



The Nigerian Communications Commission (NCC): Issues, Challenges and Policy Prescriptions

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Abstract: *This paper examines the issues, challenges and policy prescriptions of the Nigeria combinations commission (NCC). An examination of the extant law and constitutional provisions is undertaken with a view to determining whether the Nigerian Communication Act (NCA) has achieved its objectives and challenges faced by the consumers prior to its promulgation. When the Commission in recent times was inundated with several complaints from consumers and stakeholders against the various promotion offers by the operators, it evaluated the complaints received against the backdrop of sustaining the integrity of the networks and the general interest of the consumers. The Commission was mindful of one of its statutory responsibilities to protect and promote the interest of consumers against unfair practices. The promotion had increased the number of minutes available to subscribers for use within a limited period of time, thereby creating congestion in the networks. Night calls were now being offered by operators at tariffs well below the prevailing inter-connect rates, thereby introducing anti-competitive practices and behaviour. The determination of calls was becoming difficult between networks, making it extremely hard for subscribers to make calls successfully. The NCC reacted promptly by placing a ban on the lotteries and promotional activities by service providers because the lotteries and promotional activities were fraught abuses. Moment later, there was contravention on the ban, which prompted the telecoms regulatory agency the NCC to slammed a total of ₦22, million fines on the four Global System of Mobile Communications (GSM) operators including Mtn, Globacom, Etisalat and Airtel. The conclusion drawn from the existing statutes and international best practices is that the NCC has gone a step further by encouraging consumerism and partnering with advocacy groups in the telecom sector. The industry is, however, not without its challenges.*

Keywords: *Issues, Challenges, Policy Prescriptions*

1.0 Introduction

Telecommunication is a vital engine for development of any economy. It is an essential infrastructural component that promotes the development of other sectors including agriculture, education, industry, health, banking, defence, transportation and tourism. It is indispensable in times of national emergency or natural disaster. It also reduces the risks and rigors of travel. To this end, the availability of a functional and efficient telecommunications infrastructure is a *sine qua non* for any country that wants to compete in today's global economy.

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Since the inception of telecommunications development in Nigeria, the system has progressed through various stages of development from the primitive communications equipment in its colonial days to the enormous variety of technologies available today. At different times, expansion of the networks was attempted to meet the needs of fledging commercial and industrial by the establishment of the Nigerian External Telecommunications (NET) and the Nigerian Telecommunications Limited (NITEL), a Limited Liability Company that administer both internal and external telecommunications services in Nigeria.

The ground work and effort to deregulate and liberalise the sector commenced with the promulgation of the first Nigerian Communications Act¹ in November 1992 and the subsequent inauguration of the first board of the Nigerian Communications Commission (NCC) in 1993. The effort did not bear much fruit as the law had a limiting effect on the liberalisation of the sector. The Act still allowed NITEL to retain its monopoly over the wire line systems, long distance transmission services and international gateway services, thereby retaining its sole national carrier status. Furthermore, due to the fact that the nation was under a military government the first seven years of its life, the commission did not have the necessary freedom and powers to carry out its functions. The rules of the game were not clear and the regulatory body that was to act as referee neither had the autonomy nor resources to guarantee a predictable market place for potential investors.

Problems were faced by the consumers in terms of protection in delivery of telecommunication services. NITEL, the government – owned operator at the time was either unwilling or unable to handle the volume of demand for telecommunication services by the increasing Nigerian population. Its services when available were mostly characterised by low call completion rates, congestion of trunk lines and exchanges and call billing errors. NITEL also had the problems of poor system maintenance and not making timely investment for network expansion to meet the demand for telecom services. There were incidences of contested bills which subscribers argued they never incurred – some complained of receiving outrageous and unbelievable bills even while their phones were disconnected and not in use and usually high subscription fee for obtaining phone lines. The waiting time for connection to a NITEL line was as long as two years. In 1999, it was estimated that there were over 10 million people on the waiting list of NITEL who had applied for telephone lines.²

1.1 The Composition and Functions of the Nigerian Communications Commission

(NCC): The leadership of the Nigerian Communications Commission consists of nine Commissioners made up of six Non-executive members including the Chairman- representing each of the six Geopolitical Zones of Nigeria and three Executive Members, including the Executive Vice-Chairman/Chief Executive and two Executive Commissioners. The NCC has had a relatively short history of active regulation in the Nigeria telecommunications industry. Although the NCC was created in 1992, it operated more like a department of the Ministry of Communications until April 2000 when the Federal Government inaugurated its first Board of

¹ Cap. N 97 LFN 2010.

