




An Overview of Consumer Law in Nigeria and Relationship with Laws of Other Countries and Organisations

F. Monye^{1,2} 

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Abstract

There is no single statute dealing with the rights and obligations of parties in relation to products and services in Nigeria. The sector-specific approach is adopted with laws and agencies put in place to regulate specific areas of consumer protection such as food and drugs; energy, telecommunications, product standards, aviation, banking, and financial services. As a former colony of the United Kingdom (UK), many Nigerian statutes are modelled on English statutes. This historical link is also reflected in the decisions of Nigerian courts which adopt, on persuasive basis, the decisions of the English courts particularly those of the House of Lords. Nigeria belongs to some international, regional, and supranational organisations which influence the consumer law of the country. This paper gives an overview of the Nigerian consumer law with particular reference to product safety, product liability, and telecommunications services and refers to the laws of other countries and organisations where applicable. The paper concludes that Nigeria has, subject to the identified gaps, attained an appreciable level of consumer protection.

Keywords Consumer protection in Nigeria · Product safety · Product liability · Fundamental breach · Telecommunications services

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✉ F. Monye
Felicia.monye@unn.edu.ng

¹ Department of Commercial and Corporate Law, Faculty of Law, University of Nigeria, Enugu Campus, Enugu, Nigeria

² University of Nigeria Nsukka, Enugu Campus, Nigeria

Introduction

The need for consumer protection is gaining wide recognition necessitating countries to put certain measures in place to protect the rights of consumers of products and services and promote a safe marketplace. With particular reference to Nigeria, it has been noted that many factors make consumer protection absolutely compelling and these include the policy of deregulation pursued by government, absence of effective competition, lack of critical awareness about consumer rights and issues, poverty, and low level of literacy (Monye 2011, p. 8). Although not based on research findings, it is generally believed that the problem of fake and substandard products and services has persisted in Nigeria. As discussed in the next section, the socio-economic situation in Nigeria impacts negatively on consumer protection, as consumers in low social and income groups rarely bother about consumer issues including seeking redress for violated rights.

The Federal Government has put in place laws and regulatory agencies to boost the level of consumer protection. The sector-specific approach is essentially adopted. Existing laws which are related to consumer protection include the Food and Drugs Act 1974; Consumer Protection Council Act 1992; Trade Malpractices (Miscellaneous Offences) Act 1992; National Agency for Food and Drug Administration and Control Act 1993; Food, Drug and Related Products (Registration, Etc.) Act 1993; Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act 1999; Nigerian Communications Act 2003; Standards Organisation of Nigeria Act 2015; and Sale of Goods Laws of various states of the Federation.

Others include the Weights and Measures Act 1974; Electric Power Sector Reform Act 2005; Economic and Financial Crimes Commission (Establishment, Etc.) Act 2004; Advance Fee Fraud and Other Related Offences Act 2006; Civil Aviation Act 2006; Central Bank of Nigeria Act 2007; Federal Road Safety Commission Act 2007; Investments and Securities Act 2007; and National Tobacco Control Act 2015.

In addition, Nigerian consumer law recognises civil enforcement by aggrieved consumers in the form of contract- and tort-based actions. However, these forms of action are greatly inhibited by factors such as insufficient knowledge about laws protecting the rights of consumers, consumer apathy, fear of litigation, inability to match the corporate might of big corporations in relation to proof and disproof of liability, and low economic and social status of many consumers in Nigeria. The last factor is particularly glaring in the rural areas.

Despite the measures put in place by the government, there are still some gaps in the Nigerian consumer law. There is no statutory protection against unfair contract terms, thus creating opportunity for the use of unrestricted exemption clauses in consumer contracts. In addition, Nigeria is yet to enshrine a competition regime that gives consumers real choice in the marketplace. The Federal Competition and Consumer Protection Bill 2018, a Bill that had earlier been sponsored by different lawmakers, which is intended to fill this gap is yet to be passed into law.

This work gives background information and the context of the development of consumer law in Nigeria. It undertakes three case studies, namely product safety, product liability, and telecommunications services. Nigeria is a member of some international and regional organisations including the United Nations, International Organisation for Standardization, International Telecommunication Union, and other supranational organisations. The influence of the laws and activities of these organisations on Nigerian consumer law are considered.

Background Information and Context of the Development of Consumer Law in Nigeria

Nigeria is a Federation comprising 36 states and the Federal Capital Territory, Abuja. Many issues falling within the scope of consumer protection are in the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Such issues include aviation, banking, drugs and poison, insurance, meteorology, trade and commerce, traffic on federal trunk roads, water from sources affecting more than one state, weights and measures, and wireless broadcast. This explains why many consumer protection statutes in Nigeria are federal-based being statutes enacted by the National Assembly and which, by necessary implication, apply to the whole country. This scenario has a definite link with effectiveness of the enforcement system given the large landmass (910,770 km² in 2016, World Bank collection of development indicators, compiled from officially recognised sources)¹ and large population of Nigeria (the current estimated population is one hundred and ninety eight million two hundred and twenty four (198,000,224) (Live Statistics) – National Population Commission 2018).²

The Head Offices of all regulatory agencies in consumer protection are located in Abuja, the Federal Capital Territory, with inadequate number of zonal offices and virtually none at local government areas which are 774 in number. This makes penetration to the rural areas rather difficult resulting in serious disparity in the level of consumer awareness and protection in rural and urban areas. This is also reflected in the low level of complaints lodged with the regulatory agencies by consumers in rural areas. In a focus group discussion conducted in the course of a study (Monye et al. 2014, p. 145),³ a participant echoed the views of other participants as follows: “We cannot take the task of pursuing the case to the city for the sake of right enforcement.”

Other indices which have some correlation with the level of consumer protection in Nigeria include consumer apathy (Monye et al. 2014, p. 143); high illiteracy rate (about 60 million people or 30% of the population according to the Minister of Education, Adamu Adamu, in a paper delivered at the opening of the 2017 Nigeria’s Annual Education Conference on “Achieving Inclusive Education through Innovative Strategies”)⁴; and low income which puts many workers below the poverty line (the minimum national wage is N18,000.00 per month⁵ – about \$50). On the last factor, it was the general consensus of participants at the above focus group discussion that poverty plays a negative role as the cost of litigation is high. According to a female participant, “poverty is part of the problem, because for you to seek redress you must have the resources.” (Monye et al. 2014, p. 144).⁶ Another study also found that “High status users were more willing to complain, reflecting a stronger sense of empowerment.” (CTO and NCC 2012, p. 56 n. d).

Nigeria was a colony of Great Britain until 1960 when she gained independence. During the colonial era, the country applied the received English statutes and the common law. After

¹ <https://tradingeconomics.com/nigeria> (last visited on 26 July 2017).

² <http://www.population.gov.ng/> (last visited on 10 July 2018).

³ <http://www.consumersinternational.org/media/2255/consumer-protection-in-nigeria-research-report-eng.pdf> (last visited on 05 August 17).

