

Review

An appraisal of the regulatory framework for the protection of consumers in the communications sector in Nigeria

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The communications sector in Nigeria has witnessed an enormous growth since 1992 when it was liberalized and deregulated. However, much more significant developments have been witnessed since 2001 when the Global System for Mobile Networks (GSM) were licensed to operate as private players in the sector. This examined the existing legal and institutional framework for the operations of these GSM providers in the country. The main aim was to determine how far the regulatory framework in the sector has improved the quality of service provided to subscribers by these GSM operators. This study revealed that in spite of the elaborate legal and institutional framework for the regulation of GSM operators in the country, their services are far from been satisfactory, and consumers in the sector do not feel adequately protected by these measures. Accordingly, the study recommended that the enactment of a generic competition law in the country should address the imperfections in the sector.

Key words: Nigeria, global system for mobile networks (GSM), sector.

INTRODUCTION

The relevance of communications to the economy of any country cannot be over emphasized. This is what goaded the Federal Government of Nigeria to embark on a holistic deregulation and liberalization of the communications sector in the country in 1992.ⁱ Under this scheme which was supervised by the then Bureau of Public Enterprises (BPE), the then existing public corporations, the Post and Telegraphs(P&T) and the Nigerian External Telecommunications Company (NET) were merged into one that is, the Nigerian Telecommunications Company (NITEL). However, in 1998, a gradual process for the full privatization of the sector commenced with the

establishment of the Nigerian Communications Commission preparatory to the licensing of private operators in what has now become known as the Global System for Mobile Networks (GSM).ⁱⁱThe final stage in this process was concluded in 2000 with the advent of a democratic Government under Chief Olusegun Obsanjo as president of the country.With the successful auctioning and licensing of the first four GSM operators in the country in 2001, the stage was set for a new vista in the sector in the country. A year later an indigenous operator was equally licensed to operate in the sector.ⁱⁱⁱ

In the last twelve years since these GSM operators

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Were licensed and commenced business in the country, it has been a tale of mixed grill for subscribers in the sector. Whereas, there is evidence of improvement in the sector as communication has improved tremendously, there is equally the side comments of the exploitative tendencies and antics of these companies (Abayomi, 2011).

This perception of exploitation by these GSM operators is in spite of the elaborate legal and institutional measure put in place by the Government to ensure that these operators provide quality services to consumers and on fair terms. Therefore, it is against the background of this that this article aims to examine this legal and institutional framework with a view to determining the extent it affords some level of protection to subscribers (consumers) in this sector.

Conceptual clarifications

Telecommunications as an integral aspect of communications have been defined in the following terms:

The art and science of communicating over a distance by telephone, telegraph and radio. The transmission, reception and the switching of signals such as electrical or optical, by wire, or electromagnetic....^{iv}

This definition presupposes that the consumer in the context of Telecommunications services should have the capacity to impact and receive information of any kind, so long as such information is permissible by law. This sets out the basis for state interest and intervention in the regulation of communications. There are valid reasons why the state should be involved in the regulation of this sector. Chiefly amongst these reasons, that given the utilitarian value of communications to the society, it is treated as a public utility light water and power that should be made available to all citizens. Accordingly, government's intervention in this regard is essentially to ensure that the citizens have access to affordable and quality telecommunications services (Thornton et al., 2006).

Another reason proffered for state intervention in the sector is that given the importance of telecommunications, most governments were not comfortable leaving this all important sector in the hands of private. Accordingly, communications was seen as veritable "natural monopoly".^v It was in furtherance of the aforesaid that most governments protected their monopoly in the sector by not allowing other competitors into the sector through its powers of licensing and regulation under the law.^{vi}

However, as shall soon be revealed this economic model has since been jettisoned by most countries for a liberalized and commercialized communications sector (Thornton et al., 2006). Therefore, presently State

regulation in this sector is now geared towards the control of existing *monopolies* rather than the protection of such *monopolies*.

Another reason why government was interested in regulating this sector was to protect its huge investments in the sector. Governments resources committed to this sector is best appreciated in the area of broadcasting especially the acquisition and utilization of radio frequency spectrum which improves the level of communication. It was therefore imperative that government regulate and control the use of such radio frequency spectrum for the overall benefit of the citizenry.

Clearly, in all these, the consumer in the communications sector was not the direct beneficiary of the regulatory measures as government's interventionist stance was more influenced by economic and political reasons. This study advances the position that the regulatory schemes in this study can indeed be deployed to protect consumer interests, thereby going beyond its original political and economic undertones. This is against the background of our proposition that private law have not adequately addressed the multifarious challenges confronting consumers particularly in the communications sector.