² Ndukwe, E., “The telecommunication Revolution in Nigeria” being a paper presented at the Annual convocation ceremony of Igbinedion University, Okada on 22nd December, 2011.

Commissioners. However, the successful execution of the global system for mobile communication (GSM) auctions so soon after the Board's inauguration gave very promising indications of the NCC's determination and ability to meet and surmount its many challenges—the first of which involve the credible licensing of industry operators. The steps taken by the Commission, to protect consumer interest stem from the Act which empowers the regulator to ensure that the interest of consumers is protected.

Consumer protection is an important and recognised function of telecommunications regulatory authorities all over the world, as such countries use several mechanisms to develop consumers' protection framework to protect consumers' rights. These include the recognitions of rights in legislation, recognition of rights in tariffs, the development of industry codes of practice, quality of service parameters and dispute resolution mechanisms³. The Nigerian Communications Act (NCA) provides that all service providers shall, in respect of their specific services meet such minimum standards of quality of service as the Commission may from time to time specify; deal reasonably with consumers and adequately address their complaints⁴.

In line with this provision, the Nigerian Communications Commission (NCC) which is the independent National Regulatory Authority for the telecommunications industry in Nigeria released the Quality of Service Regulation in 2009⁵, which aims to identify minimum quality of standards, and associated measurement, reporting and record keeping tasks⁶ and has developed the following key performance indicators (KPIs) for the service providers: Call Setup Success Rate (CSSR) \geq 98%; Call Drop Rate (CDR) \leq 2%; Hand over Success Rate (HoSR) \geq 98%; Stand alone Dedicated Control Channel (SDCCH) \leq 1%; Call Completion Rate (CCR) \geq 96% and Traffic Congestion ratings (TCH CoNG) \leq 2%⁷. The failure of the operators⁸ to meet these targets leads to consumer dissatisfaction. For instance, between January and November 2011, none of the operators met the SDCCH Cong Target, but the other key indicators were met to a less or higher degree by the different service providers.

Regulators can impose a code of conduct or suggest that operators abide by it on a voluntary basis. Typically regulators have made operators provide a code of conduct as a condition of licence: as in the UK with the Toucan and 3G codes of practice⁹. However, where either licence conditions or a code of conduct exist, they are no guarantee that the consumer interest in relation to the key issues of prices or quality of services will be addressed. Few regulators have taken on the task of improving quality of service from mobile operators either

³ Section 4(1) Nigerian Communications Act.

⁴ Ibid. Section 104.

⁵ This regulation is made pursuant to sections 70 and 104 (a) of the Nigerian Communication Act.

⁶ See the Preamble to Quality of Services Regulation 2009.

⁷ Guardian, "ALTON tasks NCC on Sector's Teething Issues," (2012), http://www.ncc.gov.ng/index.php?option=com_content&view=article&id=776%3Aguardian-23rd-May-2012-alton-tasks-ncc-on-sectors-teething-issues-&catid=86%3Acat-mediapr-headlines&Itemid=107. accessed on 10/5/2011.

⁸ The main operators currently operating in the GSM market are MTN, Globacom, Etisalat, and Airtel.

⁹ Two UK examples of codes of practice: Toucan code of practice: <http://www.toucan.com/site/code/.aspx> 3G Code of practice that mentions Otelo <http://www.three.co.uk/advice/detail.omp> accessed on 20/3/2011.

because they lack the will or the capacity to do so. Quality of service issues are often complex and the regulators may lack the resources to challenge a much better resourced mobile operator. The number of regulators imposing sanctions in the form of fines on issues relating directly to consumer interconnection and whilst this arguably has a consumer impact, the sanction is rarely driven directly by a consumer – interest motive. However, whatever assessment is made of the success or not of licence condition compliance and codes of conduct by operators, there are still countries where consumers are not covered by any code of conduct, self – imposed or otherwise.

In exercise of its powers, the Commission has developed and published Customer Code of Practice Regulations (CCPR) in 2007, whose specific objectives are; to confirm and clarify the procedures to be followed by licensees in preparing approved Customer Codes of Practice in accordance with section 106 of the Nigerian Communications Act and to determine and describe the required contents and features of any Consumer Codes prepared by, or otherwise applicable to licensees.¹⁰ Codes so prepared are subject to annual reviews and ratification by the Commission.¹¹ Consumer Codes are necessary for handling of customer complaints; inexpensive arbitration processes other than a court and procedures for the compensation of customers in case of a breach of a code; and the protection of consumer information. The Commission has also in exercise of its power developed quality of service Regulations (QoS) 2013 to prescribe the minimum standards and parameter for the quality of telecommunications services in Nigeria. Put simply, the Regulations identified the minimum quality of service standards in telecommunications industry. The objectives of the QoS Regulations 2013 are; improving the quality of service by identifying service deficiencies and encouraging appropriate changes; maintaining service quality while recognising environmental and operating conditions; making information available to help customers make informed choice of service and licensees; improving the operation and performance of interconnected networks; and assisting the development of related telecommunications market.¹²

