ Daily Sun Newspaper, April 23, 2013. P.57.

⁷ Daily Sun Newspaper, April 22, 2013. P.29.

As such, the customer can now move with a number issued by network A, to network B. The MNP scheme is revolutionary in many ways. This view is shared by Dr. Eugene Juwah, ¹ who asserted that: "MNP will revolutionize the way calls are being routed since the National Destination Codes (NDC), ...usually identified with operators will no longer play the role of unique identifier".² He further stated that, "preparatory to the implementation of MNP, NCC had adopted the "All Call Query (ACQ)" option for routing calls and SMS in line with international best practice".³

9. How Does MNP Work?

The MNP scheme is designed to work in a simple way, in order to ease stress and give greater customer satisfaction. A customer who is not satisfied with the services of one provider, and wishes to switch to another, need to take the following steps.

- 1. Walk into a service centre of your preferred service provider, and fill a form indicating that you wish to switch to their network.
- 2. Send an SMS with the word "PORT", to this short code **3232.**⁴

After taking the simple steps outlined above, the customer will receive a message via the short message service (SMS) within 48⁵ hours, from the interconnect clearing house. The message will confirm either that the porting attempt by the customer was successful or was denied.⁶ One reason why the porting option would be denied to a customer is, where a post-paid customer has not settled his bills on his previous network, and attempts to port to another network.

10. How Does the MNP Scheme Benefit the Ordinary Consumer?

The MNP Scheme has many benefits to the Nigerian Consumer of telecom services. One such benefit is that, the scheme gives more options to the consumer to choose from. While responding to questions about the scheme, the Director of Public Affairs⁷ in the NCC, asserted that: "If you are dissatisfied with your service provider or maybe you are not satisfied with the tariff... this gives you the opportunity to take a walk away from your service provider to a new service provider with your number." He further stated that, "what that does is to put power in the hands of the consumer in the sense that the consumer now becomes the king".⁸

Another, key benefit of the MNP to the consumer is that, it will trigger off a healthy competition among service providers in the Nigerian telecoms sector, which will ultimately benefit the consumer, through improvement in the quality of services on offer, by service providers. The MNP scheme has been designed with some safeguards, to cater for the security of the consumer. One such safeguard is that, where a person's number is fraudulently ported without his consent, the scheme allows for a reversal of the fraudulent port, through a process known as emergency repatriation.⁹ The benefits of the MNP in the Nigerian telecoms sector are immense. We commend the sector regulator for taking the bold step to implement the scheme. Already, there are indications that a sizable number of subscribers have switched from one network to the other, in search of better services. One of the operators in the Nigerian telecoms sector, Etisalat Nigeria Ltd, through its Chief Executive Officer Mr. Steven Evans, admitted at a media roundtable held in Lagos that, it has lost some of its subscribers to other networks, and equally gained some other subscribers who switched to their network.¹⁰ Mr. Evans further stated that, "the MNP is a fantastic initiative by the telecoms industry regulator NCC, to drive healthy competition in the sector".¹¹

11. Conclusion

We note that mobile telephony in Nigeria, at over 10 years, has come of age. While the challenges have been

⁵ The 48 hour processing window, allows the clearing house to check to ensure that, a fraudulent

¹ Dr. Juwah is the Executive Vice Chairman of the NCC.

² The Nation Newspaper, April 23, 2013. P.9.

³ Ibid.

⁴ The Short Code 3232, is common to all the network operators in the Nigerian telecoms sector.

customer does not accumulate bills on one network, and run to another network.

⁶ Daily Sun Newspaper, April 23, 2013. P.57.

⁷ Mr. Tony Ojobo is the Commission's Director for Public Affairs.

⁸ Daily Sun Newspaper, April 22, 2013. P. 29.

⁹ MTN (MNP) Literary Series 4, Published in the Sun Newspaper of 25th April, 2013. P. 26.

¹⁰ Sun Newspaper, 7th June, 2013. P. 59.

¹¹ Ibid.

many, there have been reasons to celebrate. We therefore commend the major service providers for the enormous resources they have expended to help Nigeria make the quantum leap in telephony. There is, however, the need for them to work harder to improve their services.

We equally commend the industry regulator (NCC), for creating an enabling regulatory environment for the Nigerian telecoms sector to not only thrive, but also record the giant strides, it has achieved in the last 14 years.¹ While the achievements of the NCC cannot be denied, we urge the regulator to now focus more on improving the quality of services provided by the various network operators in the Nigerian market. Indeed, the NCC acknowledges that it has not done enough in ensuring good quality services in the Nigerian telecoms market. In an interview given by its Director of Public Affairs, the NCC stated, "we are not oblivious of the existing challenges. We are not also pretending that the quality of service is what it should be..."² While it is encouraging to note that the regulator admits that there are lapses in the system, as it relates to quality of service; it should make genuine efforts to improve the situation. It is worthy of note that, fantastic initiatives of the regulatory body (the NCC), like the MNP scheme, will not benefit the consumer except, there is a consequential improvement in the quality of services on offer in the sector.

12. Recommendations

The following are a few recommendations, which we believe if implemented by the regulator, will bring some improvement to the Nigerian telecoms sector.

1. Stiffer Sanctions

The NCC is empowered to impose fines on defaulting operators, and in extreme cases, revoke the license of a notorious and habitual defaulter. It is our view that the regulator should not shy away from exercising its policing powers for the benefit of the consumer. Because of this, the commission should review upwards its fines, in order to serve as a deterrent to operators who neglect to offer quality services to their consumers. Where necessary, the regulator should revoke the operating license of a service provider who repeatedly flouts the regulations issued by it.

2. Distribution of Proceeds Collected from Fines

The regulator should be fair to consumers, by distributing monies collected from defaulting operators as fines, to consumers on the defaulting network. This is because the consumers are the ones who actually suffer losses from the poor services provided by the network operators.

3. Matching Subscription with Capacity

The NCC should not allow any operator to embark on a subscription drive, without first upgrading its facilities and increasing its capacity to handle the additional subscribers.

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² See Daily Sun Newspaper of April 22nd, 2013. P.29.

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List of Abbreviations

NCA: Nigerian Communications Act MNP: Mobile Number Portability NCC: Nigerian Communications Commission SMS: Short Message Service The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

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