It is therefore necessary at this stage, to examine the impact of the existing legal framework on consumer protection in the communications industry in Nigeria. This is against the backdrop of the fact that it is about the fastest growing industry in Nigeria, with one of the leading private communication company now boasting of about thirty million subscribers^{vii}

Presently, the communication industry in the country is now synonymous with the Global System for Mobile (GSM) industry in the country, which is privatized. However, before now, Government had maintained a monopoly in the business of communication through telephones and the related wireless communication services.^{viii} This was made possible by the regulatory provisions of the then Telegraphy Act of 1961. However, this Act was repealed by the Wireless Telegraphy Act of 1966, which made provisions for licences to private operators in the telecommunications industry, though no such licence was granted. As at this time, this sector comprised of the Department of Post and Telecommunications (P&T) and the Nigerian External Telecommunications (NET), The former was in charge of the internal communication network, whilst, the latter was responsible for the external communication network.^{ix} In 1985, these departments were merged into one and christened the Nigerian Telecommunications Limited (NITEL). This body became the only National carrier with monopoly in the sector. The poor level of service rendered by this national carrier was so embarrassing, that as at 1987, Nigeria was rated with the lowest *teledensity* in the world after countries like Afghanistan and Mongolia (Ahmed, 2012).

Accordingly, attempts to improve the quality of

telecommunications services in the country led to the enactment of the Nigerian Communications Commission Decree Number 75 of 1992. With this Decree, there was a paradigm shift in Government's policy on telecommunication in the country. The result being that private investment and operation in the industry became legitimized and the new concept of Global System for Mobile (GSM) was introduced into the country. With this initial blueprint for the GSM industry put in place, there was a further statutory intervention in the guise of the Wireless Telegraphy (Amendment) Decree of 1998^x. With this Decree, telecommunication and broadcasting was removed from the Federal Ministry of Communications and these powers were transferred to the newly established Nigerian Communications Commission as well as the Nigerian Broadcasting Commission.^{xi} This Decree was then implemented by the then Nigerian Investment Promotion Council established pursuant to the then Nigeria Investment Promotion Commission Decree of 1995.^{xii}

Conceptualizing the basis for the protection of consumers

The leading author on consumer protection is the American politician and activist Ralph Nader whose famous work *Unsafe at any Speed*,^{xiii} made tremendous contribution to the field of product liability as an aspect of consumer protection. His study centered on the hazardous effects of the use of defective automobiles. His research opened the eyes of most users of automobile in the United States to the dangers they were exposed to in the use of automobile with inherent defects or factory defects. The theory of manufacturer's liability for such defects which was developed and the awareness subsequently created in the mind of the average consumer helped in putting a lot of pressure on manufacturer of automobile to be more careful in their manufacturing and marketing processes. Modern philosophy of strict liability in the realm of consumer protection is traceable to his contributions in the area of tracing such inherent defects in such automobiles to the manufacturer and putting the blame squarely at his doorstep.

Gordon (1985) devoted his text to the study of the development of consumer law in Europe, and the policy thrust of the law at its developmental stages (Gordon, 1985). He concentrated his text on the role of the courts in the articulation and protection of the basic rights of the consumer. These basic rights he identified to include the right to information and the right to choose amongst others.

The learned authors, Brain and Deborah (2000) brought a new horizon in the development of consumer protection law (Brain and Deborah, 2000). Their work focused on the development and enforcement of consumer protection in Europe. Contentious issues like the definition of a

consumer and the nature and scope of consumer contracts were however not addressed by the authors.

They however, dwelt extensively on the philosophical basis for the protection of the consumer. They accepted as a paradigm that the consumer is viewed as a weaker party vis-à-vis the manufacturer and/or supplier of goods and services.

In their view, the arguments against state intervention on behalf of the consumer could be rationalized on the basis of this inequality of bargaining power between the consumer and the manufacture/supplier. They articulated the views of the antagonist of state intervention in otherwise private enterprises in the guise of consumer protection and ultimately supplied the answer to these antagonists by rationalizing the basis for such state intervention. The learned authors quoted copiously the views of the United States' Special Committee on retail installment sales, consumer credit, small loan and usury wherein they asked the following pertinent questions in relation to the basis for consumer protection in the following terms:

It is fair to ask precisely what is it that the consumer is not to be protected from, must he be protected from his own lack of knowledge or discipline which leads him to take advantage of easy credit to buy things he does not need or cannot afford? Is he to be protected from the "fringe" operator who may take advantage of the ignorance and gullibility of the consumer to cause him to over buy or to pay too much?^{xiv}

In rationalizing the basis for consumer protection, the learned authors adopted the views of Senator Murphy, then Attorney-General of Australia who observed as follows:

In consumer transactions unfair practices are widespread. The existing law is still founded on the principle known as *caveat emptor* meaning, *let the buyer beware*. The principle may have been appropriate for transaction conducted in village markets. It has ceased to be appropriate as a general rule. Now, the marketing of goods and services is conducted on an organized basis and by trained business executive. The untrained consumer is no match for the business man who attempts to persuade the consumer to buy goods or services on terms and conditions suitable to the lender. The consumer needs protection by the law and this bill will provide such protection.^{xv}

Kanyip's (1998) contribution to the development of consumer protection law in the country is monumental and the uniqueness of his contribution on the vexed issue of the rationale for consumer protection is that apart from justifying the protection of the consumer he went a step further by prescribing the mode and procedure for protecting the consumer (Kanyip, 1998). His recognition of the fact that the utilitarian value of any legal framework

or consumer protection would be influenced by the administrative and adjudicatory machinery put in place is laid bare by the efforts of the respective institutions established in the country for the prescription and enforcement of standards of goods and the quality of service rendered to the consumer.^{xvi}

The study has examined the activities of some of these institutions and discovered that whilst the enabling laws make adequate provisions for their powers and functions, their effectiveness in their service delivery is far from being satisfactory. This is because in spite of the activities of these agencies, the incidences of the supply of fake, sub-standard, defective as well as prohibited goods to the consumer remains endemic in the country. The influx of sub-standard goods from the Asian countries into the country is no longer news.