Furthermore, the Commission has established an Industry Consumer Advisory Forum (ICAF)¹³ in collaboration with other industry stakeholders such as the Consumer Protection Council, the National Lottery Regulatory Commission, the Nigeria Bar Association, telecom advocacy bodies as well as other key consumer advocacy representatives in the country. The objective of Industry Consumer Advisory Forum (ICAF) is to Act in advisory capacity and make recommendations to the telecoms regulator regarding the interest and concerns of consumers of information and communication technology products and services including persons with disability and elderly.

The functions of the Commission targeted at consumer protection are; the protection and promotion of the interests of consumers against unfair practices including but not limited to matters relating to tariffs and charges and the availability and quality of communications services, equipment and facilities¹⁴; ensuring that licensees implement and operate at all times

¹⁰ See Regulations 2 of the Customer Code of Practice 2007.

¹¹ See Section 106 (3), (4) and (6) of the Act.

¹² See Quality of Service Regulation 2013. Available at, <http://bit.ly/2i9gXub>, accessed on 10/5/2016.

¹³ The inaugural session of the open forum was held on the 21st day of December 2011 in Lagos.

¹⁴ Section 4 (1), Nigerian Communications Act.

the most efficient and accurate billing system¹⁵; the development and monitoring of performance standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria having regard to the best international performance indicators¹⁶; proposing, adopting, publishing and enforcing technical specifications and standards for the importation and use of communications equipment in Nigeria and for connecting or interconnecting communications equipment and system¹⁷; examining and resolving complaints and objections filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such disputes-resolution methods as the Commission may determine from time to time including mediation and arbitration¹⁸

The Nigerian Communications Act (NCA) has also taken similar steps to protect the consumer from sharp practices by service operators. The Act provides that, all service providers shall, in respect of their specific services meet such minimum standards of quality of service as the commission may from time to time specify and publish; deal reasonably with consumers; and adequately address consumer complaints.¹⁹

While the success of the GSM auctions will always remain a significant milestone in the nation's telecommunication history, the NCC must now look beyond the successful licensing of operators to the successful regulation of licensees in the provision of their products and services. The Nigeria telecommunication industry is set to become one of the most complex and dynamic in Africa, and the NCC must urgently begin to create a solid foundation for responsible and efficient market conduct within the industry. International experience teaches us that markets must never be liberalised to the detriment of the public interest, and it is a fundamental objective of regulators the world over to protect the public interest against every foreseeable, negative consequence of market liberalisation-including the insidious effects of imperfect competition. The NCC must therefore take its place amongst the forward thinking regulators of the world by ensuring that the Nigerian public is adequately protected against the present and foreseeable consequences of imperfect competition, particularly the high end-user tariffs currently being suffered by the subscribing public. Further delay in establishing the much-needed tariff regulation regime will only make it more difficult for the NCC to do so later, because operators will be sure to argue with each passing day that the industry is moving beyond that early stage of market liberalisation. Against this back drop, the Commission has helped in lowering and improving tariffs by setting a new tariff rate of ₦4 per short message service for all domestic off-net SMS with effect from the 5th day of February 2013, though the Commission does not fix retail prices²⁰.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ The Citizen, NCC pegs all SMS at N4 effective Feb 5, Available at <http://bit.ly/2x7226w>, accessed on 2/3/2016.

1.2 Integrity of Networks and the General Interest of Consumers: When the Commission in recent times was inundated with several complaints from consumers and stakeholders against the various promotion offers by the operators, it evaluated the complaints received against the backdrop of sustaining the integrity of the networks and the general interest of the consumers. The Commission was mindful of one of its statutory responsibilities to protect and promote the interest of consumers against unfair practices. The promotion had increased the number of minutes available to subscribers for use within a limited period of time, thereby creating congestion in the networks. Night calls were now being offered by operators at tariffs well below the prevailing inter-connect rates, thereby introducing anti-competitive practices and behaviour. The NCC reacted promptly by placing a ban on the lotteries and promotional activities by service providers because the lotteries and promotional activities were fraught abuses. Moment later, there was contravention on the ban, which prompted the telecoms regulatory agency the NCC to slammed a total of ₦22, million fines on the four Global System of Mobile Communications (GSM) operators including Mtn, Globacom, Etisalat and Airtel. The determination of calls was becoming difficult between networks, making it extremely hard for subscribers to make calls successfully²¹.

