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# Corporate Lawlessness and Consumer Helplessness in Nigeria: The Need for Legal Accountability by Corporate Service Providers

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**Abstract**

*Legal accountability may be used synonymously with terms like legal responsibility, answerability to the law, blame-worthiness according to law, and legal liability. Lawlessness refers to behaviour or conduct that is illegal, or that is not controlled or regulated by law. This paper enquires basically into the adequacy or otherwise of the legal framework for legal accountability of corporate service providers in Nigeria and the effective utility/application of the said legal framework so as to determine the helplessness or otherwise of consumers vis-à-vis the relevant corporate services. This paper finds that there is no dearth of legal framework for the moderation or regulation of corporate service providers in Nigeria and accordingly, it is concluded herein that the consumers of corporate services in Nigeria are not helpless per se since the law has made bountifully robust provisions for the protection of the said consumers and for the legal responsibility, liability and answerability of corporate service providers. In fact, beside specific regulatory authorities, there is now a central legal framework for consumer protection and this legal framework is the Federal Competition and Consumer Protection Act 2018. This paper recommends inter alia that consumers should be informed and sensitized, from time to time, of the privileges, legal protections and rights available to them and of the legal framework for the ventilation of their grievances against any corporate service provider that violates the said legal protections and rights of the consumers or that denies a consumer of a privilege granted by an applicable law.*

**Keywords:** Law, Lawlessness, Corporate, Accountability, Consumer Protection, Framework, Legal.

## 1.0 Introduction: Recalling the Idea of Law

The idea of law in the context of this paper is well captured and encapsulated in the glaring need for the existence and pre-eminence of enforceable set of rules, regulating the conduct of persons whether natural or artificial persons; this idea of law has always been a prominent feature of any given society. The said idea of law is necessitated by the fact that as persons live or exist in a given society or an environment, they inevitably interact and transact with one another, and in the course of such interactions, relations and transactions, certain level of standards are expected to be maintained. In tandem with the foregoing, it has been stated elsewhere that:

> *Law usually involves a set of rules guiding the behaviour patterns of a group of individuals which has the force of authority and hence compelling obedience by the members of the group. Law is therefore by its very nature authoritative. There*

> *is no known society that ever existed or exists without law. Law is by this characteristic a universal phenomenon*[1].

Every society, primitive or civilized is governed by a body of rules which the members of the society regard as the standard of behaviour. This point was buttressed by some learned authors thus:

> *In every known society, law, no matter how defined has remained the most rational and objective way of pursuing and, or achieving justice. Law is the instrument by which justice could best be achieved. The application of the law remains the best way to do justice in a state or society…*[2]

It has been submitted elsewhere that 'it is only when laws involve the idea of obligation that they become law'[3]. Accordingly, when they merely represent the notions of good and bad behaviour, they are rules of morality. However, law is most balanced and effective when it conforms to the moral feelings of the members of the community, since law is made for man but not man for law.

This paper focuses, on the interrogation and determination of the helplessness or otherwise of Consumers vis-à-vis certain corporate services in Nigeria and the said interrogation and determination can only be possible and reliable through an examination of, and reference to, the relevant laws and legal framework. Accordingly, this paper gives attention to the Federal Competition and Consumer Protection Act 2018[4] as the principal legislation in Nigeria which governs and protects the rights of consumers in Nigeria though reference will also be made to other specific regulatory authorities such as the Central Bank of Nigeria, the Nigerian Communications Commission, the Nigerian Electricity Regulatory Commission, the Standards Organization of Nigeria, the National Broadcasting Commission, the National Agency for Food and Drug Administration and Control, and the Nigerian Civil Aviation Authority. By the aforesaid examination and reference, the existence or adequacy of the legal framework for the legal accountability of the selected corporate service providers and for consumer protection are noted and relevant recommendations proffered.

## 2.0 Conceptual Clarifications

**Who is a Consumer?** Within the Nigeria context and legal framework, the term consumer refers to 'an individual who buys products or services for personal use and not for manufacture or resale.'[5] By the Nigerian Communications Commission Act and the Nigerian Communications

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KC Nwogu& MO Nwogu, 'Addressing Delay in the Administration of Justice: Cross Examination as a Major Challenge', *U.L.J.* Vol. 8 No. 1 2011, 6.

[3]NA Obodo, *General Principles of Law in Nigeria* (Enugu: Academic Press, 2005) p.1.

[4]Federal Competition and Consumer Protection Act 2018 <https://www.fccpc.gov.ng/uploads/FCCPA.pdf> accessed on 9 May, 2021.

