

CURRENT ISSUES IN LAW, JUSTICE AND SOCIETY:

ESSAYS IN HONOUR OF
HON. JUSTICE SULYMAN D. KAWU O.F.R.;
CHIEF JUDGE OF KWARA STATE



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CHAPTER FOUR

UNITED NATIONS GUIDELINES FOR CONSUMER PROTECTION AND THE CHALLENGES OF THE NIGERIAN TELECOMMUNICATIONS INDUSTRY

Ariyoosu D. Adeyemi (Ph.D)

Abstract

With the large number of subscribers and huge expenditures on telecommunications services, the ultimate desire of consumers is to get value for their monies. Consumer protection is the core hallmark of goods and service delivery. In Nigeria for instance, telecommunications and its infrastructure enhances the nation's development in terms of Gross Domestic Product (GDP). At the fourth quarter of 2020, it is one of the sectors that lifted the economy of the country out of recession with a contribution of about 12.45 to the GDP. Nigeria has a subscriber base of over 196.4 million who spent well over N320 billion on calls and data services. Despite the exponential growth in the telecommunications industry and its attendant economic development, there are still various challenges being faced by the industry vis-à-vis consumers' demands and the global best practices. The main objective of this paper was to examine the United Nations' Guidelines for Consumer Protection with a view to determining how the Nigerian telecommunications industry regulator is able to key-in into the principles enshrined in this international non-prescriptive instrument. The specific objectives were to examine the effectiveness of the service providers in satisfying the demand of consumers of their services within the context of global best practices and the international cooperation that exists in the industry. The paper employed doctrinal research methodology with the use of both primary and secondary sources of law and other online data bases. The paper found that there is a synergic alliance between the Federal Competition and Consumer Protection Commission and the Nigerian Communications Commission in the promotion of consumers rights in the Nigerian telecommunications industry. The paper realised that there is still palpable anxiety of exploitation of the consumers by the service providers notwithstanding the efforts of the regulatory bodies to meet international standards. The paper, therefore, recommended that teeth should be given to the implementation of the extant legislation relating to consumer protection and telecommunications markets in Nigeria.

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Gheorghiu G., Bunda, N.R. & Popovici, V., 'Globalization and Consumer Protection'
<[http://iecs.ulbsibiu.ro/IECS2010/section1/Gheorghiu%20G,%20Bunda %20N%20R,%20Popovici%20V.pdf](http://iecs.ulbsibiu.ro/IECS2010/section1/Gheorghiu%20G,%20Bunda%20N%20R,%20Popovici%20V.pdf)> accessed 18 August 2020.

Keywords: *Consumer, Protection, Telecommunications, International*

1. Introduction

Globalisation and liberalisation have imposed new economic reality on the growth and challenges in all segments of international trade, particularly the global telecommunications market. The impact is more felt by the consumers of telecommunications goods and services. Undoubtedly, globalisation and technological advancement have engendered reduction in the costs of doing business and transportation of goods and services. It has also influenced some positive effects in the promotion of competition among manufacturers and suppliers by widening choices in terms of quality of products and services on the demand side.²

In a competitive environment, consumers have wide range of opportunity to make choice products or services that meet the ultimate desired expectations.³ Consumers' interest in every transaction, including telecommunications services, is to derive maximum satisfaction from the deployment of their resources. Satisfaction is derived only when the outcome from the use of the product or service outweighs the desired expectation.⁴ Therefore, consumers enjoy unique power and advantage over domestic suppliers as a result of better information and the privilege to compare products and services globally. The consumers are empowered and their bargaining power is enhanced through the wider range of opportunities available to them.⁵ On the flip side, globalisation is capable of spurning anti-competitive behaviours such that some of these conducts could be detrimental to consumers' welfare.

² Ibid.

³ Hidayat, S., 'The Competition Analysis of Telecommunications Industry in Indonesia: Switching Barriers and Consumer Satisfaction', Vol. 6 (1) *International Journal of Economics and Management Sciences*.

⁴ Ibid.

⁵ Ibid (n1).

In the new world order of borderless market, national public authorities are faced with questions as to how best to protect consumers without inhibiting the growth of local productions in the evolving global market. The authorities are confronted with the task of determining whether the current regime of rules and practices are applicable and sufficient to protect consumers in their respective domains. Where it is thus found that there are no adequate or sufficient rules and regulations, attempts should be made to develop and implement effective and practicable consumer protections that conform to international global standards.⁶ In order to surmount these challenges, there is an obvious need for a proper understanding of the advantages and limitations of every new technology and the existing consumer protection framework. There is also the need to determine and define the appropriate balance between government intervention and the industry's self-regulation so as to achieve the desired goals.⁷

By virtue of the raving vogue of information revolution propelled by modern technologies, consumers now spend less to acquire information. However, notwithstanding cost effectiveness in the acquisition of information, the volume of available information and the increasing choices now available to consumers has given rise to another burning issue bothering on the cost of processing the information. Conversely, this renders consumers vulnerable once again to the same risks as those associated with domestic transactions.⁸

2.0 An Overview Of the United Nations Guidelines for Consumer Protection (UNGCP)

The United Nations Guidelines for Consumer Protection (UNGCP) (hereinafter referred to as the "Guidelines") is a body of rules coordinated by the United

⁶ Thomas B., 'Debate: Consumer Protection in a Global Market', (2000) Vol. 6 (2) *Swiss Political Science Review*, 79-99.

<<http://onlinelibrary.wiley.com/store/10.1002/j.16626370.2000.tb00293.x/asset/j.1662-6370.2000.tb00293.x.pdf;jsessionid=3771984782F9F91E051CEEE3A3383998.f04t04?v=1&t=j6kjt7x2&s=221358b287da41bbd3b65e0d4df80db7ecd37fad>> accessed 21 August, 2020.

⁷ Thomas, B. (n.6).

⁸ Gheorghiu, G., Bunda, N. R. & Popovici, V. (n.1).