⁴ <https://www.premiumtimesng.com/news/more-news/250397-60-million-nigerians-are-illiterates-minister.html> (last visited on 11 July 2018).

⁵ <http://www.nassng.org/document/download/5860> (last visited on 29 August 2017).

⁶ *Ibid.*

independence, Nigeria continued to apply English statutes (subject to local circumstances and availability of local statutes) which were in force in England on the first day of January 1900. In fact, the influence of English law on the Nigerian legal system is statutory-based. Section 32 of the Interpretation Act 1964 provides, subject to stated exceptions, that the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the first day of January 1900, shall be in force in Nigeria. By subsection (2), such Imperial laws shall be in force so far only as the limits of the local jurisdiction and local circumstances shall permit and subject to any federal law.

However, as to be expected, the influence of the above provision has waned over the years having been overtaken by local laws enacted within the period of over 50 years of the existence of the Act. Indeed, in the late 1980s, the Nigerian Law Reform Commission conducted a comprehensive review of all statutes of general application and produced draft versions of the statutes for re-enactment as local statutes. At the federal level, this culminated in the Laws of the Federation of Nigeria 1990 which was further reviewed in 2004. The latter in turn has been subjected to periodic updates. At the state level, local statutes have largely replaced the received English statutes.

Local laws (statute law and case law) take precedence over foreign laws. In *United Bank for Africa Plc v. Okeke & Anor.*,⁷ the Court of Appeal in examining the propriety of applying a foreign received law in a matter covered by a local law held that the local law should apply in place of the foreign law. The Court emphasized that where there is a comprehensive or complete local law on a particular matter or field such that there is no lacuna to be filled by reference to the provision of any other law, the local law is to be regarded as self-sufficient in the sense of replacing any received law such as a statute of general application (Olagunju, J. C.A, at p. 403).

The above position notwithstanding the spirit of the English law has continued to follow the Nigerian law. The undying influence of the English law is reflected in legislative enactments and many judicial decisions. Many laws in the statute book share close affinities with English laws on the same subject, as some originated from the latter as Acts of general application, while others were modeled on equivalent English statutes. For instance, the Sale of Goods Laws of various states, apart from reproducing almost all provisions of the repealed English Sale of Goods Act 1893, incorporate into contracts for the sale of goods, rules of the common law that are not inconsistent with the local provisions including the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause.

A similar influence permeates judicial decisions as exemplified by *Narumal and Sons Ltd v. Niger/Benue Transport Ltd*,⁸ where the Supreme Court, following the decision of the House of Lords in *Photo Production Ltd v. Securicor Transport Ltd*⁹ adopted, obiter, the rule of construction as the applicable rule in the interpretation of exemption clauses despite the absence of statutory protection against exemption clauses as obtained in the UK. Although it must be conceded that this case did not involve a consumer contract but parties of equivalent status, the fact that the Court did not place any limitations created the impression of unlimited scope of application of the rule.

An author (Sagay 2000, p. 195), in apparent reference to the *Narumal* case commented that the decisions of the Nigerian courts, particularly of the Supreme Court, on the consequences of a fundamental breach or breach of a fundamental term on an exclusion clause were not

⁷ [2004] NWLR (Pt. 872) 393 CA.

⁸ [1989] 2NWLR (Pt.106) 730 SC.

⁹ [1980] A.C. 827.

informed by any conscious policy or philosophical considerations but by an indiscriminate following of English, particularly House of Lords' decisions, regardless of socio-economic differences between the two societies and the advanced level of consumer protection legislation in England, as compared to Nigeria.

The persistent influence of English law is worrisome given the disparities in the socio-economic situations in the two countries coupled with obvious gaps in statutory protection in Nigeria. This is compounded by the inequality between providers of products and services on one hand and consumers on the other in terms of knowledge; power to pursue and sustain litigation; and the ability to engage qualified professionals. Consumer protection in Nigeria will benefit from enactments and judicial decisions that take into account the socio-economic situations in the country.

Another noticeable feature of Nigerian consumer law is the strong regulatory system which tends to focus on product and service providers, thereby relegating consumers to the background. A review of the functions of the major agencies treated in this work reveals a strong inclination towards regulation as against enshrinement of consumer rights. For instance, consumer-related rights are largely embedded in the functions of the agencies as against dedicated provisions clearly providing for such rights. Conceded that consumers are the ultimate beneficiaries of most regulatory activities, specific provisions on consumer rights will make for certainty.

An apparent provision meant to address the above deficiency is the regulation-making power which enables the agencies to issue regulations that give effect to matters covered by the principal Act. In practice, some of the agencies have duly utilized this power to make far-reaching regulations covering diverse consumer issues including the rights of consumer. A good example in the telecommunications sector is the Consumer Code of Practice Regulations 2007, an instrument that provides for the procedures to be followed by licensees in preparing individual consumer codes of practice in accordance with section 106 of the principal Act for approval as well as the required contents and features of such codes. Apart from the inherent limitations of regulations as subsidiary legislation, utility of this mode is largely dependent on the activism or otherwise of a regulatory agency. This buttresses the need for specific provisions on rights of consumers in the principal Act.

Furthermore, some of the existing laws do not make direct provisions on awareness creation and do not provide for interactions between consumers and regulatory agencies. These measures are helpful in raising consumer awareness and ensuring that consumers play the required role as active stakeholders in consumer protection. This is necessary given the low level of consumer-driven consumerism in Nigeria.

Product Safety and Product Liability

Product Safety

Nigeria does not have a dedicated statute dealing with product safety or even a dedicated part of a statute on the matter such as Part H of the Consumer Protection Act 2008 (South Africa) or Parts I and II of the Consumer Protection Act 1987 (UK). However, provisions on this subject are contained in several statutes. For the purpose of this work, attention shall be focused on safety and quality standards relating to sale of goods; safety standards for specific

products; and laws requiring suppliers to give notice in relation to risks or hazards associated with products.

Safety and Quality Standards Relating to Sale of Goods

Sale of Goods Laws of all the states in Nigeria contain provisions which relate to quality and safety of goods sold under contracts of sale. The obligations are couched in the form of implied terms. The quality terms implied by these laws are fitness for purpose and merchantable quality.

Just like section 14 of the Sale of Goods Act 1979 (UK), the opening sentence of section 13 of the Sale of Goods Law 2014, Lagos State, which is replicated in the Sale of Goods Laws of other states, restates the common law rule of *caveat emptor*. It states that subject to the provisions of this Law, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. The exceptions to this rule are implied conditions of fitness for purpose and merchantable quality which are contained in the subsections.

Section 13(1)(a) deals with fitness for purpose and provides that where the buyer, expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description which is in the course of the seller's business to supply that there is an implied condition that the goods shall be reasonably fit for such purpose. The proviso excludes from the application of this provision, goods bought under patent or other trade names.