Globacom, Mtn, Intercellular, Visafone, Etisalat, Airtel and Multilinks were not left out of the ban²². The notice of the sanction stated that in the refusal to pay the sanction amount within the stipulated time, the Commission shall have no other option than to impose stiffer penalties in accordance with the powers of the Commission including but not limited to payment of ₦1million for each day that the contravention persists. The operators were given seven days to pay their respective sanctions amount from the date of receipt of the sanction notice on February 22nd, 2013 adding that the operators where liable for payment of the sum of ₦1million for any day that the contravention persists²³. Regrettably, the money was paid to the NCC and not the consumers that suffers from the hands of the service providers²⁴.

1.3 Synergy Between NCC and CPC

In order to avoid regulatory overlaps and create regulatory certainty for the benefit of all stakeholders in the telecommunications sector, the Commission and the Consumer Protection Council entered into a Memorandum of Understanding (MoU) on the 19th day of December 2005, to the effect that; the Commission is the Sector Specific Regulator in the telecommunications industry with a statutory mandate to protect consumers as well as operators in that sector; the council is the apex agency of the federal government with a statutory mandate to seek redress for and protect consumers in all sectors of the economy including the telecommunications industry; and to avoid regulatory overlaps and create

²¹ NCC bans telecommunication operators from lotteries. Read more at: <http://bit.ly/2uTcL3O>

²² Ibid.

²³ Emeka Aginam, NCC sanctions mobile operators with N22m fine. Vanguard Thursday 28th day of February 2013. Read more at: <http://www.vanguardngr.com/2013/02/ncc-sanctions-mobile-operators-with-n22m-fine/>

²⁴ Akhabue, A.D., Consumer Protection Law: Rights, Complaints and Remedies for Telecoms Consumers in Nigeria, Amfitop Book Company, Lagos, 2018 P. 147.

regulatory certainty for the benefit of all stakeholders in the telecommunications sector, the parties hereto recognise a need for collaboration in the discharge of their functions as it relates to consumer protection in the aforesaid telecommunications sector; the parties agree to fully cooperate and collaborate with each other in the discharge of their functions as it relates to the protection of consumers of products and services in the telecommunications sector in accordance with the terms of the Memorandum of Understanding; the Commission shall reserve the right to grant approvals for sales promotions in the telecommunications industry; the council shall be responsible for registering and monitoring sales promotions in the telecommunications industry where such sales promotions are targeted at consumers and involve providing a range of direct or indirect additional benefits usually on a temporary basis, designed to make goods, products or services more attractive to consumers.

Furthermore, the parties agree that there is administrative necessity for the Council to charge a nonrefundable fee of one percent of the aggregate benefits of sales promotion, which in any case shall not exceed one million, five hundred thousand naira for the registration and supervision of sales promotions provided that any review of fees by Council beyond the aforementioned threshold shall be in consultation with the Commission. The parties also agreed that telecommunications products and services be exempted from payment of registrations fees under section 1(2) of the Consumer Protection (Products and Services, Monitoring and Registration) Regulation 2005 since they are performing similar functions in regard to registration of products and services. However, in the discharge of its statutory functions, the Council shall register telecommunications products and services at a filing fee of two thousand naira provided that any increase of the said filing fee shall be in consultation with the Commission. The Commission is enjoined at the request of the Council to provide information for the Council, which information may include but not limited to information necessary to set standards for quality and grade of services, set standards on telecommunications products and telecommunications equipments that are manufactured, imported or sold in Nigeria and periodic updates on the approved tariffs and discount for each category of telecommunication services. The MOU provides for the establishment of a Joint Implementation Committee which is made up of officers of the Commission and the Council to review the implementation of the MoU and such other matters that would promote co-operation and collaboration between the parties in the discharge of their duties to protect the consumers.

1.4 Telecoms Consumer Interest Groups

Consumer interest groups are advocacy groups that seek to protect people from corporate abuses like unsafe products, misleading advertising, lending, astroturfing and pollution. They can also engage in single advocacy. They operate through protests, lobbying or campaigning. Generally, the aim of consumer organisation includes consumer information, consumer education and advocacy.

All over the world including the United States and Germany, there are number of voluntary consumer interest associations. In Nigeria, there are Consumer Protection Organisation of Nigeria (CPON); the Consumer Rights Association of Nigeria (CRAN); the

Consumer Awareness Organisation (CAO); among others. These interest groups in Nigeria are as recent as 1970.

