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Evolving a Turn-around Strategy for Effective Consumer Protection in Nigeria

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Abstract:

This work is an attempt to address the nebulous challenges an average consumer faces within the Nigerian industrial and commercial sphere. The world best practices in the regime of Consumer protection focuses on antitrust legislations for stemming monopolistic practices for an open market economy, where there is free entry and free exist which guarantees consumers' rights. The past and present regimes of protective mechanism are anachronistic, unfriendly and leave much to be desired. The work is an analytical and expository discourse on consumer protection dynamics which are expected to usher in a regime of effective and efficient Consumer Protection in Nigeria. The article recommends that for Nigeria to achieve world best practices, the enabling Consumer Protection Legislation in Nigeria – the CPC Act, 1992, should be amended if not completely repealed.

1. Introduction

Different scholars have variously defined the term Consumer Protection but for the purpose of this work, only two definitions will be considered.

According to Moemeke¹ in his article, "Marketing and Consumerism" "Consumer Protection presupposes action by somebody other than the consumer to help or protect the Consumer". He explains that "the consumer is seen as the weaker of two forces; he requires the intervention of a third party to guarantee him a fair deal".

Monye,² defines Consumer Protection as "the act of safeguarding the interest of the consumer in matters relating to the supply of goods and services, fraudulent and hazardous practices as well as environmental degradation". While the former dwells on who protects the consumer, the latter emphasizes areas that require the protection of consumers. It can therefore be summarized that Consumer Protection is the act put up by concerned individuals, government or group in respect of the exchange relationship between the consumer and producers of goods or services to ensure that products and services are of the required standard or specification, and safe for either intended or foreseeable use.

The term 'consumer' is defined in the CPC Act, thus: "In this Act, unless the context otherwise requires: Consumer means an individual who purchases, uses, maintain or disposes of product or services".³

This article chronicles the evolution, contemporary nature and a projection into the future of consumer protection in Nigeria *vis-à-vis* the history and development of consumer protection in the international arena. Also, the associated problems or inhibitions and strategies for improvement in Nigeria since the evolution of the telecoms market place, will be appraised. In the days of the barter system of trade, things were much simpler, and the consumer did not have a large range to choose from. However, with the struggle by every country to develop and strengthen its industrial base, consumers have been subjected to all kinds of exploitation on the altar of economic growth and sufficiency.⁴

In Nigeria, most consumers, in the wake of the growing market place have at various times had to purchase adulterated foods, faulty weights, under-measures, fake and hazardous drugs, exorbitant prices, endemic shortages leading to black marketing and profiteering, and substandard products.⁵ This had been compounded by callous and indifferent services from public utilities that had been solely government owned and monopolistic, in their various sectors.

The exploitation and abysmal treatment of consumers was however responsible for the evolution of the current consumer policy. This is informed by the fact that trade is about production and consumption, and producers of goods and services need consumers as much as consumers need producers of goods and services. They need to listen to consumers and their needs, and gain more if the consumers are satisfied with their goods and services.

The idea of consumer sovereignty began with the proposition first elucidated by the Scottish philosopher and economist, Adam Smith in the 18th century that the "sole and end purpose of all production is consumption".⁶ However, the perfect market place had remained

¹ I. S. Moemeke, "Marketing and Consumerism", Advertising in Nigeria – some Fundamental Issues, APCON, Lagos vol. 2 p.6

² F. money, *Law of Consumer Protection*, Ibadan: Spectrum Books Limited, 2003; p.99

³ See 32 CPC Act, Cap c.25 LFN. 2004.

⁴ K. I. Igweike, "Consumer Protection in a Depressed Economy", 12th Inaugural Lecture, University of Jos, 2001, p.6.

⁵ Moloney Report on Consumer Protection, CMDD, 1781, p.2

⁶ J. L. Hanson, Introduction to Applied Economics, 3rd ed (Plymouth Macdonald & Evans Ltd., 1981) p.118.

a myth and an economist's dream. John Kenneth Galbraith in his own part, stated that, "It is not the consumer who is the king, but it is the large corporation who is the king in the economy. Whatever happens is not because the consumer wants it that way, but simply because powerful large co-operations prefer it that way."⁷

It was this sad reality that led to the announcement of the rights of consumers for the first time in 1962, when the former US President, John F. Kennedy, moved the "Consumers Bill of Rights" in the US Congress saying: "If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened and national interest suffers."⁸ Kennedy made this public commitment and dedicated his administration to the promotion and protection of consumers' interest on 15th March 1962, the day now observed as World Consumer Rights day. He declared the four basic rights of the consumer, namely; right to safety, information, choice and the right to be heard. To these the international consumer movement have since added four more rights: right to satisfaction of basic needs, right to redress, right to consumer education and right to a healthy environment.