Subsection (2) is on merchantable quality, and it provides, among other things, that where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. By the proviso, examined goods are excluded as regards defects which such examination ought to have revealed.

It is remarkable that the principles relating to fitness for purpose and merchantable quality have been modified under the English law (section 14, Sale of Goods Act 1979). Under the new Act, subject to the stated conditions to be satisfied by the buyer, the implied condition of fitness for purpose applies whether or not the disclosed purpose is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely or that it is unreasonable to rely on the skill or judgement of the seller.

Unlike the 1893 Act and the local statutes, the 1979 Act does not contain the proviso which excludes goods bought under trade names. This means that the implied condition applies in relation to such goods. It has been noted that "This is a great innovation because in these days of branded goods, such a proviso would have excluded many goods from the ambit of the Act." (Monye 2006, p. 50).

As regards "merchantable quality," the new section 14(2) of the Sale of Goods Act 1979 as modified by the Sale and Supply of Goods Act 1994 has replaced "merchantable quality" with "satisfactory quality." The requirement that the seller must sell in the course of business is, however, retained. But, the new Act is specific in this regard by defining the term "business." 61(1) defines this term to include a profession and the activities of any government department or local or public authority. This extension definitely widens the scope of the provision.

It is obvious from the foregoing analysis that the Sale of Goods Act 1979 (UK) has taken care of some deficiencies inherent in the 1893 Act on which the Nigerian Sale of Goods Laws are largely modeled. There is a need to review the local Laws particularly in relation to goods bought under patent or other trade names. The exclusion of such goods is counter-productive

in view of the fact that the law makes no distinction between the seller and the manufacturer with respect to liability. The exclusion of sellers from the scheme of liability creates a serious gap considering the fact that the bulk of purchases by buyers are from sellers who act as retailers of such goods.

Safety Standards for Specific Products

Standardization helps to regulate the quality of products and, by necessary extension, safety. It has been noted that from the point of view of consumers, conformity of products and services to standards provides assurance about quality, safety, and reliability of such products and services (Angya 2016, p. 239). The Standards Organisation of Nigeria (SON), established by the Standards Organisation Act 2015 which repealed and replaced the Standards Organisation of Nigeria Act 1971 under which the Organisation was originally established, is in charge of standardisation of products in Nigeria. It has prescribed numerous standards covering different fields including food, chemicals, engineering products, motor vehicle parts, and textiles.

Taking the standard for furniture for illustration, the Nigerian Industrial Standard NIS 464: 2004 governs specifications for synthetic plastic chairs. Matters covered by this standard are materials, structure, design, specifications, and marking. Among other things, the materials to be used for synthetic plastic chairs shall be free from physical and chemical substances harmful to the body. Depending on the brand, a plastic chair must be able to hold a static load of 185 kg for 30 min. Marking requirements include manufacturer's name and address, year of manufacture, and caution for handling. Apart from any appropriate action that may be taken by SON, a person injured by a substandard synthetic plastic chair can sue the offender.

SON enforces compliance with prescribed standards through factory inspections, test purchases, investigation of consumer complaints, and product certification. As regards the last item, SON awards the Nigerian Industrial Standard (NIS) to deserving manufacturers of made-in-Nigeria products who apply on a voluntary basis. This is a mark of quality indicating SON's assurance that a product has complied with relevant standards. Award winners are free to affix the NIS logo on the winning products. The NIS scheme, though voluntary, has become very popular among manufacturers as demonstrated by the high number of products with the NIS logo. But on the part of consumers, the NIS logo does not appear to constitute a strong selling symbol. In a survey where consumers were asked to list the factors considered when buying products, out of the 230 respondents, only 28 (12.7%) mentioned the NIS logo (Monye 2011, p. 100).

In addition to the NIS scheme, two other prominent certification schemes operated by SON are the Mandatory Conformity Assessment Programme (MANCAP) and Standards Organisation of Nigeria Conformity Assessment Programme (SONCAP). MANCAP applies to locally manufactured products. With particular reference to export, locally produced products are evaluated by SON before export to ensure the safety and competitiveness of made-in-Nigeria products. SONCAP entails evaluation of regulated products at the country of shipment to check compliance with relevant Nigerian Industrial Standards or other approved standards prior to export to Nigeria. This system checks importation of substandard products into Nigeria and prevents the risk of economic loss to the importer and the nation that may be occasioned by possible destruction of the product by SON. Angya writes that the scheme has reduced the frequent destruction of sub-standard products in Nigeria by blocking the importation of such products (Angya 2016, p. 218).

Almost all products sold in Nigeria bear either the NIS or MANCAP Logo. That the system of certification has improved the quality of locally made products is not in doubt. Recently, SON intercepted over N8bn worth of substandard electrical cables made in China but packaged as made-in-Nigeria products.¹⁰ The fact that foreign-made products could be packaged as made-in-Nigeria products as illustrated by this case shows the high reputation enjoyed by some locally made products. This contrasts with the position in the past when Nigerian consumers preferred foreign-made products.

Laws Requiring Notification in Relation to Risks or Hazards Associated with Products

Unlike sections 58 and 61(1)(c) of the Consumer Protection Act 2008 (South Africa), which contain dedicated provisions on duty of suppliers to give notice as regards risks associated with products and facilities supplied to consumers, the issue of warning about risks is dealt piecemeal by different statutes in Nigeria. Section 9 of the Consumer Protection Council Act imposes a duty on the manufacturer or distributor of a product, on becoming aware of any unforeseen hazard arising from the use of such product, to notify immediately the general public of such risk or danger and cause the product to be withdrawn from the market. This offence attracts a penalty of 50,000 naira or imprisonment for five years or both.

Section 46(1)(b) of the Standards Organisation of Nigeria Act gives the Minister the power to, on the recommendation of SON, require the supplier of any defective product certified by the Organisation to disclose to the public or to a class of persons specified in the Order, the nature of any defect in the product identified in the Order and the procedure for disposal of the product.

Under the Pre-Packaged Food (Labelling) Regulations 2005 issued by the National Agency for Food and Drug Administration and Control (NAFDAC), it is an offence to sell pre-packaged food without appropriate label. Among other requirements, where the ingredients of a food item are known to cause hypersensitivity, such shall be declared on the label.

Cases of notification by suppliers about risks or hazards manifested by products after the products have been put on the market are not common in Nigeria. However, the labelling requirement is duly observed since this is part of the registration requirements. Product registration is treated with seriousness in Nigeria. In particular, NAFDAC registers all regulated products (food, drugs, cosmetics, medical devices, detergents, bottled water, and chemicals—s. 31, NAFDAC Act) and issues the NAFDAC Registration Number which the supplier must affix on the product concerned. This exercise helps the Agency to ensure that appropriate warnings are inserted on product labels.