[5] E Akpan, 'A Comparative Analysis of Consumer Protection Framework In Nigeria, United States Of America And South Africa', *International Journal of Comparative Law and Legal Philosophy (IJOCLLEP)* 1(2) (2019), Pp. 133 – 140 at 134

Act a 'consumer', 'customer' and 'subscriber' mean the same thing, that is, 'any person who subscribes to and uses a communication service.[6]
The Act, defines a consumer to include 'any person who purchases, or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or to whom a service is rendered'. From the foregoing, it can correctly be summarized that a consumer is a person who purchases goods and services for personal use and not for manufacture or resale.[7]

**What is Consumer Protection?** As with many legal conceptions, there is no generally acceptable definition of the term 'consumer protection'. However, several definitions have been offered, and they all appear to agree, despite the differences in presentation. Consumer protection is based on the idea that consumers have an inherent right to basic health and safety. The concept is designed to protect the rights of consumers; it is the protection of buyers of goods and services against low quality and dangerous products and advertisements that deceive people.[8] In the context of this paper, consumer protection refers to the laws and other forms of legally enforceable regulations that govern the relationship between corporate service providers and the consumers of the relevant corporate services. The purpose of such protection is to eliminate corporate lawlessness or malpractices, and to shut the door against the exploitation of consumers by corporate service providers. Invariably, consumer protection is about implementing consumer rights to ensure that consumers are shielded from various unfair corporate practices and to ensure that corporate service providers are held responsible, accountable, answerable and liable to the law for any act or omission that infringes upon any recognized right of a consumer of such corporate services.

**What is Consumer Protection Legal Framework?** A consumer protection legal framework generally includes the introduction of greater transparency and awareness about the goods and services, promotion of competition in the marketplace, prevention of fraud, consumer education, and elimination of unfair practices which are encapsulated in enforceable laws, rules and regulations. Different countries have different legal frameworks for consumer protection. The nature of the framework adopted by a particular country is dependent on the country's legal environment and a number of other factors such as the economic system, the competitive environment, literacy of consumers, *etcetera*. Regardless of the peculiarities, consumer legal protection framework, through various policies and regulations, has to fulfil certain key objectives. Firstly, the framework should provide a mechanism that would protect consumers from unfair, unjust or deceptive conduct, unsafe, defective goods or services. Secondly, the legal framework should indicate the nature of assistance available to consumers when they suffer loss as a result of malpractices by sellers of goods or service providers; for instance, there should be legal specification of how the rules and regulations would be enforced, the method to apply in

[6]Sec 167(1) of the Federal Competition and Consumer Act 2018
[7]*Ibid.*
[8]'Consumer Protection' *Cambridge Dictionary*<https://dictionary.cambridge.org/dictionary/english/consumer-protection> accessed 9 May 2021.

resolving disputes between consumers and sellers or service providers and viable remedies available to aggrieved parties. The legal framework should also be able to provide mechanisms to assist consumers to make better purchasing decisions by providing certain information or mandating certain terms and/or conditions. The legal framework must equally provide an effective mechanism to inform and educate consumers on their rights and obligations.[9]

**What is Legal Accountability of Corporate Service Providers?** In the context of this paper, legal accountability may be used synonymously with terms like legal responsibility, answerability to the law, blame-worthiness according to law, and legal liability. Legal accountability connotes being liable in law or the law requiring a specified person or group of persons whether natural or artificial person[s], to be legally bound to account for their actions or omissions in relation to specific matters or legal obligations. By parity of reasoning, legal accountability of corporate service providers connotes the legal responsibility, answerability and liability of corporate service providers for their actions or omissions which affect the rights of consumers in the course of providing services by the corporate service providers. The basic intent of the concept of legal accountability of corporate providers is to avoid corporate lawlessness and consumer helplessness, thus the intent is to provide legal protection for the consumers of corporate services.

On the premises of the foregoing introduction and conceptual clarifications, It is pertinent to espouse the legal framework against corporate lawlessness and consumer helplessness in Nigeria, in other words the legal framework for the protection of consumers of corporate services in Nigeria.