In a survey carried out by Nkamnebe et al. (2009) it was revealed that of the total number of persons interviewed about their ability to differentiate genuine products from the fake and sub-standard ones only 36 to 39% indicated they could spot the difference.^{xvii} Similarly, on the question of how many of the respondents have ever taken a report of any incidence of fake, adulterated or sub-standard products to any of the regulatory agencies, only a paltry 24% admitted doing so. On the issue of the respondents' perception of the adequacy of the laws protecting the consumer in the country about 54 or 59% agreed that the laws on ground were adequate. When these respondents were probed further, it became evident that their response was largely influenced by the activities of only one of these agencies –NAFDAC.

Incidentally, when the remaining 36% who were not satisfied with the level of protection offered by the existing legal framework were probed further, they revealed that their assessment was based on the weak institutions charged with the responsibility of enforcing this consumer legislation.^{xviii} It is against the background of this that the study proposes to examine the role of the Nigerian Communications Commission in the articulation and protection of the rights of consumers in the sector.

The regulatory functions of the Nigerian communications commission

This commission is entrusted with the general powers of implementing Government's policies in the communications sector as well as enforcing existing regulations aimed at ensuring standard and quality of service to consumers of communication services in the country. In so doing, the Commission is expected to be guided by the following fundamental objectives behind the enabling law;

1. To promote the implementation of the National Communications and telecommunications policy as may from time to time modified or amended;

2. Establish a regulatory framework for the Nigerian Telecommunications industry and for this purpose to create an effective, impartial and independent regulatory authority;

3. Promote the provision of modern, universal, efficient, reliable, affordable and easily accessible communication services and the widest range thereof in Nigeria;

1. To encourage local and foreign investments in Nigerian Communications industry and the introduction of innovative services and practices in the industry in accordance with international best practices and trends;

2. Ensure fair competition in all sectors of the Nigerian Communications industry and also encourage participation of Nigerians in the ownership, control and management of communication companies and organizations;

3. Encourage the development of a communications manufacturing and supply sector within the Nigerian economy and also encourage effective research and development efforts by all communications industry practitioners;

4. Protect the rights and interests of service providers and consumers within Nigeria;

5. Ensure that the needs of the disabled and elderly persons are taken into consideration in the provision of telecommunication services^{xix}

In order to implement these objectives, the Commission was saddled with the following responsibilities:

1. The facilitation of investments and entry into the Nigerian market for the provision and supply of communications services, equipment and facilities;

2. The protection and promotion of the interest of consumers against unfair practices including but not limited to matters relating to tariffs and charges for and the availability and equality of communications services, equipment and facilities;

3. Ensuring that licensees implement and operate at all times the most efficient and accurate billing system;

4. Promotion of fair competition in the communications industry and protection of communications services and facilities providers from misuse of market power or anti-competitive and unfair practices by other service or facilities providers or equipment suppliers;

5. Granting and renewing communications licenses whether or not the licensees themselves provide for renewal in accordance with the provisions of the Act and enforcing compliance with license terms and conditions by licensees;

6. Proposing and effecting amendments to license conditions in accordance with the objectives of the Act^{xx}

No doubt, within the purview of this study, it is the responsibilities thrust on the Commission with respect to the quality of services and the price paid by the subscribers that calls for a critical analysis. What specific

measures have been put in place by the commission to fulfill its obligations in that regards? How effective have these measure been in the actualization of these responsibilities? What is the level of consumer's satisfaction with respect to the commission's efforts at protecting their interests?

The study shall start by examining the regulatory measures put in place by the commission in furtherance of these objectives. First and foremost, the commission as part of its efforts at regulating standard and quality of communication services offered to consumers, formulated and enacted two principal regulations, the Consumer Code of Practice of 2007 and the Quality of Service Regulations of 2009.^{xxi} Section 104 of the Nigerian Communications Act provides that all service providers must meet such minimum standard of quality of service that the commission may from time to time specify and publish. It is further provided that all service providers are to deal reasonably with consumers and adequately address consumer complaints.^{xxii}

Specific provisions on the quality of service by GSM service providers in the country

The subscribers to the various GSM services are in the context of this study^{xxiii}. Accordingly, he (consumer) deserves to get the best quality service from the GSM operators and on fair and reasonable prices. What is fair and reasonable would depend on the facts and circumstances of each case. However, in order to guide the GSM operators in rendering to their subscribers quality services, the Nigerian Communications Commission was established as a regulatory Agency in the sector.^{xxiv}

The Consumer Codes of Practice are guidelines formulated by the Commission and directed at the GSM service providers as the benchmark for rendering qualitative service and at affordable rates to the subscribers (consumers). These Codes are arrived at on the basis of a consensus between the GSM service providers, the subscribers and the commission. Accordingly, the commission is expected to convene a consumers' forum between these stakeholders for the purposes of formulating the kind of consumer codes that is holistic and accepted by all parties. In so doing, the commission will be guided by the standard of best practices in the industry.^{xxv} The consumer codes would however become effective and enforceable upon a prior approval or a subsequent ratification by the commission.^{xxvi}

The Guidelines for the consumer codes is therefore supposed to be a template for subsequent negotiation between the stakeholders as to what should be contained in the final document. However, the Commission in fashioning this blueprint has made it imperative that an ideal consumer code of practice by the service providers must be anchored on a procedure that:

1. Reasonably meets the needs of the consumer;
2. Provides for the handling of consumer complaints and disputes through elaborate alternative dispute resolution mechanism as well as a judicial process;
3. Ensures that this resolution process culminates in appropriate compensation for the subscriber as well laying down the procedure for the enforcement of such compensation or awards;
4. The code should be geared towards the overall protection of the subscriber^{xxvii}.