Nations Conference on Trade and Development (UNCTAD) to encourage interested Member States to create awareness in the promotion of consumer protection in the provision of public and private goods and services through multi-dimensional approach involving governments, businesses and civil society.⁹ UNCTAD is an international forum within the United Nations family which serves as a focal point and as a universal inter-governmental platform for consumer protection matters, among others. UNCTAD carries out various activities relating to consumer protection, including:

- (a) exploring the interface between competition and consumer protection issues;
- (b) reviewing and advising Member States on consumer protection laws and policies;
- (c) conducting training and capacity-building activities on consumer protection issues for Member States; and
- (d) supporting regional and multi-lateral initiatives.¹⁰

The UNGCP is meant to promote sustainable economic development and social development¹¹ and was designed to impact on public policy and law for the protection and empowerment of consumers across the world. The Guidelines enjoin all countries, especially developing countries like Nigeria, to pay serious attention to the interests and needs of consumers¹². The Guidelines acknowledged the fact that consumers face imbalances in economic terms, educational levels and bargaining powers and that consumers must enjoy the right of access to non-hazardous products. The Guidelines are well-articulated instrument of valuable principles which set out the basic characteristics of consumer protection in

⁹ See UNCTAD: United Nations Guidelines for Consumer Protection, United Nations, New York & Geneva (2016), p.3.

¹⁰ Ibid.

¹¹ Cayman Islands Law Reform Commission, 'Consumer Protection: Entrenching Consumer Supremacy in Cayman Islands Legislation' < accessed 21 August 2020.

¹² Ibid.

¹³ See the General Assembly Publication No. A/RES/70/186 of February, 2016 <[http://unctad.org/meetings/en/Sessional Documents/ares70d186_en.pdf](http://unctad.org/meetings/en/Sessional%20Documents/ares70d186_en.pdf)> accessed 21 August 2020.

relation to policy, legislation, enforcement institutions and redress systems.¹³ The body of rules were assembled to assist interested Member States in the formulation and enforcement of domestic and regional laws, rules and regulations that may suit their economic, social and environmental circumstances in a bid to promote international cooperation among Member States.¹⁴

The first of Guidelines proposed by UNCTAD was initially adopted by the General Assembly of the United Nations on 16th April, 1985 vide Resolution 39/248.¹⁵ It was subsequently expanded and updated by the United Nations Economic and Social Council on 26th July, 1999.¹⁶ By Resolution 70/186, the General Assembly of the United Nations affirmed the Guidelines as the standard set of rules for consumer protection among member nations.¹⁷ The Guidelines recognise that consensus must exist on the need for common principles that establish the benchmark for effective consumer protection such as the need to have robust legislation, strong enforcement institutions and effective redress systems. In other words, the Guidelines appreciate the fact that consumer protection requires a robust legal regime and a firm regulatory framework.¹⁸ Remarkably, the Guidelines were structured into 7 parts sub-divided into 97 distinct paragraphs. Part I of the instrument deals with the objectives which were set out:¹⁹

- a. to assist countries in achieving or maintaining adequate protection for their population as consumers;
- b. to facilitate production and distribution patterns responsive to the needs and desires of consumers;

¹⁴ Ibid.

¹⁵ UNCTAD: United Nations Guidelines for Consumer Protection, United Nations, New York & Geneva (n 9).

¹⁶ David, H., 'Implementing the Principles of the United Nations Guidelines for Consumer Protection', (1991) Vol. 33(2), *Journal of the Indian Law Institute* 188-245
http://14.139.60.114:8080/jspui/bitstream/123456789/17362/1/005_Implementing%20the%20Principles%20of%20the%20United%20Nations%20Guidelines%20for%20Consumer%20Protection%20%28189-245%29.pdf accessed 21 August 2020.

¹⁷ The Resolution was adopted by the General Assembly on 22 December 2015.

¹⁸ Ibid.

¹⁹ Guideline 1(a)-(h).

- c. to encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- d. to assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- e. to facilitate the development of independent consumer groups;
- f. to further international cooperation in the field of consumer protection;
- g. to encourage the development of market conditions which provide consumers with greater choice at lower prices; and
- h. to promote sustainable consumption.²⁰

Fundamentally, the Guidelines are plausible goals founded on some basic principles. From the preamble to the Guidelines, it is evident that developing countries have so much to gain from the Guidelines if domesticated and carefully implemented.²¹ In the Part II, the Guidelines set out the scope of application of the instrument and same was designed to apply to business-to-consumer transactions including both private and state-owned enterprises involved in the provision of goods and services.²² In the circumstance, all businesses (private or public) in Member States must respect and protect consumer rights, consumer interests and promote consumer welfare through conscious policies such as laws, regulations, rules, frameworks, procedures, decisions, mechanisms and programmes.²³ Part III focuses on the general principles enunciated by the Guidelines.²⁴ The legitimate needs of consumer protection which the Guidelines intend to meet are itemised as follows:

- (a) Consumers access to essential goods and services;
- (b) The protection of vulnerable and disadvantaged consumers;
- (c) The protection of consumers from hazards to their health and safety;

²⁰ Ibid.

²¹ David, H. (n16).

²² Guidelines 2 and 3.

²³ Ibid.

²⁴ Guidelines 4-10.

- (d) The promotion and protection of the economic interests of consumers;
- (e) Access of consumers to adequate information to enable them to enable them to make informed choices according to individual wishes and demands;
- (f) Consumer education including education on the environmental, social and economic consequences of consumer choice;
- (g) Availability of effective consumer dispute resolution and redress;
- (h) Freedom to form consumer groups in order to present their views in decision-making processes affecting them;
- (i) The promotion of sustainable consumption patterns;
- (j) Creating enabling environment for the protection of consumers using electronic commerce; and
- (k) The protection of consumer piracy and the global free flow of information.²⁵

With respect to Part IV, it deals with the principles for good business practices.²⁶ It sets down the benchmarks for the conduct of good businesses in online and offline commercial activities given adequate focus and concern for consumers. In this regard, attention is given to fair, honest and equitable treatment of consumers, elimination of harmful practices to consumers particularly the vulnerable and disadvantaged one,²⁷ avoiding illegal, unethical, discriminatory or deceptive practices such as abusive marketing tactics or other improper behaviour that may pose unnecessary risks or harm consumers.²⁸ As a matter of fact, the Guidelines seek for the protection of consumers' privacy through transparency, security and control in the collection of consumers' personal data and recommended that effective consent mechanisms be put in place.²⁹

²⁵ See Guideline 5 of the United Nations Guidelines for Consumer Protection. United Nations Conference on Trade and Development. (2016) Publication No. UNCTAD/DITC/CPLP/MISC/2016/1 <http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf> accessed 12 August 2020.