In Nigeria, currently, telecommunications products and services are varied as well as the demands and expectations of consumers. With a teledensity of 68.49 as at December 2011, and the coverage of the thirty-six states of the Federal Republic of Nigeria and the Federal Capital Territory, consumers are more sentient of the usefulness and potentials of telecommunications services. This awareness, no doubt, heightened the demand for good services and responsive service providers or operators. Consequently, several advocacy groups have sprung up and are quite active in the industry. These advocacy groups include the National Association of Telecommunications Consumers and Consumer Rights Project (NATCCRP). The groups' main objective is to ensure that the interest of consumers is taken care of.

1.5 Nigerian Communications Commission and Consumer Advocacy Groups

In the period before the telecoms market was liberalised, Nigerian Telecommunications Limited (NITEL) hardly had a sales/marketing department. It was a seller's market and little attention was paid to consumer complaints. Today it is a buyer's market with plenty of choices. Even in such a scenario, there is still need for consumer protection. The Commission is collaborating with several consumer advocacy groups in Nigeria to further expand the avenues for consumer protection in relation to telecoms services delivery. In the light of the foregoing, the NCC, on a number of occasions, has had cause to give orders and directions to operating companies on behalf of consumers. The Commission at various times stopped the service providers from engaging in professional campaigns that led to increase in the volume of traffic and inducing network congestion, until such a time as there were substantial improvements in the quality of services provided by the networks. The NCC has also directed that service providers were not to place any restrictions or time limitation on validity of airtime so that subscribers were not compelled to utilise their call minutes within restricted time frames.

It is true to state that the major contributor to the quality of service challenges has always been network capacity constraints. Due to the rapidity of uptake of telephones lines since 2001, the operating companies have not been able to expand their networks fast enough to meet the over growing demands by subscribers for voice and data services. This was further aggravated in the earlier days by the total collapse of NITEL long distance transmission infrastructure which a number of service providers depended on for their interstate links initially. With the fall of NITEL also came the collapse of MTEL and therefore the subscribers to the MTEL services migrated to the other networks with its attendant effect of Network congestion.

Other issues such as major deterioration in the public power supply; delay in securing approval for sites for new base stations; harassment by some government agencies especially at state level had also contributed in various degrees to the problem. Shortly after arresting a young woman, Tope Sani, 28, in Enugu and three other men in Awka for allegedly selling pre-registered Subscriber Identification Module (SIM) cards to end users without capturing their true bio-data as prescribed by law, the NCC said it is investigating the level of collusion with

relevant service providers²⁵. MTN Nigeria communications limited paid a fine of ₦90 million for poor quality of service for the period of July to December 2012²⁶. Regrettably, the money was paid to the NCC and not the consumers that suffer from the poor quality of services.

1.6 Judiciary

Nigerian economy is based on laissez-faire principles of the 18th and 19th centuries of her colonial legacy. Going by the individualism ideology (*caveat emptor*) a consumer is his best protector since exchanges which have capacity to boost production output as well as increase consumption are voluntary and unhindered. The fact of existence of real and perceived imbalance of power relations between the producers and consumers of goods and services is globally recognised. Such imbalance is obviously to the advantage of the producers who find strength in the legal maxim '*caveat emptor*'. Besides, free market economy seems to have put producers at liberty to operate in whatever manner they deem fit, without prejudice to the rights of consumers to make their choice which is restricted in most cases. That being the case, consumer sovereignty seems to have little meaning thus making consumer to perpetually complain and express one form of discontent or the other against the activities of the organisations, with which they engage in trade relationships. The English Court of Appeal did rule for the first time on the terms of the Consumer Protection Act going against the trend of judgments in lower courts that the product supplier though not negligent, the claimant was entitled to damages under the Act²⁷.

Though the strict liability provisions have not been encapsulated in the Consumer Protection Council Act, a customer who institutes an action under the Act can rely on this case as a *locus classicus* in the apparent absence of such decisions on product liability in Nigeria. However, reliance can only be persuasive as the judges are not bound to follow. The advantage of relying on the *locus classicus* is that the claimant does not go as far as proving negligence; all the court expects is to prove that the actual product itself is indeed defective. In *G.K.F Investment Nigeria Limited v. Nigeria Telecommunication PLC*,²⁸ the appellant as a plaintiff entered into an agreement for the supply of uninterrupted telephone services with the respondent who was the defendant in the High Court. The telephone services were for commercial, business and profit purposes. Sometime in September 1996, the telephone services were withdrawn by the respondent. The appellant sued. The learned trial Judge awarded the appellant two hundred thousand naira as damages. The appellant regarded the award as paltry. The Court of Appeal allowed the appeal only to the extent of the appellant's claim for seven and half percent on the judgement sum of two hundred thousand naira. Still dissatisfied, the appellant appeal to the Supreme Court wherein the appeal was dismissed on the ground that the thirty million that the appellant was asking for was gold digging. As in the words of Fabiyi JSC,²⁹ "prospective gold diggers should have no place in courts of law as well as