A major development on the international scene in the 60s was the formation of the International Organization of Consumers Union (IOCU) with its headquarters in The Hague, Netherlands. Later on, it came to be known as Consumers International (CI) and its headquarters was moved to London.⁹ It was founded in 1960 by a group of national consumer organizations that recognized that they could build upon their individual strengths by working across national borders. The organization rapidly grew and soon became recognized as the voice of the international consumer movement on issues such as product and food standards, health and patients' rights, the environment, sustainable consumption, and the regulation of international trade and public utilities.

On 9 April, 1985, there was a landmark development in the history of consumer protection when the United Nations General Assembly adopted the UN Guidelines for Consumer Protection, following a decade of hard lobbying by the international consumer movement and consumer organizations. The Guidelines embrace the principles of the eight consumer rights and provide a framework for strengthening national consumer protection policies. With the UN's adoption of the Guidelines, consumer rights were finally elevated to a position of international recognition and legitimacy, acknowledged by developed and developing countries alike.¹⁰

From the 60s, to the early 80s, consumer protection in Nigeria was not a major concern. Before the adoption of the UN Guidelines for Consumer Protection in 1985. The Nigerian economy had not suffered the kind of depression that it witnessed from the late 80s. Utilities like water, electricity and telephone services were provided by government monopolies, but had not experienced rot and total collapse that followed. The Nigerian Railway Corporation still rendered rail transport services while the Nigerian Airways flew in our skies. Also, the average Nigerian had the basic things of life like food, clothing, shelter and even personal vehicles. Jobs were available and salary earners could cater for their families. Understandably, therefore, the immoral acts of faking and production of substandard products were at their lowest ebb. However, all these did not mean the absence of market failures and other consumer concerns. There were problems such as access to goods and services, appropriate pricing for essential products and consumer representation in government policies that affected them.

Though very scant, government action in the form of statutory legislation formed the commonest form of consumer protection under this era. This includes the enactment of the Standards Organization of Nigeria Act, 1971,¹¹ the Food and Drugs Act, 1974,¹² and the Weights and Measures Act, 1974.¹³ The Standards Organization of Nigeria Act, 1971¹⁴ established the Standards Organization of Nigeria (SON) to, among others, formulate and ensure compliance with designated and approved standards, while the Food and Drugs Act, 1974 deals with the manufacture, sale and advertisement of food, drugs, cosmetics and devices. The Weights and Measures Act, 1974¹⁵ regulates indigenous measures and weights in Nigeria. All these were without prejudice to the fact that consumers whose rights were violated could institute civil actions to remedy the violation of their rights. If there was privity of contract, the action could be based on contract or tort in the case of allegation of negligence.

Another viable channel for the protection of consumers' interest during this era was the opportunity created by voluntary consumer organizations. These were made up of public-spirited consumers, who organized themselves to voice their concerns, demand better products and services and embark on campaigns to curb the excesses of the market place. Two different consumer organizations, the Consumer Protection Organization of Nigeria (CPON) and the National Consumers of Nigeria (NCN), formed in 1970 and 1971 respectively, played prominent roles in this regard.¹⁶

CPON was formed to pursue consumer information, education and advocacy. Notable among its deeds was the fact that it had represented consumers in the Council of the Standards Organization of Nigeria (SON), the Board of the Advertising Practitioners Council of Nigeria (APCON), and the Oyo State Task Force on Foodstuff Prices. It conducted market researches to monitor prices and quality of goods and services, and published a quarterly magazine called "The Consumer", which covered various consumer issues and issued public alerts on products and services. On its part, the NCN concerned itself with environmental programmes, research,

⁷ Ibid, p.120.

⁸ J. Edwards, "The Implementation of the UN Guidelines for Consumer Protection" Consumer International, Feb, 2003, p.3.

⁹ F. Monye, op. cit. p.10.

¹⁰ J. Edwards, op. cit. 23; See also B. Kenyip, "Basic Rights of Consumers under the United Nations Guidelines". Dec. 2004

¹¹ Cap 412, LFN, 1990.