The quality surveillance of the Agency was challenged in a suit between a businessman, Mr. Adebayo and Nigerian Bottling Company (NBC). The claimant contended that the Fanta and Sprite bought from NBC and exported to the UK were seized and destroyed by the Health Authorities for containing excessive levels of sunset yellow and benzoic acid which were known to be carcinogenic. The findings of the United Kingdom Health Authorities were corroborated by some European countries. The claimant alleged that NAFDAC did not carry out requisite tests to ascertain the safety of the products for human consumption. NBC admitted supplying the drinks to the claimant but insisted that the products were meant for local consumption and not for export which required different standards. It was further submitted that the products complied with approved local and international standards and that

¹⁰ <http://son.gov.ng/son-intercepts-n8bn-cloned-made-in-nigeria-cables/> (last visited on 16 July 2017).

different standards apply in different countries, as climate conditions and other factors are taken into consideration. NBC denied the allegation of negligence and insisted that stringent quality procedures were applied to ensure that the company's products were safe for end-user consumption. NAFDAC did not file any defence and did not appear during the trial.

The Trial Court accepted the evidence of the claimant and held that it made no difference whether the products were meant for export or local consumption. The Court imposed a fine of two million naira against NAFDAC and ordered the Agency to mandate NBC to insert, within 90 days, a written warning on all bottles of Fanta and Sprite manufactured by the company stating that the products shall not be taken with ascorbic acid popularly known as vitamin C. The case is currently on appeal instituted by the respective parties on different grounds.¹¹

Product Safety Monitoring and Recall

The Standards Organisation of Nigeria, National Agency for Food and Drugs Administration and Control and Consumer Protection Council are given the mandate to recall defective products.

Specifically, section 2(b) of the Consumer Protection Council Act mandates CPC to seek ways of removing or eliminating from the market hazardous products and causing offenders to replace such products with safer and more appropriate alternatives. The Council is further empowered to publish from time to time, list of products which have been banned, withdrawn, severally restricted, or not approved by the Federal Government or foreign governments. In addition, as noted above, section 9(1) imposes a duty on manufacturers and distributors, on becoming aware of any unforeseen hazard, to notify the public and cause the affected product to be withdrawn from the market.

Section 46(1)(a) of the Standards Organisation of Nigeria imposes a duty on suppliers of defective products to recall such products following an order by the Minister.

One of the functions of the National Agency for Food and Drug Administration and Control is to pronounce on the quality and safety of food, drugs, cosmetics, medical devices, bottled water, and chemicals after appropriate analysis.

Based on the foregoing provisions, each agency has recalled many products adjudged harmful and detrimental to human health. In particular, the website of NAFDAC contains a long list of products recalled over the years.¹²

Product Liability

Product liability in Nigeria takes statutory and civil forms. Statutory liability relates to offences created by various consumer protection statutes and which are enforceable by regulatory agencies, while civil liability concerns private enforcement by aggrieved consumers.

¹¹ See the following sources: <https://independent.ng/nbc-ltd-v-adebo-holdings-ltd-a-judicial-victory-like-no-other/> (last visited on 11 December 2017); <https://www.thehealthpilot.org/> (last visited on 14 December 2017); <https://nlipw.com/court-orders-nafdac-direct-nigerian-bottling-company-add-warning-statement-dangers-drinking-fanta-sprite-vitamin-c/> (last visited on 11 December 2017).

¹² See <http://www.nafdac.gov.ng/> (last visited on 23 August 2017).

Statutory Liability

There is no single statute that deals with product liability in Nigeria; instead, the statutes listed above create product-related offences. Each of these statutes imposes liability on any person who contravenes any provision therein. For instance, the Food and Drugs Act prohibits, among other things, sale of poisonous or harmful food, drugs, and cosmetics; sale of food unfit for human consumption; sale of adulterated food or drug; and sale of cosmetic with injurious substances. The Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act prohibits sale and distribution of counterfeit, adulterated, banned, fake, substandard, or expired drugs or unwholesome processed foods. The Trade Malpractices (Miscellaneous Offences) Act prohibits various deceptive practices such as labelling, packaging, offering for sale, or advertising any product in a manner that is false or misleading or is likely to create a wrong impression as to quality, character, brand name, value, composition, merit, or safety. The Consumer Protection Council Act prohibits the sale of hazardous products (sections 3 and 9).

Contravention of any provision of these statutes attracts the stipulated fine or term of imprisonment.

Offences falling under the above statutes are enforceable by the bodies created by each enabling Act. Hitherto, statutory offences were criminal law-based in the sense that the intention was to punish the offender not to compensate the victim. The only exception among the pre-2015 statutes is the Consumer Protection Council Act 1992 which makes provision for compensation order in favour of the victim by the court before which the offender is tried (section 13). To the best of the writer's knowledge, no award has been made under this provision despite the fact that the Act has existed for about 26 years. The Administration of Criminal Justice Act 2015 makes a similar provision by empowering the courts before which the criminal aspect of an offence is tried to award compensation to the victim. Section 319(1), among other things, empowers a court to order the defendant or convict to pay a sum of money as compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed on the defendant or convict. This Act applies to criminal trials of offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. It follows that the Act applies to all consumer-related statutes enacted by the National Assembly. The Act came into force on 13 May 2015, and so far, the efficacy of the provisions as regards consumer offences is yet to be tested.

Civil Liability

Civil liability concerns civil enforcement by aggrieved consumers. Such actions can be based on contract or tort.

Contract-Based Actions

Contract-based actions are normally instituted by buyers against sellers or any other party with whom the contract was made. This is because actions in contract are restricted to parties in privity of contract based on the principle that rights and obligations under a contract apply only to parties covered by the contract. Sale of goods contracts involve terms specified by the parties and terms implied by the Sale of Goods Laws.

One basic term implied by law is that goods supplied under a sale of goods transaction must be reasonably fit for purpose. Just like the position under the English law (*Frost v. The Aylesbury Dairy Co. Ltd*¹³; *Wren v. Holt*¹⁴), the courts in Nigeria have held that goods which are injurious to health or property are not fit for purpose. In *Nigerian Bottling Co. Ltd. v. Ngonadi*,¹⁵ involving explosion and serious bodily injuries to the respondent by a kerosene refrigerator bought from the appellant, it was held that the refrigerator was not fit for purpose. The same decision was held in *Henry Stephens Engineering Ltd. v. Complete Home Enterprises Ltd.*,¹⁶ involving a defective crane.

The foregoing cases show that the courts are willing to uphold the rights of buyers who are supplied with defective or injurious products. Buyers can contribute to consumer protection in the area of sale of goods by seeking redress against erring suppliers.

Another issue that has recurred in product liability cases in Nigeria is that of the exemption clause, a clause inserted by a party (usually the supplier of product or service) to limit or exclude liability for breach of the contract terms. This has become a nightmare to consumers as almost all consumer products and services are sold with one form of exemption clause or another. Even in very simple transactions, it is not uncommon to find a clause such as “no refund, no return, no replacement” or, in the case of a fee-paying park, a notice to the effect that “cars are parked at owner’s risk.” A consumer may not be conscious of the reality of such clauses until a problem arises and the supplier of the product or service raises the clause to escape liability.