## 3.0 Consumer Protection Challenges and Corporate Lawlessness

It is germane to state that across the sectors of the Nigerian economy, corporate service providers have not been fair to their consumers in terms of protecting their interest. In the banking sector, for example, consumer related challenges definitely includes excess or unauthorized charges, ATM frauds or issues like allowing shoulder surfing, use of stolen, fake cards and duplicate cards to make withdrawals from customers' accounts, Card Jamming and Card swapping. Other challenges consumers face are Point of Sale (POS) frauds or issues, BVN frauds, cheque related frauds or issues including the notorious "DAR" or dud cheque syndrome, facility guarantee frauds and bank teller dispensing errors. Cases of unlawful or unauthorized funds transfers have wrecked many people (consumers) and businesses alike. Many fraudulent activities have been orchestrated or facilitated by bank employees and their officers including phishing, spoofing, social engineering scams, skimming, hacking and the use of identity theft to obtain unauthorized credit. This age of e-banking has led to e-banking frauds such as bogus offers, friendly or trusted

[9] VV Mugobo and P Malunga, 'Consumer Protection in South Africa: Challenges and Opportunities for Furniture Retailers in Cape Town, South Africa', *Mediterranean Journal of Social Sciences* 6(1)(2011) 227<https://www.richtmann.org/journal/index.php/mjss/article/view/5457/5262> accessed on 9 May, 2021.

relatives' frauds, stolen phone fraud, SIM swaps and bank employees frauds on unsuspecting consumers. The list of these atrocities against consumers is endless[10].

Generally, the banking sector is characterized by inefficient service delivery, consumer distrust, rising bad loans or bad debts, the increase in poverty among the people making it impossible for the populace to make deposits in the banks, low or absence of savings culture among the populace due to heightened inflationary trends and the fact that wealthy Nigerians are now investing outside the country instead of in the nation's economy. In the words of Olukole, the introduction of e–banking in Nigeria:

> *has new attendant security risks and frauds inherent in its usage technology breakdowns, system malfunctions and lack of basic telecommunications infrastructure has made e-banking transactions problematic, traumatic and sometimes unreliable. Frequent power failures and epileptic power supply synonymous with the Nigerian environment often damage computer hard disks on which operating and application software are loaded and this inevitably leads to systems breakdowns[11].*

In no other sector of our national life has corporate lawlessness been more obvious than in the energy sector where the Nigerian Energy Regulatory Commission[12] holds sway as the specific statutory/institutional regulator and enforcer of rules. Consumer challenges in this sector include the continued use of estimated billing without approved methodology, faulty equipment and defaults in metering. This has led to cases of electrocution of consumers without appropriate and commensurate legal remedies or redress for the affected consumers and their families. Often times, consumers are made to bear the cost of procurement and installation of electric poles and transformers. Also the cost of cables, poles and transformers are not expected to be borne by the helpless consumers who has continued to pay for the heavy bills and high cost of meters they have continuously been subjected to by all the distribution companies in Nigeria. This sector is further plagued by service interruptions and power outages by electricity service providers. The distribution companies failed to provide to consumers 6.4 million meters over the agreed 5 years' period and this was tolerated by NERC. In the face of increasing public outcry for electricity supply, there is apparently no home/family or indeed business in Nigeria that do not own a generator or plant with its attendant hazards and dangers. This sector is known for poor quality service delivery, biases against consumers by the NERC as consumers are made to bear the burdens of generating and distributing companies. The sector is adversely affected by NERC's blameworthiness on service interruptions due to network issues or the failure of investment by wealthy individuals in the power and energy sector, new customers' connection, lack of improvement in consumer services and complaints handling procedures and accessibility. The absence of a vigorous and sustained consumer enlightenment campaign or strategy and the lack

[10]MM Dura & JM Shishi, 'Combating Computer and Electronic Banking Fraud in Nigeria; Challenges and Prospects', *Nasarawa State University's Public and International Law Journal,* 1(1) (2013) 158 – 160.
[11]O Olukole, *Nigerian Electronic Banking Law* (Ibadan None such house Publishers, 2009) p.5.
[12] Nigerian Energy Regulatory Commission. Hereafter referred to as NERC.

of enforcement of customer service standards performance of the generating and distributing companies further account for this sector's failure.

In the aviation sector, corporate lawlessness can be seen, as often happens, in the conduct of airlines with the regulatory agencies turning a blind eye or mouthing reminders for them to comply with the extant laws and regulations without more. These include: no show and overbooking, denied boarding, delayed flights, cancelled flights, damaged or lost baggage, unsolicited route, sudden fares increase and tariffs, personal injury to consumers[13]. In Nigeria, airlines or carriers cancel flights arbitrarily and passengers' flights have been known to be delayed for as long as six hours without any concrete explanations. Flights are cancelled at short notice or no notice at all or even after long hours of waiting. The passengers or consumers are subjected to unannounced flight rescheduling which results in their missing other connecting flights, exposes them to breaches of contracts with third parties. Airlines or carriers have been known to blame delays and cancellations on bad weather and other avoidable technical reasons. Air passengers have been exposed to serious psychological, emotional and traumatic experiences. There is no compensation at all for emotional injury in all the extant laws and regulations in this sector. According to statistics from the NCAA, 55% (16,429) of the domestic flights operated in the first 6 months of 2019 were delayed, 241 flights were cancelled. On international flights between January – June 2019, out of 7,640 flights 2,241 got delayed and 55 were cancelled representing 29% of that total[14]. This shows how reckless, negligent and lawless our airlines/carriers (all corporate bodies) and the regulatory agency the NCAA (a Statutory Corporation) have become vis-à-vis the protected or guaranteed rights of air passengers or consumers in Nigeria. The ubiquitous exceptions to the rule on liability of carriers to passengers make them escape the payment of due compensation to their passengers when the enumerated challenges or problems above occur. Most air passengers helplessly resign to or accept their fates are frustrated and walk away being dissatisfied with the way they have been treated. Litigation is not usually resorted to due to inherent/systemic bottlenecks.

