THE CHALLENGE OF CONSUMER PROTECTION RIGHTS IN NIGERIA; A CASE STUDY IN THE POWER SECTOR AND TELECOMS IN NIGERIA.

1. INTRODUCTION

In the present world, human economic activities are driven by two major sectors namely; Telecommunication and Electric power. The ability to interact and communicate with one another as well as provide the requisite power needs to our various consumers is one of the yardsticks to measuring the quality of life as well as the per capita income of the citizenry.

At the centre of these activities are the various stakeholders comprising of the Regulator(s), Government and Consumers. The weakest in the chain is the consumer and that is why there are various laws and regulations in place to protect them.

1.1 Who is a Consumer?

According to John F. Kennedy “Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision... But they are the only important group in the economy who are not effectively organized, whose views are often not heard”.¹ The Consumer Protection Act, which is the foremost Nigerian legislation on Consumer Protection, defines the term consumer, “as an individual, who purchases, uses, maintains or disposes of products or services.”²

1.2 Why protect the Consumer?

Although consumers are described as kings in today's economic environment, they are the worst victims of unfair and unethical practices employed by the producers of goods and services.³ One would further ask if consumers are kings why bother to protect them?

According to Kamarudeen Babatunde Bello etal⁴ “consumer protection is the concept to protect consumers from unscrupulous producers and service producers. It denotes the attempt by government to provide regulatory


framework to protect and enforce the rights of people who pay for goods and services. Therefore the law of consumer protection has two fold purpose... it protects the interest, rights and safety of end users of products and services, on the other hand to the extent that it derives from and relates to contractual transactions, consumer protection can be said to be a means by which private law relationships are regulated. It is in the interest of the public that the nature and deficiencies of products and services be made known to consumers."

Felicia N. Monye\(^5\) noted that: “One elementary, though important question that may be asked is whether it is necessary to give or advocate a special protection for consumers. Cannot it be postulated for instance, that the consumer should take care of his own affairs? In other words, is it necessary for the law and policy to shift from the sphere of caveat emptor to caveat venditor? One can say with reasonable certainty that the above questions have been overtaken by events. On the part of the government, this assertion is buttressed by the various measures (laws, agencies etc.) often put in place to take care of consumer issues. This shows a conviction about the need for consumer protection.

According to Messrs Eze, Eluwa and Nwobodo\(^6\), there is a global recognition of the fact that there exists real and perceived imbalance of power relations between the producers and consumers of goods and services which always goes to the advantage of the producers, who are strengthened by the traditional legal maxim “caveat emptor” (buyer beware) and the ever growing free market philosophy, which seems to put the producers at liberty to do whatever they want.

Furthermore, consumers need to be protected because of the rapid advancement of information technology and aggressive marketing technique adopted by producers which are more attractive than the products itself has made it even more difficult for an average consumer to understand the in depth truth about the goods and services.

Thus consumer choice is influenced by mass advertising art of persuasion and marketing. The consumer may not be aware whether a product meets minimum standards of safety, quality, and efficacy. Sometimes he does not know how much he pays for the services; whether one prepared food has


more nutritional value than another or whether the performance of a product will in fact meet his needs etc.\footnote{John F. Kennedy : 93 - Special Message to the Congress on Protecting the Consumer Interest. \textit{March 15, 1962}. \url{http://www.presidency.ucsb.edu/ws/?pid=9108} accessed 12/08/15.}

Other rights sought to be protected are:

- Right to safety
- Right to information and advice
- Right to choice
- Right to being heard
- Right to enforcement etc.

The Consumer Protection Act (CAP) Cap C. 25 LFN 2004 is the main legislation that deals with the protection of the consumer. It established the Consumer Protection Council which is a body shouldered with the responsibilities to protect the consumer. However other legislations also anticipated consumers’ abuse in their services and therefore provided for the consumer protection in their legislations.

2.0 Consumer Protection In The Nigerian Power Sector.

The electric power sector is one of the most important sectors to national development. For many years, the electric power sector has been plagued by a plethora of problems from low capacity generation of power, decaying facilities, corruption, leakages, poor distribution, non-collection of tariff and many other problems. In Nigeria the monopoly exercised by NEPA through the Electricity Act and NEPA Act came with its usual baggage of inefficiency and poor service delivery.

The reform programme commenced in 1999, when the Electric Power Implementation Committee (EPIC) was inaugurated, culminating in the drafting of the National Electric Power Policy 2001; the enactment of the Electricity Power Sector Reform Act 2005; and establishment of Power Holding Company of Nigeria (PHCN). The new Act gave rise to the creation of 18 successor companies in three categories, viz: Generation (Six companies); Transmission (One company); and Distribution (11 companies).