In a bid to curb abusive use of exemption clauses, the courts have devised several rules prominent among which is the rule of fundamental breach. In *Niger Insurance v. Abed Brothers Ltd.*,¹⁷ the Supreme Court established the rule of law doctrine to the effect that a party in fundamental breach cannot rely on an exemption clause to escape liability. In contrast, the same Court in *Narumal and Sons Ltd. v. Niger Benue Transport Co Ltd.*,¹⁸ following the decision of the House of Lords in *Photo Production Ltd. v. Securicor Transport Ltd.*¹⁹ adopted, though obiter, the rule of construction as the applicable rule.

The approach of the Court in the latter case has attracted intense criticisms from writers in Nigeria who are predominantly of the view that Nigerian courts should retain the rule of law pending legislative intervention in the area of unfair contract terms (Agomo 1981–83, p. 69–77, 1995; Ajai 1993, 37–49; Ali n.d, available online; Monye 1991, p19–27, 2004, p51, 2006; Olawale 1993; Oyewunmi and Sanni n.d, available online; Sagay 1985, p155, 2000, p. 201; Uvieghara 1996, p. 29;). Commenting on the decision of the Supreme Court in the above case with particular reference to the fact that the decision was reached obiter and did not refer to the earlier contrary decision of the same Court in *Niger Insurance v. Abed Brothers*, Sagay states: “There is, therefore, a compelling need for the Supreme Court to give a clarifying judgment which, as a matter of principle, recognises that contracts in Nigeria are concluded and performed in a totally different socio-economic and cultural environment from that of the United Kingdom” (Sagay 2000, p. 201).

¹³ [1903] IKB 610.

¹⁴ [1903] IKB 610.

¹⁵ (1985) 5 SC 313.

¹⁶ (1987) 1 NWLR (Pt. 47) 40 SC.

¹⁷ [1976] 6 UILR (Pt.1) 64.

¹⁸ [1989] 2NWLR (Pt. 106) 730 SC.

¹⁹ [1980] A.C. 827.

The hostility expressed by writers against the rule of construction approach is not surprising given the fact that the Supreme Court in the above case did not place any caveat as to whether the rule of construction should be extended to consumer contracts. As pointed out by a writer (Ajai 1993, p. 37), the rule of construction as affirmed by the House of Lords in the *Photo Production* case was not the only law governing exemption clauses, fundamental breach, and breach of fundamental terms in the UK, as the law relating to these issues was also contained, especially as concerns consumer contracts, in the Unfair Contract Terms Act 1977.

It is remarkable that in the relatively recent cases of *Eagle Super Pack (Nig.) Ltd. v. African Continental Bank Plc*²⁰ and *International Messengers (Nig.) Ltd. v. Pegofor Industries Ltd.*, involving fundamental breaches, the Apex Court refused to allow reliance on exemption clauses, thus, in effect, restating the rule of law doctrine.

These cases show that the rule of law and the rule of construction have been competing for supremacy. The decisions of the Supreme Court in *Narumal* (rule of construction) and *Eagle Super Pack* (rule of law) were held obiter, while that in *Pegofor* was based a statutory provision. A firm adoption of the rule of law is advocated to fill the gap created by the absence of legislative protection of consumers against unfair contract terms.

Tort-Based Actions

Existing product liability cases show that actions in negligence against manufacturers or distributors have become a preferred option adopted by injured consumers. This is not surprising because in many cases, the injured or aggrieved consumer may not have contracted with the offender and therefore action in contract will not be possible due to the absence of privity of contract between the parties. Tort-based (negligence-based) actions do not require privity of contract and can be taken against any person perceived as responsible for the offending act. Thus, if a product or service causes injury, the victim can sue any person to whom the negligence is traceable. This principle, which was established in *Donoghue v. Stevenson*²¹, has been adopted and applied in many local cases. In the realm of product liability, the principle is that an ultimate consumer can sue a manufacturer or any supplier of a defective product or service (see for instance *Okonkwo v. Guinness (Nig.) Ltd*²²; *Nigerian Bottling Co. Ltd. v. Ngonadi*²³; *International Messengers (Nig.) Ltd. v. Nwachukwu*²⁴; and *Okwejiminor v. Gbekeji and Anor*²⁵). Flowing from this, any consumer injured by a negligent act can bring an action in negligence against the perpetrator of the act.

Expectedly, actions against manufacturers are often based on this ground partly due to lack of privity to warrant action in contract and partly due to the fact that in most product liability cases, the defect complained of may only be attributed to the negligence of the manufacturer since many products reach the ultimate consumers in the same condition as packaged by the manufacturer. The main problem in the pursuit of tort-based actions by consumers is the difficulty in proving negligence against manufacturers. Under the Evidence Act, in civil cases, the burden of first proving the existence or non-existence of a fact lies on the party against

²⁰ [2006] 19NWLR (Pt. 1013) 20.

²¹ (1932) AC 562.

²² [1980] 1PLR 583.

²³ [1985] NWLR (Pt.4) 739.

²⁴ (2004) 13 NWLR (Pt.891) 543.

²⁵ (2008) 5 NWLR (Pt. 1079) 198 SC.

whom the judgement of the court would be given if no evidence were produced on either side, with regard to any presumption that may arise on the pleadings – s.133.

This position is also reflected in product liability cases under which the claimant is required to prove any allegation against the defendant. With particular reference to negligence-based product liability, the claimant must prove the three elements of negligence, namely duty of care, breach of duty, and consequential damage.

Decided cases in Nigeria show that proof of negligence constitutes an almost insurmountable obstacle on the part of claimants. Apart from the difficulty in proving the three requirements stated above, defendants often raise the defence of foolproof system of production. This is a defence raised to the effect that the production process employed in the production of the product alleged to be defective is designed and operated in a way that can never fail and, consequently, cannot produce defective or injurious products. In *Okonkwo v. Guinness Nigeria Ltd.*²⁶; *Ebelamu v. Guinness Nigeria Ltd.*²⁷; *Boardman v. Guinness (Nig.) Ltd.*²⁸; and *Onyejekwe v. Nigerian Breweries Ltd.*,²⁹ this defence was raised by the defendants and accepted by the courts. However, in *Okwejiminor*, the Supreme Court rejected the defence and held in favour of the appellant who suffered injury resulting from a Fanta orange manufactured by the second respondent and which was proved to contain a poisonous substance. With this decision handed down by the highest Court of the country, it can be said that the problem posed by this defence has been laid to rest.

The condition that the claimant must establish injury caused by the alleged act of negligence, that is, the third element as stated above, is still a serious problem in negligence-based actions. The implication of this condition is that where a product has been found to be defective but has not caused injury to the claimant, an action based on negligence cannot succeed since negligence is predicated on product safety and not the general state of a product. This means that an action cannot be taken in respect of an unsafe product which has not been consumed by the claimant because the condition of consequential damage will not be satisfied. The law should go further to give remedy to prudent consumers who avert personal damage by engaging in diligent examination of products before consumption.