²⁶ Guidelines 11.

²⁷ Guidelines 11(a).

²⁸ Guidelines 11(b).

²⁹ Guidelines 11(e).

It also suggests that businesses should provide complete and accurate information relating to fees, terms and conditions about their goods and services to consumers to enable consumers take informed decisions.³⁰ Similarly, it enjoins them to create necessary awareness and education that will update consumers with knowledge, skills, professional advice and necessary assistance needed to be understood where risks are involved.³¹ Again, consumers must be availed with the opportunity to lodge complaints, seek redresses in the most efficient, accessible, fair, transparent, cost effective, expeditious and speedy manner.³² In other words, there must be well-structured dispute resolution mechanisms, including alternative dispute resolution methods in line with international standards.³³

Under Part V, the Guidelines comprehensively consider the core consumer interests and same are applicable to home-produced goods and services as well as imports.³⁴ It emphasises the need for applicable procedures or regulations made for consumer protection to take cognisance of international trade obligations in a manner that would not constitute trade barriers or jeopardise international trade.³⁵

Parts VI of the Guidelines provide for the promotion of international cooperation among Member States and encourage States to synergise at regional and sub-regional levels in the promotion of consumer protection.³⁶ It urges them to develop, review and maintain appropriate mechanisms as well as promote exchange of information on their respective national policies in such a way that will strengthen consumer protection.³⁷ It advocates States to cooperate and collaborate in the area of exchange of information, procurement and joint use of testing facilities, common testing procedures, price and quality control, combating fraudulent and deceptive cross-border commercial practices,

³⁰ Guidelines 11(c).

³¹ Guidelines 11(d).

³² Guidelines 11(f).

³³ Ibid.

³⁴ Guideline 12.

³⁵ Guideline 13.

³⁶ Guidelines 79-94.

³⁷ Guideline 79(a).

cooperation among enforcement agencies in the area of investigation of cases, resolution of disagreements, among others. The Guidelines also enjoin States to cooperate and participate in bilateral and multilateral agreements through improved international judicial intervention and inter-agency cooperation in foreign consumer protection and recovery of foreign assets where cross-border cases are involved.³⁸

Presently, there are many initiatives at the regional and sub-regional levels that seek to promote consumer protection. For instance, there are the Committee on Consumer Protection of the Association of South-East Asian Nations (ASEAN),³⁹ the Organization of American States and its Inter-American Rapid Alert System (SIAR), the Central American Council on Consumer Protection, African Consumer Dialogue, European Union Council on Consumer Protection Cooperation⁴⁰ and European Commission Initiatives, among others.

Notwithstanding the fact that the provisions of UNGCP are not binding on Member States, but as a matter of international law, the Guidelines may be respected by member countries considering the practical impact and the far-reaching importance of the provisions to the socio-economic development of each nation and government.⁴¹ It is a set of directives consisting of some specific standards necessary for the promotion of consumer protection against inimical abuses and exploitation. The provisions are, no doubt, good recommendations that are actionable if implemented by governments. The Guidelines emphasises the responsibility of individual country to give force to consumer protection policies considered appropriate to her peculiar needs.⁴² It is a comprehensive and expansive concept that is not limited to governments alone, but accommodates other stakeholders including manufacturers and civil society groups. However, it requires mandatory intervention of governments to make it effective through legislative framework.⁴³

³⁸ Guidelines 83-89.

³⁹ Established in 2007 which serves as a focal point to implement and monitor regional arrangements and mechanism to foster consumer protection in ASEAN Economic Community, among others. <<http://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/consumer-protection/the-asean-committee-on-consumer-protection-accp/>> accessed 21 August 2020.

⁴⁰ The Consumer Protection Cooperation (CPC) is a network of authorities for enforcing EU consumer protection laws in EU and EEA countries. <http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/consumer_protection_cooperation_network/index_en.htm> accessed 21 August 2020.

⁴¹ Guideline 5 of the United Nations Guidelines for Consumer Protection.(n25).

⁴² Ibid.

⁴³ Ibid.

3. Consumer Protection Agencies and the United Nations Guidelines for Consumer Protection (UNGCP)

As earlier observed, the Guidelines set out the mood that consumers often face imbalances in economic terms, educational levels and bargaining power and that consumer should enjoy the right to just, equitable and sustainable economic and social development.⁴⁴ The UNGCP therefore enjoin countries to develop, strengthen or maintain a strong consumer protection policy by implementing some of the provisions of the Instrument. Advisedly, each Government is obliged consider its peculiar economic needs, social circumstances, population, costs and benefits of proposed measures.⁴⁵ In other words, the UNGCP guidelines, though a non-prescriptive international policy instrument on consumer protection, enjoin Member States to provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies in their respective countries.⁴⁶ The word “infrastructure” within the context of the Guidelines ultimately refers to a comprehensive legal framework such as legislation, institutions and other necessary enabling environment that States can put in place for the enforcement of the provisions for consumer protection.⁴⁷

In New Zealand⁴⁸ and South Africa for instance,⁴⁹ consumer protection was directly administered by the relevant Ministry and Department of their governments. The Consumer Protection of New Zealand is an agency within the Ministry of Business Innovation and Employment⁵⁰ while the National Consumer Commission (NCC) of South Africa is an institution established under the Consumer Protection Act (CPA)⁵¹ operating under the direct supervision of the Department of Trade, Industry and Competition.⁵² The Consumer Protection of

⁴⁴ Guideline 1.