In addition to these general guidelines, the Consumer Codes is expected to address these specific issues:

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

These elaborate provisions under the enabling Act provided the platform for the Commission to work in synergy with the stakeholders before coming out with the Consumers Codes of Practice as well as the Quality Service Regulations under reference. Whilst the Quality of Service Regulations deals with specific technical issues, the Consumer Codes deal with specific service delivery issues. Specifically, Part 1 of the Quality of Service Regulations encapsulates behind the expected quality of service to include the following:

1. Improving service quality by identifying service deficiencies and by encouraging or requiring appropriate changes;
2. Maintaining service quality, while recognizing environmental and operating conditions;
3. Making information available to help inform the subscriber of the choice of services offered by the licensees;
4. Improving the operations and performance of interconnected networks and;
5. Assisting the development of related tele-communication markets.^{xxix}

As can be gleaned from these objectives, the Quality of Service Regulation if fully enforced will improve the quality of service of telecommunications operators in the country. Although, these regulations are not directly at articulating and protecting the rights of the consumer, they can be stretched fully towards consumer goals.

The impact of these codes on consumer service can be examined from two perspectives, the technical aspect dealing with the quality and standard of tele-communication equipment used by the operators and the consumer welfare aspect of the relationship between the

operators and the subscribers. With respect to the technical, there are sundry provisions making it mandatory for the operators to ensure that they acquire and use the best materials and equipment for service delivery to their subscribers.

Accordingly, the Commission is enjoined to keep record of the activities of these operators in that regards.^{xxx} In particular, whilst part (ii) of the Regulations deal with the reporting and investigation of the technical standards of the operators, part (iii) of the Regulations deal with the publications of developments in the industry with respect to recent research and ground breaking innovations. This is apt as it would ensure that operators are abreast with the current trends in the industry and would take out time to invest in research and development in the industry. On the other hand, parts (iv) and (v) deals with issues relating to the investigation of the quality of service of the operators as well as the prescription and enforcement of sanctions for defaulting operators.^{xxxi}

However, as observed earlier, the Consumer Codes have more direct bearing on the rights of the subscribers of telecommunication services in the country. Its prescriptive provisions are anchored on a peer review driven regulatory measure amongst the operators. This is well encapsulated in the fundamental objectives behind its provisions, which set out to regulate the quality of service rendered by the operators in the country.^{xxxii}

The general provisions under the Code that impact on the rights of the subscriber include section 8 thereof, which imposes on the operators the duty to provide information on the description of services offered to the subscriber. This is commendable as it is in synch with our advocacy for the enforcement of the right of the consumer to adequate information about the nature of service he is being rendered and the terms and conditions thereof. In particular, section 9(a) –(e) of the Codes make direct provisions on the duty of the operator to inform the subscriber about such intrinsic details as the rate of charges, content of charges, frequency of charges . These details must be made available to the consumer before the contract of service is consummated. Once more, this is a commendable as it will protect the subscriber from the usual *entrapment* that most consumers find themselves in, when they are lured into contracts without adequate information about the terms and conditions of such contracts.^{xxxiii}

In addition to this duty of providing general information, the operators are enjoined to inform the subscribers about their product warranties and the maintenance procedure for such products.^{xxxiv} This information extends to the range of services rendered by the operator to persons with physical challenges. The operator must make sure that its products and services are amenable to the use of these categories of persons.^{xxxv} This is a positive development as it accords with the recent campaigns by some pressure groups for the adaptation of the laws and institutions in the country to accommodate

the interest of this category of persons.^{xxxvi}

However, as shall soon be revealed the level of compliance with this requirement by the operators is a different ball game altogether.

The Code also addresses the crucial issue of advertisements by operators. In this regard, emphasis is not only placed on advertisement of product and services of other companies aired through the medium of these operators but also on the marketing strategies of the operators with respect to their services. The Code adopts most of the regulatory measure put in place by the Advertising Practitioners Council of Nigeria (APCON), though there a wide range of specific provisions in the Code providing the guidelines for advertisements by telecommunications operators in Nigeria.^{xxxvii}

There are provisions in the Code making it mandatory for operators to justify the basis of their billings. This is to ensure that subscribers are indirectly shortchanged by the operators with respect to pricing. Accordingly, the operators are required to ensure that their billings are accurate and timely; in addition, such billings should be verifiable by the subscriber. The operator is equally enjoined to ensure that such billing information contain the subscriber's name, address and other requisite particulars. This is to enable the regulatory agency maintain a feedback mechanism on such bills.^{xxxviii}

The Code also provide for the protection of the secrets of subscribers. The operators are expected to protect information relating to their subscribers, such information include the identity of the subscriber, his or her conversations or messages contained in the operators data base. The operator is not expected to divulge this information amongst others to third parties except so authorized to so do in exceptional circumstances.