An issue that is often contested by defendants in product liability cases is the ownership of the product which is the subject matter of the suit. This is a crucial matter because a defendant cannot be held liable for injuries arising from the product of a third party. A claimant must, therefore, be prepared to prove that the offending product is that of the defendant and not a fake brand produced by a third party.

Another matter which affects proof of negligence in product liability in Nigeria is the refusal of the courts to accept evidence of similar defects in products from the same batch as the offending product. Some of the existing decisions show inclination by claimants to present similar defective products from the same batch of the defendant's products. In *Ebelamu v. Guinness Nigeria Ltd.*, the appellant presented an unopened bottle of beer with similar poisonous sediment as that in the bottle complained of. The Court rejected this evidence and held that there was no link between the injury suffered by the appellant and the sediment in the unopened bottle since the appellant did not consume the content of the unopened bottle.

²⁶ (1980) IPLR 581.

²⁷ (Unreported) FCA /1/101/82, delivered on Monday 24 January 1993.

²⁸ (1980) NCLR 109.

²⁹ (Unreported) Suit No. E/129/72, 01 June 1973.

This attitude is unnecessarily restrictive. If the same defects are found in the offending product and similar products from the same batch manufactured by the defendant, this should raise prima facie evidence in favour of the claimant. This approach is necessary because in most cases, the product alleged to have injured the plaintiff would have been interfered with, thereby raising doubt as to the truthfulness of the plaintiff's claim or allegation.

This is not to undermine the duty of the plaintiff to prove that the defendant is responsible for the alleged negligence and the resultant injury. The plaintiff should be diligent in preparing evidence for the suit, and if the need arises, should engage expert witnesses. All documents supporting the transaction should be kept and produced at trial. The last factor needs to be stressed as many consumers neither obtain nor keep contractual documents thereby jeopardising the chances of success of possible suits.

Indeed, there is a need for the courts to balance the interests of the claimant and the defendant to ensure that justice is done in each case and that the legal process is not abused by either party.

Persons that Bear Responsibility for Defective Products

In a sale of goods contract, because of the rule of privity of contract which confines rights and obligations in a contract to parties to the contract, the buyer can only sue the seller of the goods – the retailer, distributor, or manufacturer as the case may be. The wording of the Sale of Goods Laws discussed above is to the effect that liability is strict as the buyer is not required to prove negligence.

In the absence of privity of contract, a buyer or any other person affected by a product can bring action in negligence against any person who is responsible for the defect. Decided cases show that persons liable to the buyer or consumer in negligence are the manufacturers, distributors, middlemen, and retailers – see *Nigerian Bottling Co. Ltd. v. Ngonadi and Okwejiminor v. Gbekeji and Anor*. A plaintiff in this case enjoys the liberty to sue any of these persons.

It follows from the foregoing that persons liable for product defects depend on whether the action is based on contract or on tort (negligence). In contract-based actions, the principle of privity of contract restricts liability to persons who are parties to the contract (Nigeria does not have any statute that confers rights on third parties as the Contracts (Rights of Third Parties) Act 1999 (UK)). In tort-based actions, the claimant enjoys considerable choice of parties and can sue any person against whom the defect can be attributed. Statutory liability is borne by any person who contravenes a provision of the statute concerned.

Manufacturer's Guarantees

Manufacturer's guarantee is another issue that has remained unresolved in Nigeria. So far, there is no statute imposing on manufacturers the duty to offer guarantees to consumers. The Federal Competition and Consumer Protection Bill 2018 seeks to prohibit misleading warranty and guarantee but is yet to be passed into law.³⁰

Manufacturer's guarantee is, therefore, governed by terms of a contract. The experience is that most durable consumer goods are sold with guarantees. Enforcement is, however, a different issue as such guarantees may be accompanied by some terms and conditions. For

³⁰ <http://www.nassnig.org/> (last visited on 07 July 2018).

instance, it is not uncommon to find in a contract covered by guarantee a term that “goods received in ‘good order’ cannot be returned.” A term such as this obviously wanes the significance of a contractual guarantee.

Rights of Parties for Delayed Delivery, Non-delivery, or Damage Before Delivery

Under the Sale of Goods Laws, subject to the terms of the contract, the place of delivery is the seller’s place of business or residence – s. 30, Sale of Goods Law, Lagos State 2014. In the case of delayed delivery, the party whose responsibility it is to deliver will be liable. Thus, if there is no contrary term in the contract imposing the duty to deliver on the seller, then the buyer bears the responsibility to take delivery from the seller’s place of business or residence. But, the seller bears the obligation to deliver if the contract so provides. In *Amadi v. Thomas Aplin*,³¹ the respondent bore the obligation to deliver some bales of stock fish in the months of June and July but delivered the consignment in August. It was held that the appellant was entitled to reject the goods as time was of essence of the contract being a commercial transaction.

It is pertinent to note that this contract involved trading parties and this fact was stressed by the Court. It is, therefore, not clear if the same decision would have been reached if the contract had involved non-commercial parties. It is suggested that the same principle should apply to consumer contracts as time can be of essence irrespective of the status of the contracting parties. If a consumer requires the subject matter as a gift to be presented at a wedding party, time of delivery would definitely be of paramount importance as failure to deliver before the wedding will defeat the essence of the contract.

In the case of non-delivery, the buyer is entitled to damages. The amount of damages to be awarded depends on the nature of the breach and the market value of the goods at the time of breach.

If goods are damaged in the course of delivery, the person who bears the duty of delivery under the contract will be liable. Thus, if the contract imposes this duty on the seller, the seller bears the duty to deliver the goods in good condition. But, unless otherwise agreed, the buyer bears the risk of deterioration associated with the course of delivery (s. 34, Sale of Goods Law). As regards the last point, the nature of the goods will determine the state to be expected by the buyer. In the case of perishable goods, it may not be expected that the goods will be as fresh as when loaded for delivery but must be reasonably fresh at the time of delivery. An objective test is appropriate here.

Telecommunications with Particular Reference to Mobile Phones

Overview of Legal Framework and Some Issues Faced by Consumers

The telecommunications sector is about the most popular sector in Nigeria. According to the Nigerian Communications Commission’s statistics, there were over 162 million active mobile telephone subscribers in Nigeria as at May 2018.³²

³¹ (1972) 4 S.C. 205.

³² <https://www.ncc.gov.ng/stakeholder/statistics-reports/subscriber-data> (last visited on 10 July 2018).

The Nigerian Communications Act 2003 is the principal law protecting the interests and rights of telecommunications consumers. Consumer-related matters covered by the Act include interconnectivity, access, quality of service, competition, universal service, approval of tariffs, emergency services, and technical standards such as type approval and resolution of consumer disputes.