The reform also resulted in the establishment of Nigerian Electricity Regulatory Commission (NERC) was established to regulate the entry and operations of the private operators in terms of tariff and service delivery.

The experience of consumers under the old order – NEPA left a bitter taste in the mouth of all consumers. The sector as a natural monopoly left users without option than to groan under the various abuses that characterised the
sector. These right abuses which were visible include: Crazy bills, Mass disconnection, Wrong billing, Lack of information to consumers, Non-regulation of the voltage resulting to damage to appliances, No customer care centres, etc.

2.1 Protection of Electricity consumer rights.

With the privatisation of the electricity sector, issues of consumer rights and interest in the electric sector must be in the front burner. Electricity is the pivot by which every economy revolves. The privatisation in the sector implies that consumers expect quality service delivery.

The problems faced by consumers include power interruptions, short and long term voltage fluctuations etc. the costs of this to consumers are so many. It does not only have adverse economic implication especially on those whose livelihood depends on it but also poses safety and health challenges especially where the providers negligently deploy naked cables as well as cases of high voltage damage to appliances.\(^8\)

Section 32 of the EPSRA 2005 established the NERC with the clear mandate to perform among other things the following functions:

1. To maximise access to electricity services by promoting and facilitating consumer connections to distribution systems in both rural and urban areas;

2. To ensure that an adequate supply of electricity is available to customers;

3. To ensure that the prices charged by licensees are fair to consumers and are sufficient to allow the licensees to finance their activities and to allow for reasonable earnings for efficient operation.

4. To ensure the safety, security, reliability and quality of service in the production and delivery of electricity to consumers;

5. To ensure that regulation is fair and balanced for licensees, consumers, investors and other stakeholders

A Customer under NERC Customer Complaints Handling: Standards and Procedure 2006 Regulation means any person or organisation supplied with electricity for his own use by a distribution licensee or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving

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electricity from a distribution licensee or such other person, as the case may be. This implies that any end user of electricity who is a customer of a distribution company is a consumer. This clearly means that all illegal connections who are not known by the distribution companies are not consumers.

Sections 80 and 81 of EPSR Act 2005 make further provisions for the protection of consumers for electricity in providing for consumer protection standards and performance standards and codes. Section 81 provides that NERC in collaboration with the licensees should develop the following:

- Customer service standards
- Customer complaint handling standards and procedures
- Codes of practice for the provision of assistance to special needs customers, such as the blind or disabled, the elderly or severely ill;
- Procedures for dealing with and assisting where necessary customers who have difficulty paying bills
- Procedures for applying for electricity service;
- Procedure for disconnecting non-paying customers or for those in breach of those terms and conditions of an applicable tariff or contract and
- The information to be provided to consumers and the manner of its dissemination.

NERC Customer Service Standards of Performance for Distribution Companies 2007\(^9\) created further obligations on the licensees in favour of the consumers. The obligations are as follows:

- The obligation to restore electricity to a consumer’s premises within 24 hours of complaint being lodged;
- Obligation to provide new connection
- The obligation to give the estimate of connection charge
- The obligation to notify customers of planned electric supply interruptions
- Obligation to rectify voltage complaint
- Obligation relating to meter dispute
- Obligation to reconnect supplies disconnected for non payment
- Obligation to reposition the meter
- Obligation to respond to faults with prepayment meters

\(^9\) Published in the FGN Official gazette No. 102 Vol. 94 of 21\(^{st}\) December 2007.
Obligation to read meters frequently.

To address this plethora of issues Under the Customer Complaints Handling: Standards and Procedures Regulation, each Distribution Licensee, shall establish a Customer Complaints Units (CCU) within its premises and other locations within its area of operation.

The CCU shall be the first point for all customer complaint. Any customer dissatisfied with the outcome of the handling of his complaint(s) by the Customer Complaints Unit or encounters delay/failure in the handling of such complaints may refer his complaint(s) to the Consumer Forum.

In addition, where the Distribution Licencee and the customer are unable to agree on a resolution to a compliant, either party may refer the compliant to the forum for settlement. The membership of the forum is as follows:

- One representative of Industrial Customers to be nominated by the Manufacturers' Association of Nigeria.
- One representative of Commercial Customers to be nominated by the Nigerian Association of Chambers of Commerce, Industry, Mining and Agriculture.
- One representative of Household Customers to be nominated by the Consumer Protection Council.
- One representative of an NGO based in the Distribution Licensee’s operating area nominated by the commission.
- One nominee based in the Distribution Licensee’s operating area who has an electrical engineering background nominated by the commission.