The Code also articulates the procedure for consumer complaints and resolution. In particular, it is mandatory for operators to provide easily understandable information about their complaint process. The information should include a reminder to the subscriber of his right to complain as well as the procedure for channeling such complaints.^{xxxix}

In order to ensure full compliance with this regulation, the commission has the power to monitor the operators, this it does by supervising the operators with regards to how they receive these reports and address them. The Commission equally assists the operators in the verification of complaints and the scope of compliance by the operators.^{xl} However, it must be noted that the Consumer Codes also place some measure of responsibility on the consumers.

Accordingly, it is expected that the consumer will perform his own obligations under the code as part of his complementary efforts in ensuring quality service by the operators. In particular, the consumer shall allow the operators access to their equipment and facilities for the purposes of maintenance of such equipment or facilities.^{xli} No doubt, if the operators are denied access to their base

stations, masts and other equipment, it would ultimately have a negative effect on the quality of service rendered to the consumer. This will be akin to a self-inflicted injury.^{xlii} The consumer is equally expected to use the equipment and related facilities provided by the operator for the normal and regular purposes for which such equipment or facilities were installed. Accordingly, the consumer should not do anything to interfere with the use of such equipment or facilities without the prior approval of the operators. A consumer shall be held liable for any loss or damage to equipment or facilities that result from such unlawful interference.^{xliii}

In addition, the consumer is not allowed to re-sell any service provided by the operator except with the permission of the operator.^{xliiv} The consumer is equally not allowed to misuse the telecommunication services rendered by the operators by using same for illegal or unlawful purposes. In particular, a consumer is precluded from dishonestly acquiring telecommunications services or possessing or supplying equipment that may be used for obtaining such services dishonestly or fraudulently.^{xliv}

Finally, in order to ensure strict compliance with the provisions of the Quality of Service Regulations and the Consumer Code as discussed, the Commission is given specific powers to evolve enforcement mechanism and procedure under the relevant Regulations. In particular, under the Quality of Service Regulations, the Commission is in the event of a contravention by the operator empowered to do the following:

1. Demand from the operator, a published information about its remedial plans or;
2. In appropriate cases issue one or more directives pursuant to section 53 of the Act especially in the area of directing the operator to compensate the aggrieved consumer.^{xlvi}

Under the Consumer Code, there is a similar provision empowering the Commission to analyze and investigate consumer complaints with a view to determining whether there is a breach of the applicable code. Where the Commission confirms the incidence of contravention it will having regards to the seriousness of the breach, past record of the operators amongst other factors direct the operator pay the appropriate fines.^{xlvii}

How effective is the existing regulatory scheme in the Nigerian communications industry?

No doubt, the study has revealed that there exists a robust legal framework for the regulation of the activities of GSM operators in the country. It can equally be gleaned that these regulatory measures are aimed at ensuring that the consumer gets good and quality service from these operators, and at reasonable and affordable prices. However, what remains to be demonstrated is

how the relevant institution charged with the implementation of these regulatory provisions has fared in that regard. What is the link between these prescriptive provisions of the laws and the enforcement mechanism put in place by these laws?

In resolving these issues, it is important to bear in mind that the attributes of the quality of service offered to the consumers and by the operators of GSM in the country can be understood from the following perspectives : The quality of network coverage, Tariff or billing system, The incidences of call-drops, Interconnectivity, Short Message Service (SMS), customer care services, recharge procedure, protection of consumer privacy, general consumer information, internet services, advertisements and sales promotions, emergency services by operators, Sim card registration, consumer complaint procedure, consumer complaint redress mechanism.

In the area of the quality of network coverage, it is not in doubt that twelve years after the advent of the GSM in Nigeria, the network coverage of the various networks have improved and there is a visible presence of most of the major networks in most cities and villages across the country.^{xlviii} At present the quality of network coverage is best appreciated from the increased number of GSM subscribers in the country. A major operator, the M.T.N has hit the all-important digit of more than 10 million subscribers in the country. However, beyond this façade of number it is necessary to determine if some or all these subscribers are satisfied with the quality of service rendered by these GSM operators.

In two recent surveys by some researchers it was revealed that consumers' perception of the quality of service offered by most service providers in the sector was not satisfactory. Specifically et al. (), carried out a general survey in 2014 on the public perception of the quality of service of MTN (one of the four major GSM service providers in the country.)^{xlix} In carrying out this survey, these researchers set out the following objectives as benchmarks:

1. To examine the effect of customer care service on customer satisfaction
2. To examine the effect of network quality on customer satisfaction
3. Determine the impact of customer satisfaction on the market share of telecommunication

Their result is that on all the three benchmarks set out, MTN was not doing well. This was attributed largely to the customer belief that the service provider scored below 40% satisfactory level on these benchmarks. Similarly, Alabar et al. (2014) in another survey carried out the same year arrived at the same result Alabar et al. (2014). In their finding they were able to demonstrate that there was a correlation between service quality and customer satisfaction. They confirmed the poor level of customer satisfaction with the quality of service in the

sector which they say has occasioned switching of networks by subscribers. In terms of demographics, their report indicated that a high proportion of 46% reflecting about 242 of the respondents expressed their desire to switch mobile service providers, whilst about 22% representing 116 respondents were not sure of what to do.