⁴⁵ Ibid.

⁴⁶ Guideline 4.

⁴⁷ Guideline 32.

⁴⁸ Ministry of Business Innovation and Employment of New Zealand provides policy and regulatory framework which shape business behaviour, ensuring there is a robust consumer protection regime in the country. <<http://www.mbie.govt.nz/info-services/consumer-protection>> accessed on 21 August 2020.

⁴⁹ National Consumer Commission established under s. 68, Consumer Protection Act 2008 <<http://www.thence.gov.za>> accessed 21 August 2020.

⁵⁰ <<http://www.mbie.govt.nz>> accessed 12 June 2021.

⁵¹ CPA South Africa, 2008.

⁵² National Consumer Commission (NCC) – Overview. <<https://nationalgovernment.co.za>> accessed 12 June 2021.

New Zealand as part of the Ministry of Business Innovation and Employment is responsible for the development of consumer policy including consumer protection; ensuring product safety and enforcing weight measures; providing education and advice for consumers and businesses on consumer laws and issues; conducting investigations on unsafe consumer products and administering issues bothering on consumer legislation.⁵³

In South Africa, the NCC has the mandate to promote compliance with the CPA through advocacy and enforcement so as to ensure business practice as well as uphold socio-economic welfare of consumers.⁵⁴ It is also responsible for the promotion of fair, accessible and sustainable marketplace for consumer products and services.⁵⁵ NCC of South Africa is saddled with the responsibility of establishing national norms and standards relating to consumer protection. The Commission also provides standards in relation to consumer information, prohibition of unfair market and business practices, promotion of responsible consumer behaviour and the promotion of regular and consistent legislative and enforcement framework relating to consumer transactions and agreements.⁵⁶

In Nigeria, the Federal Competition and Consumer Protection Act, 2018 established the Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Tribunal (CCPT) for the purposes of enforcing consumer rights and protection.⁵⁷ The Commission is a Federal Government Agency under the Federal Ministry of Trade and Investments which supplants the defunct Consumer Protection Council created under the repealed Consumer Protection Council Act.⁵⁸ FCCPC has the mandate to protect and promote the consumers' interest and welfare through the development and promotion of fair, competitive and competitive markets in the Nigerian economy.⁵⁹ It is also established to ensure that citizens have access to

⁵³ See <<https://www.govt.nz/organisations>>accessed 12 June 2021.

⁵⁴ Guidelines 79-94.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ FCCPC: The Nigerian Federal Competition and Consumer Protection Commission 2019: Lessons from South Africa <>accessed 12 June 2021..

⁵⁸ Cap C25 Laws of the Federation of Nigeria 2004.

⁵⁹ See FCCPC <>accessed 12 June 2021

safe products as well as provide consumers with secured rights and variety of quality products at reasonable and competitive prices, among others.⁶⁰ Some key areas of operation of the Commission include complaint resolution, surveillance and enforcement, consumer education, research and strategy etc.⁶¹

Notably, the provisions of FCCPA 2018 apply to all undertakings and all commercial activities within or having effects in Nigeria. The Act also applies to all bodies and agencies of the government engaging in commercial activities where the government has controlling interest and all commercial activities established for making profits with ultimate satisfaction of the public.⁶² In a nutshell, the Federal Competition and Consumer Protection Commission and Competition and Consumer Protection Tribunal⁶³ are established to promote competition in the Nigerian markets and also to eliminate monopolies, prohibit the abuse of dominant market position as well as penalise restrictive trade and business practices.⁶⁴

Meanwhile, apart from the FCCPC, the Nigerian law recognizes several other regulators in the field of consumer protection. In other words, there are other regulators who are statutorily empowered to protect the consumers in their respective sectors. The FCCPC, however, has an overall oversight role over all the sectors where the interests of consumers are involved. There is collaborative alliance and synergic efforts between these specific sectors and FCCPC.

In the telecommunication industry, Nigerian Communications Commission (NCC) is created under the Nigerian Communications Act, 2003 as the sector-specific regulatory body⁶⁵ responsible for licencing, competition, spectrum regulations, interconnection, access, tariffs and numbering.⁶⁶ The agency is saddled with the responsibility of ensuring that there are no regulatory barriers to

⁶⁰ Ibid.

⁶¹ FCCPC: What We Do < accessed 12 June 2021.

⁶² Section 2(2) of FCCPA, 2018.

⁶³ Section 39(2) FCCPA, 2018.

⁶⁴ See the explanatory note to the FCCPA, 2018.

⁶⁵ See s. 4 NCA, 2003.

⁶⁶ The Public Private Infrastructure Advisory Facility, The World Bank; May 2013: International Best Practices Report on Telecommunications Regulations, Contract No. 7166250 (Presented to Ministry of Communications and Information Technology, Republic of the Union of Myanmar, P. 5.

access market and implementation of the regulations to prevent anti-competitive practices among the operators and opening up the telecommunications markets to new investors⁶⁷ and ensure that the operators provide quality services to consumers or subscribers on fair terms.⁶⁸

4. Consumer Associations and Independent Actors within the Context of United Nations Guidelines for Consumer Protection

The UNGCP laid good platforms for consumer associations and independent actors to participate in the promotion of the interest of consumers. The Guidelines make provision for these non-governmental bodies when it is observed in the principal objectives that Member States should take into account the interests and needs of consumers by recognizing the fact that consumers face some challenges in terms of economic and educational imbalances, uneven bargaining powers and the right to access non-hazardous products.⁶⁹ It also enjoins States to provide conducive atmosphere for consumers in a manner that will promote just, equitable and sustainable economic and social development and observe their right to enjoy environmental protection.⁷⁰ As a way of achieving this objective, the Guidelines specifically provide that Member States should facilitate independent consumer groups.⁷¹ Again, it also enjoins States to ensure that they give room for freedom to form consumer and other relevant groups or organisations and that such bodies should be allowed to present their views in decision-making processes affecting them.⁷²

⁶⁷ These principles are in line with the resolutions adopted in 1997 as part of the WTO negotiations on the Agreement on Basic Telecommunications and became the reference papers on telecommunications regulatory principles. This WTO-prepared Reference Paper has become a working tool on the subject. See http://www.wto.org/english/tratope/serve/telecom.e/tel23_e.htm accessed 21 January 2020.