²⁵ Fraudulent SIM Cards. Nigeria Daily News, 22/03/2013. Read more at <http://bit.ly/2uXB2ps>

²⁶ NCC fines MTN N90M for Poor Services, This Day News Saturday 23rd 2013. Read more at <http://www.thisdaylive.com/articles/ncc-fines-mtn-n90m-for-poor-service/142929/>

²⁷ *Abouzaid V. Mother Care (U.K) Ltd. 2000 B3/00/227.*

²⁸ (2009) vol. 174 LRCN P. 1-43.

²⁹ Ibid, P.41-44.

that of equity. A Judge should be wary of them. A party who is ordinary entitle to a pound of flesh should not run after one hundred of same. The award of two hundred thousand naira as damages to the appellant by the trial Judge at his discretion, affirmed by the court below is in order. I endorsed same”.

In *All Progressive Congress v.NCC & 5 Ors.*³⁰, the APC filed a fundamental rights enforcement suits against NCC, Etisalat, MTN Nigeria Limited, Globacom Limited, Airtel Nigeria Limited and Visafone Communications Limited demanding twenty five billion Naira as damages for allegedly banning its presidential campaign fund-raising platform wherein the APC initiated the participatory fund-raising platforms as a way of getting members of the general public to contribute one hundred naira to its presidential campaign fund each time they send ‘APC’ as SMS to 35350. By its claim, NCC by a letter dated the 19th day of January 2015 instructed the other respondents to shut down the platform, warning them to avoid running political advertisement and promotions that will portray them as being partisan. The Commission has also threatened to sanction any of the telecommunications service providers which failed to comply with the order. The APC considered the NCC’s instruction and consequent shutting down of its fund raising platform as both discriminatory and infringement on its fundamental right³¹. It argued that the NCC did not give the same instruction to the other respondents when Peoples Democratic Part set up the short codes designated 6661, 6662, 6663, and 6664 being managed by one Wagitel Communications Limited to raise funds for the campaign of President Goodluck Jonathan and his vice Namadi Sambo in 2010. Delivering his judgment on the above suit, Justice Ibrahim Buba of the Federal High Court awarded five hundred million in favour of the APC against NCC and five other services provides for unlawfully shutting down the party’s Presidential Campaign fund-raising platform³².

1.7 Policy Formulation

Creation of consumer protection policies are justified by market failures such as, high transaction costs faced by consumers in dealing with large companies, the lack of information made available to consumers regarding service conditions and market dominance by some service providers. That is, in the absence of meaningful competition, consumers have no choice in service providers. If they are dissatisfied there may be nowhere else to bring their business.

United Nations Guidelines for Consumer Protection is a declaration of best practices in consumer protection law and policy. The Guidelines are not binding, but do provide a set of basic consumer protection objectives upon which governments have agreed, thereby serving as a policy framework for implementation at a national level³³.The Guidelines were adopted by the

³⁰ *Unreported FHC/CS/16/15.*

³¹ Section 39 of the 1999 Constitution of Nigeria as amended and Article 9(1) (2) and 19 of the Africa Charter on Human and People’s Right (Ratification and Enforcement) Act Cap. A 9 LFN 2010.

³² Akhabue, A.D., *Consumer Protection Law: Rights, Complaints and Remedies for Telecoms Consumers in Nigeria*, Amfitop Book Company, Lagos, 2018 Pgs. 158 - 160.

³³ Wikipedia, *United Nations Guidelines for Consumer Protection*. Available at <http://bit.ly/2v4h1MY>, accessed on 13/07/15.

UN in 1985 after 10 years of campaigning by CI. The Guidelines have been interpreted by CI and translated into clear consumer rights as follows, the right to the satisfaction of basic needs, the rights to safety, the right to be informed, the right to choose, the right to be heard, the right to redress, the right to consumer education, and the right to a healthy environment³⁴.

The Guidelines, no doubt, had a significant impact on protection of telecoms consumers and competition policy in Nigeria. Today, there is telecommunications market structure in Nigeria in which multiple operators provide services on a competitive basis to the broadest range of consumers. In the regime, competitive market forces are the best determinant of the appropriate and sustainable levels of price charges by various service providers for their services.

Geraint³⁵, have identified at least six functions of consumer protection policy. Firstly, to ensure that the market place is competitive. Secondly, to protect the weak from unfair market-determined outcomes. Thirdly, to serve as a distributive tool for an equitable society. Fourthly, to ensure the creation of rules against unfair trade practices and disclosure requirements. A fifth function is to align consumer policy with environmental policy in the protection of the environment. And lastly, to ensure that there is a convergence of consumer policy and health policy for purposes of good quality and safety of goods, services and credit facilities.