Accordingly, in their recommendations, the authors amongst others advised the GSM service providers to improve on their technology as well as service rendered in order to retain their respective customers. In specifics, they suggested that these service providers could avoid such negative nuances like call drops whilst it improved on their SMS/MMS de.

Certainly, these polls suggest strongly that despite the robust legal and regulatory measures put in place in the country, these measures have failed to improve the quality of service rendered to consumers in the sector. This has created the room for another option that may devoid of direct state control or regulation in the sector. This is where the option of a strong and effective competition legislation in the sector becomes attractive.

Competition law and the communications sector in Nigeria

Leading scholars in the country have canvassed for the enactment of a competition law that will serve as a complement to the existing legal and institutional framework for consumer protection. A leading authority on competition law in Nigeria, Dimgba has in his numerous works championed the cause of competition law in the country.ⁱ His thesis is that for the economic growth and stability of the country, a competition law is imperative. He argues that an effective institutional framework for competition is a precursor to the deregulation and privatization of public utilities in the country. In his words:

When we liberalise and deregulate vital sectors of our economy as we have done, ushering in, in place of government monopolies, private players who are not constrained by social interest and whose overriding drive is profit, there is nothing to prevent the new undertakings from engaging in cartel and abusive behavior such as price fixing, market division and excessive pricing.ⁱⁱ

In essence, he faults the Nigerian approach, where we rushed to the liberalization and privatization of our key economic sectors like the communications sector without the enabling laws and institutional framework to regulate the conduct of the new entrants into these sectors. Thus, it is arguable that competition law is not all about creating the platform for competition but setting the rules and regulation that would make such competition fair and effective for consumer goals.ⁱⁱⁱ

It is in the light of the aforesaid, that it has become necessary to determine whether there is the need for a

competition law to regulate the communications sector in the country. This is because the existing legal framework for the regulation of communications in the country has inbuilt regulatory measures for the entrenchment of competition in the sector. This brings to fore the conflict between generic competition legislation and the sector specific competition legislation. The effectiveness or otherwise of the anti-competitiveness provisions of the Nigerian Communications Act will certainly influence what the response to the calls for a generic competition law will be.

The antitrust provisions of the Nigerian communications act and its relevance to consumer goals

The communications sector in the country has effectively been deregulated and privatized.ⁱⁱⁱⁱ Accordingly, the communications sector is a veritable sector of the Nigerian economy to assess the utilitarian values of competition policy and law to the supply of quality and affordable services to subscribers. What needs to be resolved in the course of this paper is how well the legal framework for competition in this sector is in support of the goals of consumer welfare and consumer protection

The Nigerian Communications Act is a good example of a sector specific regulatory framework that has attempted to encapsulate the core values of competition in the communications industry. To this end, sections 90-93 thereof make provisions for the regulation of competition in the sector. However, what is necessary to resolve is the extent to which these provisions aforesaid can be said to have sufficiently and effectively addressed the issue of competition in the sector. This will be done without prejudice to our obvious bias for a generic competition law to protect the generality of consumers in the country.

Section 90 provide that the "Commission shall have the exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance with competition laws and regulations, whether of a general or specific nature as it relates to the Nigerian Communications Market. Implicitly, this presupposes that the Commission apart from enforcing the specific competition regulations hereunder, it has a broader power to enforce a generic competition (if any) in the country for the benefit of the communications sector. This therefore sets the basis for our contention that generic competition legislation is imperative for the communications sector in the country.

Beyond, the general provision of section 90 aforesaid, sections 91-93 which purport to address specific issues relating to competition in the sector are not comprehensive and exhaustive to make it unnecessary for it to be supplanted by generic competition legislation. Incidentally, section 91 aforesaid prohibits a licensee

(GSM operator) from engaging in any conduct that lessens or is likely to lessen competition in the sector. It falls short of aptly circumscribing the nature and scope of such conducts in question.

The indices supplied in sub-section 2 thereof are expressed in such vague and technical terms that can only be understood and appreciated by persons who have a firm foundation of the general principles and philosophy behind competition law and competition legislation. These guidelines which include, the relevant market economy, global trends in the relevant market amongst others require further elaboration in more comprehensive generic competition legislation. In the same vein, sub-section 3 thereof which prohibits a licensee from entering into any agreement with regard to rate fixing, market sharing and boycott of another competitor, boycott of a supplier of apparatus or equipment or the boycott of any other licensee is commendable.

However, it is clear that these indices of racketeering and price syndication in the market are better addressed by a generic competition legislation that would go a step further to strike down such unwholesome transaction as well as sanctioning the offending parties. This is what the Anti-trust legislation does in the American legal system that has been largely adjudged to be effective in the communications sector in the United States of America (Harvey and Johnson, 1962).