⁶⁸ B. A. Agoro & L. A. Adeleke, 'Alchemy of the Legal Regime of Consumers Protection in Telecommunications Industry in Nigeria', (2018) Vol. 2 (2) *Niger Delta University Law Journal*, 136- 159.

⁶⁹ Guideline 1.

⁷⁰ Ibid.

⁷¹ Guideline 1(e).

⁷² Guideline 5(h).

There markable implication of these provisions are that consumers' protection is not limited as the exclusive duty of governments or their agencies alone. In other words, other stakeholders are engaged in the promotion and protection of consumers' rights. The Guidelines clearly leverage a legitimate need for the freedom to form consumer association and other relevant groups. It recognizes the opportunity of such organisations to present their views in decision-making processes affecting them.⁷³

Under the Guidelines, the States are advised to make laws that will grant Consumer associations the power to monitor adverse practices such as adulterated foods, false or misleading claims in marketing and service frauds;⁷⁴ misleading environmental claims;⁷⁵ involve in consumer education⁷⁶ including environmental education,⁷⁷ and develop voluntary codes⁷⁸ in aid of their duties. The Guidelines also implore Governments to encourage and ensure availability of facilities to test and certify quality and performance of essential goods and services⁷⁹ particularly the possible inclusion of consumer associations in the exercise through the formation of synergy between the government or its agencies and the consumer associations.

The UNGCP also take cognizance of the roles consumer associations may take in dispute resolution and redress mechanisms.⁸⁰ It permits community participation of the associations in public utilities especially the energy sector.⁸¹ In a nutshell, the UNGCP confirms the relevance of the participation of Civil Society Organisations (CSOs) in consumer protection.

⁷³ Guideline 5.

⁷⁴ Guideline 21.

⁷⁵ Guideline 30.

⁷⁶ Guideline 42.

⁷⁷ Guideline 45.

⁷⁸ Guideline 31.

⁷⁹ Guideline 35.

⁸⁰ Guideline 41.

5. Principles of Competition in the United Nations Guidelines for Consumer Protection

The UNGCP uphold some ample provisions relating to competition policy and thus make the promotion and protection of the economic interests of consumers of utmost concern. The instrument encourages States to strive to promote effective distribution methods, fair business practices, informative marketing and effective protection against harmful practices that may adversely affect the consumers' right of choice.⁸² It also suggests that States should develop, strengthen or maintain measures that will control restrictive and other abusive practices that are harmful to the interests of consumers.⁸³ The Guidelines also make references to the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices⁸⁴ with the ultimate objective that States should encourage fair and effective competition in order to provide range of choices for consumers to elect in their desired products and services.⁸⁵ In other words, these principles are geared towards ensuring that all Government policies must be tailored towards allowing competition in markets and efforts must be made to provide the legal framework to give effect to those policies.⁸⁶

6. An Overview of the Nigerian Federal Competition and Consumer Protection Act

Conscious of the imperativeness of protecting the rights of consumers in line with the global best practices and in accordance with the country's obligations and commitments to international treaties, the Nigerian Federal Competition and Consumer Protection Act⁸⁷ was assented to by the President of Nigeria on 30th of

⁸¹ Guideline 76.

⁸² Guideline 20.

⁸³ Guideline 22.

⁸⁴ This set of principles were adopted by the General Assembly of the United Nations by her Resolution 35/63 of 5th December, 1980.

⁸⁵ Guideline 24.

⁸⁶ Guideline 31-32.

⁸⁷ Cap C25, Law of the Federal of Nigeria, 2004.

January, 2019 after it was passed by the National Assembly. The new Act repealed the Consumer Protection Act which established the defunct Consumer Protection Council. It was enacted for the development and promotion of fair, efficient and competitive markets in the Nigerian economy and to facilitate access by all citizens to safeguard and secure the protection of rights for all consumers in Nigeria.⁸⁸ The objectives of the Act are:

- a. to promote and maintain competitive markets in the Nigerian economy;
- b. to promote economic efficiency;
- c. to protect and promote the interests and welfare of consumers by providing consumers with wider variety of quality products at competitive prices;
- d. to prohibit restrictive or unfair business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria; and
- e. to contribute to the sustainable development of the Nigerian economy.

The Act is, no doubt, a legal framework in tandem with the recommendations of the UNGCP and shares the same objectives and goals as applicable to all undertakings and commercial activities within or having effect within Nigeria. In other words, it applies and has binding force on all corporate bodies, whether state-owned or private-owned, including all commercial activities aimed at making profit and geared towards satisfying the demands of the public.⁸⁹ As a matter of fact, the Act establishes the Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Tribunal (CCPT) for the implementation of the laudable provisions of the Act. The FCCPC has, apart from administering the law, a very extensive mandate

⁸⁸ See the Long Title to the Act
⁸⁹ s.2 FCCPA, 2019.

among which is to generally advise the Federal Government on national policies and matters relating to all goods and services as it affects competition and consumer protection⁹⁰ as well as identify anti-competitive, anti-consumer protection and restrictive practices that may adversely affect the economic interest of the consumers.⁹¹ In this regard, it has a very wide power to make rules and regulations under the Act which power may be extended to any other interests where issues bothering on competition and consumer protection is covered by any legislation.⁹²

The CCPT, on the other hand, is established as a redress platform to adjudicate over conducts prohibited under the Act. Some of the conducts prohibited and offences established under the Act are: prohibition of restrictive agreements and agreements containing exclusionary provisions, prohibition of minimum resale price, withholding of products from a dealer by a supplier, abuse and prohibition of dominant position in a relevant market, price-fixing, bid-rigging, giving false or misleading information etc. The jurisdiction of the Tribunal includes hearing of appeals from or review of any decision of the Commission; hearing of appeals from or review of any decision of any regulatory authority where issues of competition and consumer protection are involved; issuing orders and making rulings that are incidental to its powers under the Act.⁹³

Further to the above, the Act is also significant in that it provides for elaborate rights of the consumers and also identified the obligations and duties on the part of the manufacturers, importers, distributors and suppliers of goods and services. A diary of some of the rights provided for include right to information in most clear and understandable language; right to disclose the price of goods and services; right to choose or examine goods; right to select suppliers; and right to fair dealings. Others include right to return goods; right against unfair,

⁹⁰ Ibid. Section 17©.