Where the consumer is dissatisfied with the decision of the forum, an appeal may be lodged with the Commission. Where the consumer does not accept the decision of NERC, he may explore other avenues of dispute resolution.

For an unsuccessful consumer the complaint will be dismissed. For successful consumer, the remedies available to the consumer are as follows:

I. Returning to the consumer the undue charges paid by him
II. Removing the defect/deficiency in the service that is the subject of the complaint
III. Discontinuing the unfair trade practice or the restrictive business practice or not to repeat them.
IV. Withdrawing the hazardous electrical services being offered
V. Providing for adequate cost to the consumer.

2.2 Metering and billing of consumers

The measurements from the readings of electricity meters are used to calculate the amount of energy supplied to consumers and will appear on the energy bill sent to the consumer by the distribution companies. The Commission should take meter reading seriously and ensure that it is accurate. The practice ensures that consumers pay for the amount of energy they actually used.

Billing dispute, may arise from poor and inaccurate reading or from faulty meters. All meters should be duly calibrated by the authorised agency of government to ensure the meters are reliable and also avoid major operational faults.  

If a consumer discovers a fault it will be appropriate for such consumer to report to the service provider who is required to investigate the complaint and make best efforts to resolve the problem. Where this problem remains unsolved, the consumer may report such inaccurate billing to the Commission. Where the Commission fails to resolve the problem or refuses to act, the court may be the last resort for the consumer.

The Nigerian Senate passed a resolution following a motion entitled, “Unfair trade practices of Electricity Distribution Companies in Nigeria,” NERC, defied the directive by the Senate to abolish the Fixed Charges, introduced by the commission, noting that there is nothing illegal about the charges. NERC maintained that Electricity consumers pay both fixed and energy charges and that the purpose of the fixed charges is to recover the capital and fixed costs of the various operators in the industry. Consumers have asked why they should pay for services not rendered. We submit that such practice is unfair and unjust to the consumer.

On the issue of the practice of bulk-billing to residential customers, NERC noted that the commission has already abolished it on a previous ruling brought before it by a customer against the duo of the VGC Estate Management and the Eko Electricity Distribution Company (EEDC) in 2008. NERC maintained that the decision of the commission stipulated that every

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11 Ibid.

customer is expected to be metered individually, irrespective of the status of supply coming into the area, and the class of billing should be on R2 or as appropriately determined by the Disco.

NERC however allows for estimation in situations where residential meters are not provided to customers. In this instance, statistical meters installed as transformer substations are used to calculate the energy to be used as basis for estimating customers on the feeders.

The issue of estimation has left big sour taste in the mouth of consumers because it has given opportunity for arbitrariness and manipulation of consumer’s bill. We urge the commission to discontinue the practice. On connection every consumer should be connected with a meter. For customers still unmetered, NERC should commit the Discos to a timeline to complete the metering process.

2.3 Consumer Responsibilities

Every consumer right has a corresponding obligation. The consumer is expected to:

I. Provide access to his premises for meter reading
II. Pay his bills as at when due
III. Report all faults to the service provider
IV. Avoid energy theft circumvention of the meters etc.

3.0 Consumers Protection In The Nigerian Telecoms Sector.

With the deregulation of the telecomm sector, Nigeria today has one of the fastest growing telecommunication sector in the world with about 139.1 million lines as at the end of 2014 and a tele-density of over 99.39. These are not without its challenges to consumers.

Following the above development, government enacted the Nigerian Communication Act (NCA) 2003 which repealed the Nigerian Communications Decree 1992 and other subsidiary regulations geared towards the protection of the consumers. The NCA 2003 provided for the requisite legal regime which established the Commission as the Regulator, licensing and the control of the service providers as well as consumer protection and quality of service for the telecomm industry.

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The NCA gives wide-ranging powers to the NCC, headed by an executive vice chairman, to ensure that the commission discharges its duties without any bureaucratic bottlenecks. Each of the 158 sections of the Act is enshrined to empower the commission to achieve its goal of ensuring good telecoms service delivery in Nigeria.

The consumer in this sector has high expectations to be met but is grossly dissatisfied and disappointed. He wants services available at all times at every location. The consumer wants a good quality service at affordable rates too. The consumer wants responses, explanations and answers when things go wrong. Can one say that with the liberalisation of the sector these expectations are met? Knowing where we are coming from in the era of NITEL which was known for non-performance and recklessness in the handling of consumer affairs, we can boldly say there are improvements; however a lot of abuses of consumer rights still remain unresolved in Nigeria.