Section 92 addresses the crucial issue of cartels and/or companies that attain or attempt to attain a dominant position in the communications sector. It is settled that the main thrust of competition regulations is the prevention of monopolies or companies with a dominant position in the market. Whereas, a generic competition legislation will provide the benchmarks for determining when companies are assuming dominant position in a particular sector, the specific limitation of the benchmarks associated with sub-section 2 of section 92 aforesaid equally limit the nature and scope of the concept of a "dominant position" in relation to operators in the communications sector. For example, sub-section 2 aforesaid, gives the Commission the discretion to formulate and use the following guidelines in determining when licensee has attained a "dominant" position or is attempting to attain same in the sector.

These guidelines include the following; the relevant market economy, global technology and commercial trends affecting market power, market share of the licensee, the licensee's power to make independent rate decisions, the degree of product or service differentiation and sales promotions in the market and any other matter which the Commission is satisfied are relevant.

These guidelines ought not to be limited to the communications sector as they straddle all shades of commercial undertakings and are better addressed in generic competition legislation. What is more, sub-section 4 provides that the Commission may direct the offending licensee to cease that conduct which entrenches its

dominant position in the market place or lessens competition. The failure of sub-section 4 to speak in imperative terms has taken away the value of the prescriptive provision in sub-section 3 aforesaid. This void can be filled by a generic legislation that will not only prescribe the guidelines highlighted above but will go a step further to provide specific and enforceable sanctions against the errant operators in the specific sector concerned.

Furthermore, section 94 adds nothing new as it merely empowers the Commission to enforce the provisions of the Act with respect to the competition provisions through the Court. This right of access to Court was equally conferred on any person with the requisite locus standi. The use of a judicial process in the striking down of Anti-Competitive behavior in sensitive sectors like communication makes it imperative for the enactment of a generic competition legislation backed with a requisite institution for the enforcement of its penal provisions.

CONCLUSION

The study examined the legal and institutional framework for the regulation of the communications sector in Nigeria. In the course of this study it was revealed that there exist in the Nigerian legal system abundant legislative intervention in the regulation of GSM operators in the country. This is evident from the provisions of the Nigerian Communications Act and its subsidiary regulations and guidelines aimed at the regulation of the conduct of these operators and ultimately protect subscribers/ consumers in the sector.

However, the study assessment of the efficacy of these provisions revealed that in spite of this elaborate legal and institutional framework, GSM operators in Nigeria have not lived up to the expectations of consumers in the sector, the regulatory agencies and Government in terms of effective service delivery. It was also revealed that the existing legal framework is inadequate to protect the rights of consumers in the sector in the face of this poor service delivery of these GSM operators.

It is in this study humble submission that one way around this conundrum is the enactment of a competition law in Nigeria. The study treatise is that with the enactment of a competition law and an effective institution to enforce it in the country, all service providers especially operators in the GSM sector will be compelled to improve their services in order to retain the patronage of their subscribers. This is because an ideal competition law will encourage a free market; open up channels for other companies to invest in the sector. It will also ensure that there are no sharp practices by other players in the sector. Such sharp practices like price syndication, cartel influence and monopoly in the sector can be reduced if not eliminated in the sector.

The study conclusion is that direct state intervention or

regulation in the sector or any other sector may not be the solution to the incidence of poor service delivery in the country and the communications sector is not an exception. Competition law in the sector will make up for the lapses in the existing regulatory framework in the sector.

Conflict of Interests

The author has not declared any conflict of interests.

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ⁱThe Wireless and Telegraphy Act of 1962 was repealed by the Nigerian Communications Decree, Decree Number 30 of 1992 which is presently the Nigerian Communications Act, Cap N33 Laws of the Federation of Nigeria, 2004. (The Act).

ⁱⁱ For more details on this historic perspective, see Ernest Ndukwe "The Telecommunications Revolution in Nigeria (Unpublished) A Paper delivered on the 2nd of December 2011 at the Annual Convocation Ceremony of Igbinedion University, Okada, Edo State, Nigeria. Pg.9-10

ⁱⁱⁱUndukwe *ibid*

^{iv}Newton's Telecom Dictionary, 18 ed.(2002) 733 as quoted in Lisa Thornton *et al Telecommunications Law in South Africa* (Johannesburg, STE Publishers, 2006)19

^vUnder the defunct Wireless and Telegraphy Act, Government was the only player in the communications sector through the then Post and Telecommunications (P&T) and later NITEL and NIPOST

^{vi}Sections 3-5 of the defunct Wireless and Telegraphy Act of 1962

^{vii}Available data now indicate that there are about 61 million active GSM subscribers in Nigeria, see www.ncc.ng.gov accessed on 12/11/2015

^{viii}. This was the position under the Wireless and Telegraphy Act of 1962 which was amended in 1966

^{ix}[http://www.ncc.org.ng/NigerianCommunications Commission-Consumer Affairs Bureau Home Page](http://www.ncc.org.ng/NigerianCommunicationsCommission-ConsumerAffairsBureauHomePage) accessed on 19/11/2015

^x Decree No 31 of 1998

^{xi} The Nigerian Communications Commission Amendment Decree No 30 of 1998

^{xii}Decree No 16 Of 1995. See Sections 17 and 18 thereof.

^{xiii}Ralph Narder's classic work "Unsafe at any speed" was published in 1965.