The policy of licensing competitive operators has helped in improving and lowering tariffs though the Nigerian Communications Commission does not fix retail prices. While the Commission set a new tariff of ₦4 per short message service for all domestic off-net SMS with effect from the 5th day of February 2013, it refuses to place a price cap on international SMS. The Commission took the decision in the interest of striking a balance between sustaining operator's profitability and ensuring consumer's satisfaction and also in accordance with the power conferred on the Commission under section 4 and chapter vii of the Act³⁶. Prior to 2001, getting a mobile line was over ₦60, 000: 00 per line. In 2001, following the deregulation and liberalisation of the telecom sector by the Nigerian Communications Act³⁷, the GSM subscription started with a price of about ₦30, 000: 00 per line and today the price has fallen virtually to zero. However, without prejudice to the foregoing, GSM service consumers in Nigeria still experience dissatisfaction with the cost of services/tariffs as the Commission has failed to fix retail prices and give directive to all service providers and make it an offence for any service provider to charge above the stipulated price.

In April 22nd 2013, with the aim of deepening competition in the industry, the Commission flag off an exercise which enables subscribers to move from one telecommunication network to other networks without needing to buy another SIM card. In the

³⁴ Ibid.

³⁵ Geraint, H., Consumer Representation (1993) *Consumer Law Journal* 17 at P. 18 Cited in Badalki, A.D., Effect of Privatisation and Commercialisation Policy on Consumer Protection in Nigeria, op. cit. P.164.

³⁶ The Citizen, NCC pegs all SMS at N4 effective Feb 5, Available at <http://www.thenigerianvoice.com/nvnews/106445/1/ncc-pegs-sms-tariffs-atn4.html>, accessed on 2/3/2016.

³⁷ Cap. N97 LFN 2010.

month of October 2016, the Commission declared that a total number of 35,655 Mobile Number Porting (MNP) activities were recorded³⁸.

1.8 United Nations guidelines for Consumer Protection³⁹

United Nations Guidelines for Consumer Protection is a declaration of best practices in consumer protection law and policy. The Guidelines are not binding, but do provide a set of basic consumer protection objectives upon which governments have agreed, thereby serving as a policy framework for implementation at a national level. Whilst directed primarily at governments, some provisions of the Guidelines are also direct at businesses.

The earliest known statement of consumer rights at a political level was given on 15th March 1962, when President John F Kennedy of the United States delivered a speech to Congress in which he outlined four consumer rights: the right to safety, the right to be informed, the right to choose and the right to be heard.

In 1981, the United Nations Economic and Social Council (ECOSOC) “requested the Secretary-General to continue consultations on consumer protection with a view to elaborating a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries”. In 1983, draft guidelines for consumer protection were submitted to ECOSOC in response to its request. Following extensive discussions and negotiations, the Guidelines were adopted by consensus resolution of the United Nations General Assembly on 9th April 1985(Resolution A/C.2/54/L.24 9TH). They have since been amended by the addition of a new section on sustainable consumption on 26th July 1999.

The Guidelines originally covered seven areas: physical safety, promotion and protection of consumers’ economic interests, standards for the safety and quality of consumer goods and services, distribution facilities for essential consumer goods and services, measures enabling consumers to obtain redress, education and information programmes, and measures relating to specific areas (food, water, and pharmaceuticals). With their amendment in 1999, an eighth area, promotion of sustainable consumption, was added.

The United Nations Conference on Trade and Development (UNCTAD), which is the subsidiary body of the UN General Assembly that holds responsibility for consumer protection and competition policy, states that the Guidelines “take into account the interests and needs of consumers, particularly those in developing countries”. A 1993 report on progress in implementation of the Guidelines by the UN Secretary-General noted that most governments who responded “reported that the guidelines had a significant impact on their work” on consumer policy. The reception of the Guidelines within the Consumer movement has been positive. The eight sections of the Guidelines have also been restated as eight consumer rights by the NGO Consumers International, expanding upon those recognised by President Kennedy. On the other hand, at the time of their negotiation the Guidelines were opposed by certain

³⁸ Telecoms operators record 35,655 porting activities in October – NCC. Vanguard Tuesday 20th December 2016, Read more at <http://bit.ly/2wggqBR>.

³⁹ Wiki, United Nations Guidelines for Consumer Protection. <http://bit.ly/2v4h1MY>, accessed on 13/07/15.

business interests and developed countries as paternalistic, and they have since been criticised as vague, overblown and unnecessary.