Pursuant to the powers conferred by the Act, the sector regulator, the Nigerian Communications Commission (NCC) has made many Regulations and Guidelines which amplify the provisions of the Act. The list includes the Consumer Code of Practice Regulations 2007; Competition Practices Regulations 2007; Universal Access and Universal Service Regulations 2007; Telecommunications Networks Interconnection Regulations 2007; Type Approval Regulations 2008; Registration of Telecommunications Subscribers Regulations 2011; and Quality of Service Regulations 2013.

Issues which are of concern to telecommunications consumers in Nigeria include lack of interconnectivity, poor quality of service, inaccurate billing, unlawful disconnection, anti-competition practices, protection of personal information, and data privacy. Some of these issues have been taken care of by Regulations issued by NCC. For instance, the Consumer Code of Practice Regulations 2007 impose on service providers the duty to include in the service contract with consumers accurate information including pricing information, applicable rates and charges, disconnection terms, confidentiality of consumers' information, and complaints handling processes. Consumers are bound to comply with the terms and conditions contained in the service contract. In practice, except for the post-paid consumers, service providers do not provide formal contract documents containing applicable terms as required by the law. Instead, consumers are given fliers advertising various services offered by the service provider with a clause that for terms and conditions, subscribers should visit the website of the provider.

Number Portability

Consumers are free to switch service to any provider of choice while keeping the same number. Service switch is dealt with by the Mobile Number Portability Regulations 2014 which set out detailed requirements for porting. Among other things, it must be shown that the subscriber making the request is not indebted to the donor service provider; that the number has not been barred for any reason; is not reported stolen or lost; and an undertaking by the subscriber that ancillary services (SMS, voice mail, and the like) saved may be lost. Subject to laid down conditions, operators are bound to process porting requests from eligible subscribers at no cost and even where the subscriber has zero credit balance. Statistics contained on NCC's website show that thousands of subscribers port to other networks on a monthly basis.³³

Lapsing and Depletion of Data and Airtime Bought by Consumers

Lapsing of airtime bought by consumers is still a relative problem in Nigeria. Unlike airtime for voice calls which enjoy infinite validity period, validity for Internet data is for a fixed duration depending on the data plan. Before the direction issued to service providers by NCC which took effect on 26 June 2018, there was no rollover of data after the expiry date. The only concession which was given by all service providers was the liberty to renew before the expiry

³³ Ibid.

date and have the credit rolled over to the next period. Failure to renew before the expiry date led to loss of all the accumulated data no matter the level. Under the new dispensation, consumers are given grace periods ranging from 1 to 7 days depending on the duration of the data plan. The data plan and applicable renewal (rollover) periods are as follows: 1 day (1 day), above 1 day but less than 30 days (3 days), and 30 days and above (7 days).

As regards depletion of airtime, NCC has mandated service providers to give billing information to consumers at the end of each voice call. This is duly complied with in practice as subscribers are given usage details at the end of each call including credit balance. Similarly, data usage can be checked using the platform provided by each service provider. The accuracy of billing in each case, though regulated by law, requires some technical knowledge to determine, and it is doubtful if many consumers take the trouble to verify this.

Sale of Phones and Telecoms Services

Sale of phones in Nigeria is carried out by telecommunications service providers and private commercial enterprises. NCC regulates the quality of phones to be sold in Nigeria via the Type Approval Regulations 2008. Consumers are free to purchase phones from any source and not necessarily from telecommunications service providers.

Contract for telecoms services can be pre-paid or post-paid. The former, which is the more popular system in Nigeria, takes a very simple process. The subscriber registers with a chosen service provider, and the line is activated by the provider after obtaining the subscriber's details.

The post-paid is more complex. Almost the same requirements are stipulated by all service providers. Like the pre-paid, subscriber registration is mandatory under the post-paid system. Essentially, the subscriber is required to write a request letter to the service provider accompanied with a recent photograph, a copy of utility bill showing applicant's residence, an identity card, and deposit based on the chosen plan. On submission of these documents, the applicant will complete an agreement form detailing the terms of the contract. Generally, call charges on the post-paid plans are lower than the pre-paid plan in addition to other sundry benefits.

NCC monitors the activities of service providers and imposes any appropriate sanction in the event of observed deficiency. For instance in 2014, the Commission imposed a total fine of N647.5 m on MTN, Airtel and Globacom for poor quality of service and failure to meet the target Key Performance Indicators (KPIs) specified by the Commission.³⁴

Making of Contracts Via Mobile Phones

A variety of contracts take place by phone and other electronic means in Nigeria – banking and other financial services as well as purchase of goods and services of diverse descriptions. Hitherto, it was controversial whether contracts transacted by electronic means could satisfy the requirements of writing and signature. This controversy has been laid to rest by the Evidence Act 2011 which allows the admission of computer-based evidence (sections 84 and 93).

³⁴ <http://www.cknigeria.com/2014/03/airtelglomtn-pays-n6475m-fine-over-poor.html> (last visited on 13 December 2017).

Unsolicited Messages and Value Added Services

Operators in Nigeria engage in a wide range of marketing and advertising services, most of which are unsolicited. Among the steps taken by NCC to address consumers' concern in this regard is the issuance of the Quality of Service Regulations 2013 which impose an obligation on service providers to provide option for subscribers to opt out of such messages. Providers also bear the obligation to block or filter unsolicited messages from business partners and other sources.

In June 2016, the Commission took a further step by directing the service providers to institute the "Do-Not-Disturb" short code (2442) which gives subscribers the liberty to choose what unsolicited message(s), if any, desired. NCC is currently carrying out a nationwide consumer awareness campaign to educate consumers on the options to take to restrict unsolicited messages or opt out completely from such messages by sending appropriate message to the service provider through the 2442 short code. Research is needed to know to what extent consumers are responding to this system and the overall success of the scheme.

NCC runs some consumer enlightenment programmes such as Consumer Parliament, Consumer Outreach Programme, and a yearly Interactive Forum under the Industry Consumer Advisory Forum (ICAF). In addition, a duty is imposed on service providers to acknowledge consumer complaints and to act within the timeframe stipulated in the Quality of Service Regulations 2013. These measures notwithstanding, the study on the State of Consumer Protection in Nigeria (Monye et al. 2014), show a low level of awareness by telecoms consumers. The study also disclosed that the provisions as regards resolution of consumer complaints under the Quality of Service Regulations are not duly complied with. Consumer complaints are generally acknowledged by service providers with a promise to get back to the complainant, but such promises are rarely kept.

Interaction Between Consumer Law in Nigeria and Foreign Supranational Laws and Agencies

Nigeria belongs to many international and regional organisations whose activities influence national consumer law and policy. These include the United Nations (UN); Commonwealth Telecommunications Organisation (CTO) *n. d*; International Telecommunication Union (ITU); World Bank; International Monetary Fund (IMF); and New Partnership for Africa's Development (NEPAD).³⁵ Like other member countries, Nigeria gains technical support, consultancy, and other services from these organisations. Specifically, the United Nations Guidelines for Consumer Protection frequently feature in research and consumer protection documents in Nigeria (see for instance the NCC Consumer Bill of Rights which adopted most of the issues contained in the UN Guideline of 1985.³⁶ This instrument was made before the new UN Guidelines 2015.)