^{xiv}Harvey & Parry, "Consumer Protection and Fair Trading" 13, where they quoted from Trieblock: "Consumer Protection in Affluent Society 16 Magill Law Journal 263"

^{xv} Harvey and Parry, *ibid*

^{xvi}These Institutions include, The Standard Organization of Nigeria (SON), The National Agency for Food and Drugs Administration and Control (NAFDAC) The Consumer Protection Council of Nigeria(CPC), The Nigerian Communications Commission(NCC) The National Electricity Consumption Regulation Council (NERC) amongst others.

^{xvii}Nkamnebe Anayo et al (2009) "Consumer Protection in Market Transactions in Nigeria" *Journal of Innovative Marketing* Vol. 5 No. 4: 89-94 .See also , Victor Ochigi "Curbing the Menace of Fake Drugs and Counterfeiting in Nigeria" published in the National Vision Newspaper Online Edition available at www.nationalvisiononline.com accessed on 20/09/2015, See also J. Akpan "The Calamity of ' My Pikin' " published in the online version of Leadership Newspaper available at www.leadershipnigeria.com/news accessed on

20/09/2015 See also, Iba Louis et al "Sub-standard Products in Nigeria a Growing Menace" a featured article available at <http://www.nigerianbestforum.com/blog/?p=68286> accessed on 20/09/2015 See also Ngozi Sams "China still Floods Nigeria with Sub-Standard Products" a featured article available at <http://www.nigerianbestforum.com/generaltopics/?> accessed on 20/09/2015

^{xviii} Anayo: *ibid* 85

^{xix}See Section 1(a)-(u) of the Act which encapsulate these noble objectives

^{xx}See Section 4(1) (a)-(f) of the Act

^{xxi}These Regulations were made pursuant to Chapter (VII) of the enabling Act which empowers the commission to formulate regulations for the enforcement and implementation of its fundamental objectives as set out under the Act.

^{xxii} See Section 104 (a)-(c) of the Act

^{xxiii} See Section 187 of the Act for the definition of a subscriber as consumer in the context of this work

^{xxiv}See Section 3(1) and (2) of the Act for the establishment of the Nigerian Communications Commission.

^{xxv}This is where; a comparative review of the best practices in other countries would be of immense benefit to the commission.

^{xxvi}See Section 106(1) and (2) of the Act

^{xxvii}See Section 106(3) (a)-(c) of the Act

^{xxviii}See Section 106 (4) (a)-(f) of the Act

^{xxix}See Section 106(a) (a)-(f) of the Act

^{xxx}See Sections 5-12 of the Regulations

^{xxxi}See Sections 14-16 of the Regulations

^{xxxii}See Section 1 (1) and (2) of The Consumer Code of Practice 2007 (Hereinafter referred to as "The Code")

^{xxxiii}See Section 10(a)-(j) on the subscribers sundry rights in the contract of service between him and the operator.

^{xxxiv}See Sections 11-14 of the Code

^{xxxv}See Section 15 of the Code

^{xxxvi}There is now a spirited campaign by the Society of the Physically Challenged Nigerians on this issue.

^{xxxvii}See Sections 17-20 of the Code.

^{xxxviii}See Sections 21 and 22 of the Code

^{xxxix}See Sections 39-41 of the Code

^{xl}See Section 39-41 of the Code. This is the platform for which the Consumer Parliament.

^{xli}See Section 29 of the Code

^{xlii}There are reports of communities placing onerous levies and other rates on operators of GSM in the country before they are allowed access to such equipment for repairs. There are equally incidences of theft and vandalization of telecommunications equipment of the operators of GSM services in the country.

^{xliii}See Section 30 of the Code

^{xliv}See Section 31 of the Code. This is the basis for the consistent campaign by the GSM operators in the country against the sale of pre-registered subscribers identification module (sim) cards by consumers in the country.

^{xlv}See Sections 32-33 of the Code

^{xlvi}See Section 17 of the Quality of Service Regulation 2009. As shall be seen shortly, this is one area of overlap between the powers and functions of the Commission and the Consumer Protection Council.

^{xlvii}See Section 55 of the Code which makes direct reference to the provisions of Chapter IV of the Nigerian Communications (Enforcement Process etc) Regulations 2005, with respect to the procedure for imposing such fines and the quantum of such fines

^{xlviii}The active subscriber's base in the country is now assessed at 60 million. See www.ncc.orn.ng accessed on 12/09/2015.

^{xlix} Abdul .F. *et al* '(2014)*Impact of Customer Satisfaction on Mobile Telecommunication Service Provider Jorind (12) 2 : 212-236*

^lNnamdi Dimgba , "The Need and the Challenges to the Establishment of a Competition Law Regime in Nigeri /africa.html.nigeria accessed on 23/12/2015. See also N. Dimgba, "Nigeria's Competition Law: The Egg that Never Hatches" The Guardian ,22nd February 2004, Nnamdi Dimgba , "The Urgent Need for Antitrust Law" This Day Newspaper 3rd February, 2004.

^{li}Dimgba , *ibid*, 10.

^{lii}Dimgba, *ibid*, 11

^{liii}Decree number 38 of 1992 now the Nigerian Communications Commission Act Cap N7 LFN 2004 made elaborate provisions for the deregulation and privatization of the telecommunications sector in the country.