In 2011, Consumer International, which was involved in preparatory work for the original guidelines and the sustainable consumption amendments, developed a suggested set of further amendments to the Guidelines covering the topic of access to knowledge. A decision of UNCTAD's Intergovernmental Group of Experts on competition and Consumer Protection in July 2012 to open the Guidelines for review paved the way for this to be fleshed out into a broader proposal for amendment of the Guidelines, which would introduce a number of new areas including financial services and energy. As at July 2013 the amendment of the Guidelines remains under discussion⁴⁰.

The United Nations Guidelines for Consumer Protection (UNGCP), act as an International reference point of the consumer movement, but with new developments in technology and business practices, there is a strong argument for revising them to ensure they are still relevant to the challenges facing consumers. The guidelines were adopted by the UN in 1985 after 10 years of campaigning by CI. They gave important legitimacy to the principles of consumer protection legislation. In 1999, they were updated with a new section on sustainable consumption and production (section G) to reflect environmental concerns emerging during the 1990s.

The guidelines have been interpreted by CI and 'translated' into clear consumer rights as follows: the right to the satisfaction of basic needs; the right to safety; the right to be informed; the right to choose; the right to be heard; the right to redress; the right to consumer education; the right to a healthy environment⁴¹. UNCTAD is currently in the process of consulting the UN Guidelines on Consumer Protection. This follows directly from the conclusions of the Ad Hoc Expert Meeting on Consumer Protection, that took place in Geneva between the 12th and 13th July 2012, which recommend that "UNCTAD should...undertake discussions regarding the possibility of updating the United Nations Guidelines for Consumer Protection" and "undertake to collaborate on the content of potential revisions".

The current Guidelines were drafted by ECOSOC and adopted by the General Assembly in 1985 (Resolution A/C.2/54/L.24 9TH). These Guidelines remain a valid and relevant document for consumer protection policy and have been used to draft a significant number of national consumer protection laws. In order for these Guidelines to continue to provide an important framework, a number of areas have been identified for their improvement. Firstly, since there has not been any form of revision since 1999, their content does not reflect the issues covered in the most contemporary consumer protection laws and policies. Secondly, their scope of application does not correspond with the usual powers of modern consumer protection authorities. Finally, the Guidelines are not backed by a state-of-the-art compilation of the best practices and common trends in the field of consumer protection. This process aims to address these issues.

⁴⁰ Wikipedia, United Nations Guidelines for Consumer Protection. Available at <http://bit.ly/2v4h1MY>, accessed on 13/07/15.

⁴¹ Ibid.

The first stage of this process involved an initial consultation process with stakeholders; member states, international organisations and consumer groups. A call for contributions, in the form of views on the current Guidelines, was made by UNCTAD, whereby participants were invited to complete a matrix relating to the issues addressed in the Guidelines. Particular attention was paid to the 'emerging issues' of consumer protection; e-commerce, financial services and modalities for multilateral cooperation. As a result of this consultation process, UNCTAD has compiled and digested the received contributions in order to produce the first draft of the Implementation Report. The objective of this report is to establish a benchmark on the use and adoption of the Guidelines, to highlight the emerging issues for consumer protection and to identify a number of areas for their improvement.

United Nation Guidelines for consumer protection are not binding in any formal sense on countries, or are they an international convention or treaty but they have considerable moral and persuasive value and are a sound basis for the development of consumer policy at both national and international levels⁴².

1.9 Conclusion

Issues, challenges and policy prescription in the telecommunication industry have been discussed in this article. It was noted that protecting the consumer from sharp practices by service providers is usually the pre-occupation of both service providers through self-regulatory mechanisms and regulators of communication services. The United Nation Guidelines for consumer protection are not binding in any formal sense on countries, or are they an international convention or treaty but they have considerable moral and persuasive value and are a sound basis for the development of consumer policy at both national and international levels. Creation of consumer protection policies are justified by market failures such as, high transaction costs faced by consumers in dealing with large companies, the lack of information made available to consumers regarding service conditions and market dominance by some service providers.

⁴² Mehta, P.S., "An Integrated Consumer Policy- The Rational Basis for Protecting Consumers" *Briefing Paper No. 3 April, 1996* (Consumer Unity and Trust Society: India) at P. 3. (This briefing was originally written for a presentation at the Africa Conference on Consumer Protection, Harare, 28th April-2nd May 1996, by Mehta, P.S. of and for Consumer Unity and Trust Society, India) cited in Umenyi, I., *The Role of the Consumer Protection Council in a Liberalised Economy*, in *Consumer Journal* Vol.2 No.1 2006 P.71.