⁹¹ Ibid. Section 17(b).

⁹² Ibid.

⁹³ Ibid. Section 47(1).

unreasonable and unjust terms; right against false, misleading and deceptive representations; right to enjoy safe and good quality goods and services etc. The manufacturers, importers, distributors and suppliers of goods and services on their part are obliged to observe duties relating to proper labeling of goods; duty to withdraw hazardous goods and products from the market; duty to take liability for defective goods; liability from misrepresentation; and liability arising from breach of implied obligations, among others. The Act provides options to consumers to lodge breach of their rights or make complaints in respect of any grievance and these includes direct lodging of complaint to the Commission, lodging of complaint to the industry sector regulator such as the Nigerian Communications Commission (NCC) in the Nigerian Telecommunications industry and direct approach to the court for judicial redress.⁹⁴ It also encourages the use of alternative dispute resolution through mediation and conciliation with the collaboration of civil society groups.⁹⁵

It is also instructive to note that the Act takes cognizance of the roles of civil society groups in the promotion and protection of consumer rights. Thus, it enjoins the Commission to facilitate, support and collaborate with civil society groups in activities such as consumer education, research, marketing monitoring, surveillance and reporting, promotion of consumers' rights and advocacy of consumers' interest and to allow them participate in national and international associations, conferences, seminars, workshops and other fora where matters relating to consumer protection are concerned.⁹⁶ Meanwhile, the Commission reserves the right to accredit any consumer group principally formed to promote or represent the interest of all or a specific category of consumers. Such group(s) must be engaged in activities that advance the cause of consumers' interests and committed to achieve these objectives.⁹⁷

⁹⁴ Ibid. Section 146(1).

⁹⁵ Ibid. Section 151(1)(e)

⁹⁶ Ibid. Section 151(1)(a)-(e)

⁹⁷ Ibid. Section 151(3)-(5)

By the elaborate provisions of the FCCPA, it will be observed that Nigerian government has shown serious enormous commitment to not only the provisions of the UNGCP but to the economic impact of consumer protection.

7. The UNGCP and the Nigerian Telecommunication Sector: The Role of Nigerian Communications Commission

The Nigerian Communications Act 2003 is the principal statute that regulates the provision and use of telecommunications services and networks in Nigeria. The objectives of the Act which came into force on the 28th July, 2003 include to provide a regulatory framework for the industry and to protect the rights and interests of service providers and consumers within Nigeria.⁹⁸ It establishes the Nigerian Communications Commission (NCC)⁹⁹ charged with the responsibility of regulating the telecommunications sector in Nigeria. The Act enumerates 23 areas of operations as the principal functions of the Commission which include the following:

- a. the facilitation of investments in and entry into the Nigerian market for the provision and supply of communications services, equipment and facilities;
- b. the protection and promotion of the interests of consumers against unfair practices including but not limited to matters relating to tariffs and charges for and the availability and quality of communications services, equipment and facilities;
- c. ensuring that licensees implement and operate at all times the most efficient and accurate billing system;
- d. the promotion of fair competition in the communications industry and protection of communication services and facilities providers

⁹⁸ <<http://www.ncc.gov.ng/data/html/NCA2003.html?ml=1>> accessed 17 December 2020.

⁹⁹ See Section 3 Nigerian Communication Act 2003. See also <<http://www.ncc.gov.ng/data/html/NCA2003.html?ml=1>> accessed 03 December 2020

from misuse of market power or anti-competitive and unfair practices by other service or facilities providers or equipment suppliers; and

- e. granting and renewing communications licences whether or not the licences themselves provide for renewal in accordance with the provisions of the Act and monitoring and enforcing compliance with licence terms and conditions by licensees.¹⁰⁰

The functions of the Commission also include developing and monitoring performance standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria, having regard to the best international performance indicators¹⁰¹ and examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such dispute-resolution methods as the Commission may determine from time to time including mediation and arbitration.¹⁰² The Act also mandates the Commission to carry out its functions and duties and exercise its powers efficiently and effectively in a non-discriminatory and transparent manner.¹⁰³

From the general provisions of the Act, it is critical to note that consumer protection is given premium attention. The Act makes elaborate provisions for the resolution of consumer complaints through Alternative Dispute Resolution (ADR) processes.¹⁰⁴ Under the Act, the Commission is conferred with powers to resolve disputes between persons who are subject to the Act regarding any matter under the Act or its subsidiary legislation. However, it is incumbent on the parties to first make an attempt to first resolve any dispute between them through internal negotiation mechanism before the involvement of the Commission.¹⁰⁵

¹⁰⁰ Section 4(a) – (g) NCA, 2003 .

¹⁰¹ Section 4(h) NCA, 2003.

¹⁰² Section 4(p) NCA, 2003.

¹⁰³ Section 4(2) NCA, 2003.

¹⁰⁴ See Section 73 NCA, 2003.

¹⁰⁵ See Section 74 NCA, 2003.