In addition, as a member of the United Nations, Nigeria benefits from the partnership of this Organisation with the European Union (EU). A case in point is the partnership between the EU and the United Nations Office on Drugs and Crime (UNODC) under which a large-scale project in Nigeria is currently being implemented, through a \$42.9 million contribution from

³⁵ <https://www.cbn.gov.ng/monetaryPolicy/IntOps.asp> (last visited on 24 January 2017).

³⁶ <http://consumer.ncc.gov.ng/Archive/publication/fact/bill.pdf> (last visited on 21 August 17).

the EU, addressing both drug demand and drug trafficking as well as related organised crimes (EU/UN Forum, Vienna 2015, p. 12).

Examples of supranational organisations which Nigeria cooperates with are the Federal Trade Commission, Consumers International, International Organization for Standardisation (ISO), *Codex Alimentarius* Commission, and the World Health Organisation (WHO).

Specifically, the National Tobacco Control Act 2015 was influenced by the WHO Framework Convention for Tobacco Control 2003. Nigeria participated in the workshops leading to the adoption of the Convention in Geneva in 2003. The country signed and ratified the Convention on 28 June 2004 and 20 October 2005, respectively, and ultimately passed the 2015 Act to give effect to the Convention. One of the objectives of the Act is to fulfil the obligation assumed by Nigeria to protect citizens against tobacco-related harms as a party to the WHO Convention and other related treaties.

Nigeria, represented by the Consumer Protection Council (CPC), is an active member of the African Consumer Protection Dialogue and has been participating in the annual meetings of the Group for the past 10 years. CPC has been a member of the Consumers International (CI) since 2005 and participates in the activities of the organization including the World Consumer Rights Day observed on 15 March every year. As stated by a one-time Director-General of CPC, the Council works with international partners such as the Federal Trade Commission USA (FTC), Department For International Development (DFID) UK, and the German International Aid Agency (GIZ) (Atoki 2013).

In the area of standards, a considerable number of Nigerian national standards originated from standards prescribed by ISO of which Nigeria is a member. For instance, Nigeria (through the national standards body, the Standards Organisation of Nigeria) participated actively in the ISO Guidance Standard on Social Responsibility (which has consumer issues as a core subject) and ultimately adopted the standard as the country's national standard – NIS ISO 26000: 2010. The participation and adoption of ISO standards by Nigeria helps to achieve uniformity between local and international standards in key areas of products and services. In addition to ISO, SON partners with *Codex Alimentarius* Commission, British Standards Institute, and Food and Agriculture Organisation among others.³⁷

A similar role is played by the National Agency for Food and Drug Administration and Control (NAFDAC) under the platform of the *Codex Alimentarius* Commission (CAC) under which the agency participates and adopts relevant food standards. CAC is a central part of FAO/WHO Food Standards Programme established to protect consumer health and promote fair practices in food trade.³⁸

As an active member of the International Telecommunication Union (ITU), the Nigerian Communications Commission contributes and derives mutual benefits from the activities of the Union. According to Danbatta (n.d.), ITU brings to members including Nigeria, modern communication technologies in an efficient, safe, easy, and affordable manner and provides the necessary platform for exchange of ideas and research. Some months ago, the Secretary General of ITU, Houlin Zhao, visited the Commission and expressed the Union's commitment at ensuring that ICT is employed to drive the establishment of SMEs for employment in the country and assured the Commission that the Union would work hand in hand with Telecoms

³⁷ <http://son.gov.ng/> (last visited on 09 July 2018).

³⁸ <http://www.nafdac.gov.ng/director-general> (last visited on 9 July 2018).

regulatory bodies in Africa to ensure that Africa reaps all the dividends of Telecoms and ICT.³⁹ In recent times, NCC has collaborated with the ITU in Digital Economy.⁴⁰

Membership and participation in the activities of these agencies greatly influence Nigerian consumer protection law and activities in different sectors.

Conclusion

Nigeria does not have a single statute on consumer protection. The sector-specific approach is essentially adopted with each statute establishing a regulatory agency and making provisions relating to the sector. While agencies are empowered to carry out statutory enforcement of consumer rights, aggrieved consumers are also at liberty to institute private suits against offenders.

As stated above, the telecommunications sector has witnessed considerable activism. Nigeria has a dedicated regulator, the Nigerian Communications Commission. Apart from the Nigerian Communications Act 2003, which is comprehensive in scope, there are many regulations issued by the Commission to regulate different areas of telecommunications services. However, consumer awareness of the laws and channels of redress is still low particularly as regards consumers in the rural areas.

Tort- and contract-based actions are available to aggrieved consumers, but each is saddled with considerable problems. As regards the former, the burden of proof borne by the claimant is, in many cases, insurmountable. Similarly, the latter is constrained by the use of exemption clauses by suppliers of products and services. Indeed, unrestricted use of exemption clauses is noticeable even in consumer contracts. This problem is compounded by the fact that Nigeria does not have any statute governing unfair terms in consumer contracts like the Unfair Contract Terms Act 1977 (UK) or the right to fair, just, and reasonable terms and conditions as contained in Part G (section 48–52) of Consumer Protection Act 2008 (South Africa). This naturally places a compelling task on the courts to continue to evolve rules to restrict the ambit of exemption clauses.

Unlike what obtained in the past, consumer regulatory agencies have become more active with each mounting different consumer enlightenment programmes such as *Telecoms Today*, *Consumer Parliament*, *Consumer Outreach Programme* (NCC); *Standard and You* (SON); and *Quality Campaign* (CPC). In addition, different social media platforms are employed to create awareness and encourage consumers to send feedback to the agencies. The extent to which consumers have utilized these avenues to seek redress is a matter that needs dedicated research. But, consumers have shown improved participation in consumer enlightenment programmes including audience participatory programmes.

On the whole and as shown in this work, Nigeria has put in place an impressive number of laws and agencies to take care of various aspects of consumer protection. There are, however, some gaps especially in the areas of unfair contract terms, manufacturer's guarantee, and consumer awareness. Consumer redress which is the hallmark of consumer protection is yet to receive adequate attention as many consumers display lack of knowledge about the existing

³⁹ See <https://www.ncc.gov.ng/stakeholder/media-public/news-headlines/329-itu-secretary-general-visits-ncc> (last visited on 09 July 2018).

⁴⁰ See <https://www.ncc.gov.ng/documents/719-speech-at-stakeholder-forum-for-itu-telecom-world/file> (last visited on 10 July 2018).

laws and channels of redress. Consumers are yet to be fully sensitised and empowered to drive the marketplace and influence the level of consumer protection in Nigeria.

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