¹² F. Monye, Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Monye, p.9.

information and the creation of public consumer awareness on relevant issues. Both organizations were members of Consumers International.

But all these channels had their various challenges for consumers. Under the statutory protection framework, the aforementioned consumer related laws were only criminal based and never provided for the compensation of injured consumers, and thereby made it unattractive for consumers whose rights were infringed upon to pursue any claim. In the pursuit of the civil rights of the consumer, both proof of negligence and the restrictive principle of privity of contract presented an almost insurmountable burden to a claimant. Under this situation, the voluntary consumer associations could only play salutary roles to existing legislations and statutory bodies. So, in as much as the ills suffered by consumers during this era had not sufficiently multiplied at the time, there were no effective protective devices or provisions in consumer legislations for the practical protection of consumers, particularly in the areas of services and consumers right to redress.

2. The Present State of Consumer Protection in Nigeria

The present phase of Consumer Protection in Nigeria is what could be regarded as the era of the UN Guidelines for Consumer Protection. It is the period from 1985 to date, which has witnessed an upsurge in the number of regulatory bodies and consumer groups coming up across the country.

The economic policy of government at this time is predominantly that of liberalization and deregulation of erstwhile monopolistic sectors like aviation, telecommunications, broadcasting and lately, refining of petroleum products. It is also a time that government has had to divest in hitherto public owned enterprises due to endemic corruption and pervasive rot, both of which have adversely impacted the welfare of Nigerian consumers.

The economic recession of the time has subjected consumers to all sorts of hardship, ranging from poverty to the near absence and high cost of basic goods and services, and moral decay which led to the faking and manufacture of substandard goods and services. It is within this period that Nigerian "entrepreneurs" started giving substandard specifications of products to manufacturers in Asian countries for the manufacture and importation of the products to Nigeria.¹⁷

However, the UN Guidelines for Consumer Protection emphasized the need for consumers to be protected in terms of safety of products and services, freedom from exploitation, redress and access to basic goods and services. The Guidelines also have clear objectives in market development and by implication, the promotion of competition through the curbing of abusive business practices which, adversely affect consumers and the development of market conditions which provide consumers with greater choice at lower prices. It was later realized that the Guidelines did not address aspects of consumption and consumer welfare, which were becoming very important, and in 1999, additional sections dealing with sustainable consumption and production were adopted and included in the Guidelines.

The UN had been quite concerned about the implementation of the Guidelines that in 1995, it carried out a survey, which revealed that in Latin America, most countries had introduced consumer protection legislation while a number had amended older legislations. Consumer rights were also recognized in the constitution of eleven countries. But in the Asia Pacific, the overall position was not as good as many countries were left with no legal or institutional framework. The case was different in Central and Eastern Europe, as there was a rapid move from 1990 for the development of consumer protection legislation. Indeed, developed countries almost all had wide-ranging legislation and well-established institutions including independent consumer organizations.

But in Africa, very few countries had a legal or institutional framework, while the principal development had been the rapid growth of national consumer organizations. There were six in four countries in 1985, but more than 40 decades later, when this survey was carried out, the Seychelles and Botswana had laws in place, eight other countries had legislation in draft and eight had competition laws, while a new draft constitution in Kenya referred specifically to consumer protection.

In Nigeria, this period witnessed the enactment of new consumer legislation¹⁸ like the Consumer Protection Council Act, 1992; the Advertising Practitioners Council Act 1988 (as amended by Act No. 93 of 1992); the National Agency for Food and Drugs Administration and Control Act, 1993; the Trade Malpractices (Miscellaneous Offences) Act, 1993; the Food and Drug Related Products (Registration etc.) Act, 1993; the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, 1999; the Nigerian Communications Commission Act, 1992; and the Nigerian Civil Aviation Authority Act, 1999. It also inherited previous consumer legislations like the Standards Organization of Nigeria Act, Food and Drugs Act and the Weights and Measures Act.

This era also saw the rise of voluntary consumer associations in Nigeria, some of which are the All Nigeria Consumer Movements Union (ANCOMU), the Consumers Rights Association of Nigeria (CRAN), the Consumer Organization of Nigeria (CON), the Consumer Campaign Foundation (CCF), the Consumer Awareness Organization, the Consumers Rights Project and of course, the Consumer Rights Advocacy League (CRAL). This is in addition to the fact that the Consumer Protection Organization of Nigeria (CPON) and the National Consumers of Nigeria (NCN) survived the previous era and continued to function under the present dispensation.¹⁹

¹⁷ www.consumerinternational.org "The way forward for LDCs; Empowering Consumers for Pro-Poor Development." April/May, 2001 Last accessed 17th July, 2017.