The NCC in 2007 gazetted Consumer Code of Practice Regulation which is a reference document for both consumers and the operators. Each licensee is required to produce and submit a Code of Practice which has to be reviewed and approved by the Commission. The Code of Practice stipulates Service Level Agreements, the responsibilities and rights of each party, and procedure for resolving disagreements whenever they arise between parties.

Notwithstanding the above, NCC and the Consumer Protection Council have not done enough to protect consumers of telecom services in Nigeria as most of their efforts are either concentrated in the urban areas or nonexistent especially for the rural consumers.

The consumer are still suffering poor services despite the high and extortive tariffs the consumer was being charged. These come in form of dropped-calls which are not compensated, absence of service resulting from network failures, deductions for un-rendered services, using of the networks as a platform for unsolicited and offensive ringtones and unwanted text messages etc.

As a result of these inefficiencies, the average consumer has no option that to carry more than one phone with different networks at every given time. These may be as a result of the inability of the licensees to expand and invest in infrastructure.

As posited by Amanim Iwok Bassey Kooffreh\textsuperscript{14}, rather than making efforts to plough, back some of their profits back into the market, to improve their

services, these telecom service providers embarked on bogus reward schemes, which could not be verified. Many Nigerian consumers became victims of these sham schemes, which were designed to increase the subscriber base of these companies.

A cursory look at the activities of NCC and CPC shows that they are either not equipped or insufficiently equipped to carry out their responsibilities. This means that the operators are always ahead in their anti–consumer activities while the regulators trail behind only to correct or punish in form of penalties rather than protecting the consumers in advance.

While the Nigerian consumer bears the heavy burden of poor services, the NCC does little or nothing to protect the consumer’s interest. In the rare cases where regulatory action is taken by way of penalties, it is to the financial advantage of NCC who suffered no loss as a result of bad service.

A case in hand is where Consumers Empowerment Organization of Nigeria (CEON) and the United Consumers Association of Nigeria (UCAN, demanded the sum of N1.5 trillion, from operators in Nigeria.\(^\text{15}\) The NCC pocketed the penalty paid by the operators even though they suffered no loss.

It must be noted that although section 8(b) of the CPC Act, which allows a consumer to institute civil action against a producer of poor quality goods or services, for compensation, it is the responsibility of the regulator to ensure that telecom operators live up to expectation and not the consumer.\(^\text{16}\)

### 3.1 Improvement In Consumer Choices

Prior to the introduction and implementation of mobile number portability (MNP) scheme, each of the telecom operators in the Nigerian market was allocated a specific national destination code (NDC). The consumer had very limited choices. E.g, 0802 (Airtel), 0803 (MTN), 0804 (Mtel), 0805 (Globacom) and 0809 (Etisalat). This means that a customer is tied to a particular operator even where he is dissatisfied as dumping the sim card means social disconnection from family and friends. This enslaved Nigerian consumers to all manner of poor services from telecom service providers.

With the implementation of MNP on April 22, 2013, consumers where made the bride of the operators while competition was once more generated among the operators in favour of the consumers. With the launch of MNP, telecom consumers no longer need to acquire new numbers in other to

\(^{15}\) Daily Sun Newspaper, April 25th, 2013. P.48

move from one network service provider to another. This has granted proper ownership of the sim card to the consumer rather than the operator.

The MNP Scheme has brought several benefits to the Consumers. One such benefit is that, it has provided the consumer with a range of choices to choose from. Secondly, it has triggered off a healthy competition among service providers to the benefit of the consumer, through improvement in the quality of services.

**Recommendations**

- Stiffer sanctions
- Equitable distribution of fines collected from operators to the consumers
- Ensuring constant consumer education
- Monitoring and ensuring upgrade in networks and standard.

**4.0 Conclusion**

We acknowledge that the Nigerian economic environment is a challenging one where operators face a number of challenges, ranging from poor or in some cases, total absence of critical infrastructure, policy somersault from government agencies, corruption, etc. all service providers should be meant to understand that the mainstay of their business is the consumer. To do so the operators must restore the concept of the consumer as King.

In the words of Mahatma Gandhi

“a customer is the most important visitor on our premises, he is not dependent on us, we are dependent on him, he is not an interruption on our work, he is the purpose of it, he is not an outsider on our business, he is part of it. We are not doing him a favour by serving him, he is doing us a favour by giving us an opportunity to do so”