The Act also mandates the Commission to publish guidelines setting out the principles and procedures that parties must follow and take into account in resolving disputes or a class of disputes.¹⁰⁶ The Act enjoins the NCC to publish in its website and distribute flyers and leaflets on specific subjects such as: procedure for lodging a consumer complaint; the role of NCC in consumer protection; consumer facts: obligations of service providers to Nigerian consumers of telecoms services; awareness on cybercrime; understanding broadband; consumer bill of rights; and host of others.¹⁰⁷

The Commission also established the Consumer Affairs Bureau (CAB) in September 2001 as a unit within its operation to protect, inform and educate all consumers of telecommunications services in Nigeria.¹⁰⁸ The charter of the Bureau code-named PIE (an abbreviation of protect, inform and educate) is meant to empower the consumers through awareness creation programmes that will highlight the rights, privileges and obligations of the consumers. The Bureau's mandate also include ensuring that consumers have adequate information and education; to protect them from unfair practices; to facilitate redress for dissatisfied consumer care services to consumers and to organise consumer outreach forums.¹⁰⁹ The CAB's core vision is to ensure all consumers of telecommunications and ICT services in Nigeria are well-informed, protected and satisfied. It also mediates and resolves disputes between consumers and service providers and facilitates efficient consumer-operator interface in the course of its complaints management system.¹¹⁰ The Unit also monitors the activities of service and programmes of service providers and the extent to which it impact on consumers.¹¹¹ It also ensures that call/care centres established by the service providers meet acceptable standards in line with the international best practice and collaborates with consumer advocacy groups in every of its dealing with its mandates.¹¹²

¹⁰⁶ See Section 75 NCA, 2003.

¹⁰⁷ See <consumerportal@ncc.gov.ng> and Consumer Web Portal www.ncc.gov.ng/consumer accessed on 17 December 2020.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

Under the Act, NCC is empowered to resolve disputes in such manners including but not limited to ADR processes and upon such terms and conditions as it may deem fit.¹¹³ In carrying out its dispute resolution functions, the Commission is to be guided by the objective of establishing a sustained dispute resolution process that is fair, just, economical and effective and shall not be bound by technicalities, legal forms or rules of evidence and shall at all times act according to the ethics of justice and the merits of each case.¹¹⁴

It should be noted that sections 104 - 106 of the Act¹¹⁵ deal with consumer protection and quality of service. By these provisions, all service providers are required to meet specific minimum standards in the quality of service as the Commission may from time to time specify and publish and may deal reasonably with consumers and adequately address consumer complaints. The Commission is empowered to use any of its powers under the Act in the resolution of complaints received from consumers in relation to matters of customer service and consumer protection including but not limited to quality of service or the failure by a licensee to comply with a Consumer Code.

The Commission also has mandate to establish procedures or guidelines for the making, receipt and handling of complaints of consumers regarding the conduct or operation of licensees and may, at its discretion, institute alternative dispute resolution processes for the resolution of the complaints or disputes provided that the licensee's dispute resolution procedures shall first have been exhausted by the consumer before presentation of the complaint to the Commission. By section 106,¹¹⁶ the Commission may designate an industry body to be a consumer forum and to prepare a consumer code, subject to the prior approval of, and ratification by, the Commission. The Commission may require licensees to prepare individual consumer code for their respective customers, and such consumer code shall be subject to the prior approval of and ratification by the Commission.

¹¹³ See Section 76 NCA, 2003.

¹¹⁴ Ibid.

¹¹⁵ NCA, 2003.

Also, under the Act, where a Consumer Code is prepared by a Consumer Forum, the Commission or licencees shall include model procedures for reasonably meeting consumer requirements, the handling of customer complaints and disputes including an inexpensive arbitration process other than court proceedings. Such procedure must include procedures for the compensation of customers in case of a breach of a consumer code, and the protection of consumer information. Other matters which the consumer code is supposed to address include, but not limited to, further recourse available to a consumer who is dissatisfied with the licensee's complaints-handling procedures together with specific details of compensation and refund schemes offered by licensee to its customers, the provision of information to customers regarding services, rates and performance, and any other matter which in the opinion of the Commission, may be of concern to consumers.¹¹⁷

Taking a look at some of the provisions of the Act and its subsidiary legislation, an impression may be imputed that the procedure is intended to constitute a bar to recourse to the court or other avenues for redress. For instance, section 74 (1) provides that an attempt shall first be made by the parties to resolve any dispute between them through negotiation before the involvement of the Commission. And where a dispute is eventually taken to the Commission as prescribed in the Act,¹¹⁸ section 78 (1)¹¹⁹ provides that the decision of the Commission shall be binding on the parties and the Commission may direct a party to a dispute to abide by the decision of the Commission. A decision made by the Commission may be enforced by the Court as if the decision is a judgment of such Court provided that the Commission had issued a certificate to the complainant for leave to proceed to the Court for the enforcement of the decision. By the provisions of Sections 86–88,¹²⁰ any person who is aggrieved or adversely affected by any decision of the

¹¹⁶ Ibid.

¹¹⁷ Festus, O. U. *op. cit.*

¹¹⁸ See NCA, 2003.

¹¹⁹ Ibid.

¹²⁰ Ibid.

Commission made pursuant to the exercise of the powers and functions under the Act or its subsidiary legislation may request in writing to the Commission for a statement of the reasons for the decision and subsequently for a review by the Commission of the decision. Thereafter, an aggrieved person can only appeal to the court for a judicial review of the Commission's decision or other action. Although the provision of sections 74 and 78 of the NCA correlates with the provision of section 146(1) of the FCCPA, it however fell short of the provision of section 146(2) which affords an aggrieved consumer to directly approach a court of competent jurisdiction to seek redress against his complaint without necessarily taking the routes of referring the matter to the service provider, the FCCPC, the sector regulator like the NCC. The provision of the FCCPA therefore seems to accord with the legal principle of *ubi jus ubi remedium* without fettering the power of the court with any restrictive clause.

8. Challenges of Consumer Protection in the Nigerian Telecommunications Industry

The policy of consumer protection is geared towards regulating and checking the exploitative and excessive manipulation of businesses and individuals against the Nigerian consumers.¹²¹ Thus, the aim is to protect consumers and to:

- a. ensure that fake products are not sold to consumers nor poor service rendered;
- b. guard against false and misleading advertisements;
- c. protect consumers from consuming dangerous goods;
- d. avoid cheating consumers with regards to credit sales;
- e. ensure that consumers get value for their money and maintain a suitable standard of living; and
- f. ensure that producers and sellers respect the rights of consumers in the market place.¹²²

¹²¹ Ebitu, E. T. 'Consumer Rights, Consumer Protection and Public Policy in Nigeria: A Critical Review' Vol. 7 (12) *International Business Research*, 120-127 <www.ccsenet.org/ibr> accessed 17 December 2020.