¹⁸ F. Monye, *Ibid*, 9.

¹⁹ J. O. Enyia, "The dynamics of Telecom Industry Regulation in Nigeria: Perspective on Consumer Protection" Calabar: Unical Press, 2014 p.167-194.

This is an era when Monye²⁰ correctly observes that “consumer protection is now governed by a myriad of laws”. But even in the face of these laws, consumers have continued to suffer the wanton abuse of their rights in the market place.

The reasons are not far-fetched. Indeed, consumer protection is not all about legislation. Unimplemented laws and toothless consumer protection institutions make any legislation marginally effective. Also, legislation must be complemented by effective information and education, consumer representation in policy and decision procedures, accessible and enforceable redress mechanisms, action to promote competition and deter abusive business practices, and policies to promote sustainable production and consumption.

Like the legislation in the previous era of consumer protection in Nigeria, it is evident, for instance, that apart from the Consumer Protection Council Act, all the other numerous consumer legislation of this era are criminal law based, without any form of compensation for victims of defective products or services. And in the case of the Consumer Protection Council Act, which expressly provides for speedy redress to consumers’ complaints through negotiation, mediation and conciliation, the attitude of past administrations to its implementation has left much to be desired. While the law establishing the Council was enacted in 1992, it started operations only in 1999, revealing seven clear years of dormancy. Even after it started operations, the Council has been bedeviled by the problem of gross under funding which has left it lacking the necessary logistic and operational facilities, and the ability to reach out to the teeming Nigerian consumer population.

This gross inadequacy of financial resources is a disturbing factor haunting a good number of the aforementioned regulatory authorities. Regrettably too is the fact that the civil rights that are available to consumers in the present dispensation are still similarly restricted by some legal principles relating to privity of contract and tort as experienced in the past era. All these have continued to act as disincentives for consumers in pursuing any form of redress to the infringement of their rights. It must therefore be placed on record that these numerous legislations, like most laws, are not in themselves sufficient for the protection of consumers as even the Consumer Protection Council Act that is observed to be a more comprehensive consumer protection legislation has been noticed to be devoid of relevant provisions and is presently undergoing amendment at the National Assembly.

In the case of independent consumer organizations under this era, the story so far is not different as they operate in the same difficult environment. In terms of logistics and finances, they are equally hamstrung and so have most times resorted to writing articles, addressing press conferences, granting media interviews and holding seminars and workshops to bring their grievances to the knowledge of the public.

Perhaps the most significant feature of this era is that the regulatory framework of consumer protection is characterized by the disjointed efforts of sectorial agencies involved in different aspects of consumer protection. This has resulted in the incoherence of policy as it concerns consumer protection, which in the light of the liberalization of the economy has been made worse by the absence of a competition policy. In spite of all these, however, there are signs that the present state of consumer protection in Nigeria is bound to take us to a better consumer protection regime in the next dispensation.

3. Future Turn around Strategy

To conjecture the future of consumer protection in Nigeria is to carefully take into consideration the economic exigencies of the times, *vis-à-vis* the legal and institutional frameworks that are currently available for the protection of Nigerian consumers. With deregulation and globalization, consumers have a greater need to be protected from the abuse of the market place, and the way to do this is to entrench a comprehensive consumer policy, the main elements of which are, the empowerment of consumers through information, education, representation and regulation. They contribute to poverty eradication, making markets work, transparent and accountable governance and sustainable production and consumption. In addition, consumers must organize themselves to come together to seek to influence and determine their own ability to have what they need to exist and to secure proper justice and fairness in the way they are governed and supplied.

This behooves Nigerian consumers to pay greater attention to their responsibilities. In the same way that we have a set of internationally recognized rights of the consumer, we also have a set of responsibilities, which include; action, social concern, critical awareness, solidarity and the environment. These require that the responsibility to assert ourselves and act to ensure that we get a fair deal; the responsibility to be aware of the impact of our consumption on other citizens, especially disadvantaged or powerless groups; the responsibility to be more alert and questioning about the price and quality of goods and services; the responsibility to organize together as consumers to develop the strength and influence to promote and protect our interest; and the responsibility to understand the environmental consequences of our consumption, are first and foremost, our individual responsibilities as consumers.

Consumer organizations should on their part design and embark on measures to:

- Empower disadvantaged consumers to enable them to be selective, conscious of their rights and responsibilities and make informed choices;
- Monitor the market, publicize their findings and undertake campaigns, protests and judicial actions on behalf of consumers;
- Cooperate with other stakeholders like government, academia, civil society and the media to ensure adequate information dissemination to consumers so as to enhance their welfare;
- Lobby and advocate for effective consumer legislation and protection in the face of changing national economic and social situations which affect the interest and welfare of consumers;
- Improve consumer awareness concerning their rights under national consumer protection laws and what they stand to gain from such laws;
- Advocate for policy changes that will enhance consumer protection within the market place.

²⁰ Monye, op. cit. 10

- Develop public awareness to the existence of the legislation and work of enforcement institution(s);
- Hold seminars, workshops and other interactive forms of education campaigns targeted at political and government leaders, the business community and consumers; and
- Work with businesses to develop and implement voluntary self-regulatory codes that establish effective and enforceable consumer protection mechanisms.

By so doing, Nigeria would have climbed a higher pedestal on her road to protecting the interest and rights of consumers in Nigeria. But we must admit that these are no mean tasks in terms of the enormous manpower, logistics and financial requirements that go with it. Consumer associations in Nigeria must therefore work towards having one virile, visible and influential national federation of consumer protection organizations on whose platform they will seek to protect the interest and rights of consumers at the national level. Such a body should be proactive, pragmatic and not limited to criticism, and in that wise gain the support of the citizens, the recognition of government and the respect of businesses. Then along with other civil society organizations, such as trade unions, women and youth groups and a strong independent media, they can act as watchdogs, providing an important mechanism to check and balance the activity of business and government.

The government's part is the need to create the enabling environment by putting in place the necessary legislation to facilitate the effective protection of Nigerian consumers. It is therefore heartwarming that a comprehensive legal instrument is being put in place through a proposed bill for an Act to transform the Consumer Protection Council into the Nigerian Trade and Competition Commission (NTCC). This bill is at committee stage in the House of Representatives. If enacted, the NTCC law is to administer all matters relating to Consumer Protection, anti-dumping, anti-trust, competition and weights and measures. It is good news too that the new law has provided for strict liability of businesses in some areas of products and services. (See the Federal Competition and Consumer Protection Bill 2016)²¹ pending in the National Assembly.

Government has seen that there is a strong relationship between competition and consumer protection that makes it imperative to legislate them together in a deregulated economy. Competition and consumer protection support each other as the two components of a single overarching unity. That overarching unity is consumer choice. Simply put, consumer choice or consumer sovereignty is the state of affairs that prevails or should prevail in a modern free-market economy. It is the set of societal arrangements that cause that economy to act primarily in response to the aggregate signals of consumer demand, rather than in response to government directives or the preferences of individual businesses. It is the state of affairs in which the consumer is truly "sovereign," in the sense of having power to define his or her own wants and the ability to satisfy those wants at prices not greatly in excess of the costs borne by the providers of the relevant goods and services. The essence of consumer sovereignty is the exercise of choice. By choosing some goods or some options over others, consumers satisfy their own wants and send signals to the economy. It is, therefore, critical that the exercise of consumer choice be protected.

With the changing attitude of government to consumer protection, therefore, if consumers will organize themselves to be concerned with the quality of the products and services that are consumed, and report abuses to relevant bodies when necessary then the future of consumer protection is bright in Nigeria.

Elsewhere, a case has been made for the consideration and domestication of salient aspects of the U.S telephone Consumer Protection Act 1991, the English credit Act of 1976 and the South African National Credit Act, 2005.

This is a bold attempt to turn around the Nigerian Consumer Protection environment to in sync with global best practices, where a consumer enjoys his right of place in the chain of consumption of goods and services.

4. Conclusion

The author has made an overview of the state of consumer protection in the past and present and has projected into its future in Nigeria. He has shed some light on the goal of ensuring enhanced consumer welfare for our citizens, the problems associated with it and how it could be achieved. The need for an effective and comprehensive consumer legislation has been stressed and the roles of individual consumers and consumer associations, including businesses has been highlighted. All these when properly harnessed will set the tone for a well – protected consumer community in Nigeria's immediate future

²¹www.linkedin.com/pulse/introduction-competition-law-policy-analysis-federal-himony-jury accessed 8th may, 2017

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