¹²² Ibid.

In Nigeria, the telecommunications industry is more or less now synonymous with the Global System for Mobile (GSM).¹²³ The GSM companies are owned and run by private companies. Expectedly, consumers are deserving of the best of quality service from the GSM operators at fair and reasonable prices. However, in order to guide the GSM operators in rendering quality services to their subscribers, the NCC established as a regulatory agency in the sector formulated the Consumer Codes of Practice¹²⁴ as guidelines for the compliance of the GSM service providers serving as the benchmark for rendering qualitative service and at affordable rates to the subscribers.¹²⁵ These Codes were arrived at on the basis of a tripartite consensus among the GSM service providers, the subscribers and the Commission guided by the standard of best practices in the industry.¹²⁶ Once a Consumer Code is made with the collaboration of all stakeholders, it becomes effective and enforceable with the approval or ratification of the Commission.¹²⁷

An acceptable Consumer Code must address the following:

1. The provision of information to subscribers regarding services, rates and performances;
2. Provision of fault repairs services;
3. Advertising or representation of services;
4. Customer charges, billings, collection and credit practices; and
5. Any other matter, which in the opinion of the commission may be of concern to the consumer.¹²⁸

¹²³ Odion, J. O. 'An Appraisal of the Regulatory Framework for the Protection of Consumers in the Communications Sector in Nigeria' Vol. 8 (2) *Journal of Law and Conflict Resolution* 16-25 <https://www.google.com.ng/url?q=http://www.academicjournals.org/journal/JLCR/article-full-text-pdf/C78BDB261535&sa=U&ved=0ahUKEwj3yZTDwLvVAhVGORoKHbTWDdQQFgggMAA&usg=AFQjCNGG2JfmP7mevzJP-_J9xwvj3IO8bw> accessed 27 December 2020.

¹²⁴ NCC: Nigerian Consumer Codes of Practice <<http://www.ncc.gov.ng/docman-main/legal-regulatory/regulations/102-consumer-code-of-practice-regulations-1/file>> accessed 03 October 2019.

¹²⁵ Festus, O. U., 'Consumer Protection in the Regulation of Telecommunications Services in Nigeria: Not Yet "Uhuru" for Consumers' Vol. 12, *The Nigeria Juridical Review*. 125-150 <https://www.google.com.ng/url?q=http://law.unn.edu.ng/wp-content/uploads/sites/12/2016/08/7-Consumer-Protection-in-the-Regulation-of-Telecommunication-Services-Ukwueze.pdf&sa=U&ved=0ahUKEwjC_9jQi77VAhXLXR0KHfZYCzIQFggjMAE&usg=AFQjCNGGqh0j4v4c9OYgysVoRCPlsIE7vw> accessed 03 November 2020.

¹²⁶ Ibid.

¹²⁷ Odion, J. O. *Op cit.*

¹²⁸ Odion, J. O. *Op cit.*

It is gratifying to note that the Consumer Codes made by the NCC deal with specific service delivery issues. Specifically, Part 1 of the Quality of Service Regulations encapsulates behind the expected quality of service to include the following:

- a. Improving service quality by identifying service deficiencies and by encouraging or requiring appropriate changes;
- b. Maintaining service quality, while recognizing environmental and operating conditions;
- c. Making information available to help inform the subscriber of the choice of services offered by the licensees;
- d. Improving the operations and performance of interconnected networks and;
- e. Assisting the development of related telecommunications markets.

The general provisions under the Code that impact on the rights of the subscribers include Paragraph 8,¹²⁹ which imposes on the operators the duty to provide information on the description of services offered to the subscriber. This provision is commendable as it is in synch with the advocacy for the enforcement of the right of the consumer to adequate information about the nature of service he is being rendered and the terms and conditions thereof. In particular, Paragraph 9(a) –(e) of the Codes¹³⁰ makes direct provisions on the duty of the operator to inform the subscriber about such intrinsic details as the rate of charges, content of charges and frequency of charges. The Codes makes it mandatory for the service providers to make these details available to the consumer before the contract of service is consummated. Once more, this is a good development as it will protect the subscriber from the usual entrapment that most consumers use to find themselves in especially when they are lured into contracts without adequate information about the terms and conditions of such contracts.¹³¹

¹²⁹ NCC: Nigerian Consumer Codes of Practice <<http://www.ncc.gov.ng/docman-main/legal-regulatory/regulations/102-consumer-code-of-practice-regulations-1/file>> accessed 03 October 2020.

¹³⁰ Ibid.

¹³¹ Odion, J. O. *Op cit*.

Apparently, there is no doubt that there exists a robust legal framework for the regulation of the activities of GSM operators in the country. These are also in tandem with both provisions of the UNGCP and the FCCPA. The regulatory measures put in place are calculated to ensure that consumers enjoy good and quality service from these operators, and at reasonable and affordable prices. It should be noted that despite the structures set up by the Federal Government and the Civil Society Organisations (CSOs) in Nigeria to ensure that consumers of telecommunications industry are protected, consumers are still faced with a lot of challenges like drop calls, unsolicited promotional messages, poor quality services etc.

9. Conclusion

This paper examined the concept of consumer protection with significance emphasis on the effect of the United Nations Guidelines for Consumer Protection as an international instrument on the Nigerian telecommunications industry. It provides some insights into the provisions of the UNGCP and the extent to which the Nigerian government through legal framework effectively focused on the core areas of the subject with the enactment of the FCCPA covering the field and the NCA as a sector regulation aimed at achieving the desired result of consumer protection in the telecommunications industry.

The paper appreciates the series of efforts made by the government in the legislation and series of regulations and guidelines made for the purpose of protecting consumers and therefore recommends intensive enforcement mechanisms in the protection of subscribers of telecommunications services.