In the telecommunications sector, acts of lawlessness has continued unabated against consumers. Unsolicited text messages flood the phones of customers of telecom networks providers; this is called spamming. Customers of these telecom networks providers have been rampantly inundated with unsolicited electronic messages despite these acts being outlawed in the Nigerian Communications Act, 2003. Eyebrows have been raised over this unscrupulous acts by the network providers because 'it eliminates quiet possession of the mobile phones owned by customers, it contributes to the increase of phone in-box, and the ultimate act of deleting such

[13]T.S. Shankyula "The Legal Regime For Consumer Protection in Civil Aviation in Nigeria" in The Nigerian Law Journal 17(1) (2014) pp. 78 – 101.

[14]BS Kokpan, 'Examination of the Legal Protection of Air Passengers for Delayed and Cancelled Flights in Nigeria' being a Ph.D Seminar paper presented to the Faculty of Law, Nnamdi Azikiwe University, Awka March, 2021. pp. 78. W Oyebade and M Adewale 'Flight Delays, Cancellations Cripple Local Travel amid Traffic Surge' in The Guardian Newspaper, August 13, 2019. See also CS Nwakoby& AE Chukwujekwu, "Impact of Consumer Protection Laws on the Aviation Industry in Nigeria" in International Journal of Comparative Law and Legal Philosophy, Vol. 2(1), January, 2020, Pp. 38-45.

unwanted messages, which in turn steal the time of the customers'[15]. In the case of *MTN Nigeria Communications Ltd. v Barr. Godfrey Nya Eneye*[16], the Court of Appeal held that permitting telemarketing organizations to send unsolicited text messages to the Respondent's mobile phone was an infringement of his fundamental human rights to privacy protected by *section 37 of the Constitution of the Federal Republic of Nigeria 1999* since the Appellant (MTN) did not adduce any evidence of custom, practices and usage of the telemarketing or telecommunications world that permits a communication services and network providers to use or permit the use of subscribers' mobile phone lines for marketing without his knowledge and consent. Telecom consumers are advised to ventilate their grievances against these corporate service providers using the provisions of Chapter IV of the 1999 Constitution as a palladium. Enforcement of fundamental rights is a preferable procedure to resorting to criminal prosecution of these corporate service providers. This case has shown that the consumers may not totally be helpless but are usually apathetic, nonchalant and indifferent to issues of consumer protection in Nigeria. There is no doubt that despite the rapid growth and expansion of the telecommunications industry in Nigeria since its deregulation in 2002, consumer dissatisfaction has become rife. Consumer complaints against telecommunications service providers in Nigeria include poor quality service, wrong billing, unsolicited telemarketing and exploitative automated services[17], an example of corporate lawlessness in the field of product liability vis-à-vis Consumer Protection. According to Okonkwo and Okaphor:

> *Globally, manufacturers, brewers and bottlers of beer, carbonated drinks and other beverages face quality assurance and control issues on daily basis. They violate regulations consciously and most times unintentionally. The Nigerian market is not an exception as consumers inundate media houses with complaints of product defects. Short filled cans and bottles, bottled particles and other issues of quality control and assurance are common among brewery companies and bottlers of soft drink. In Nigeria, Coca-Cola, 7Up, Guinness Nigeria. Nigerian Breweries and others have all run foul of the international best practices of quality control. Recently, the Consumer Protection Council sanctioned Coca-Cola Nigeria and its bottler, the Nigerian Bottling Company, for violating the Consumer Protection Act. The Consumer Protection Council also maintained that the Nigerian Bottling Company lack effective ways of addressing complaints from the public about products. The Council, therefore, ordered the company to subject its manufacturing process to CPC's inspection for 12 months. It is therefore, now*

[15]FE Eboibi& I Mac-Barango, 'Telecom Operators as Perpetrators of Spamming: Review of NTN Nigeria Communication, Ltd v Barr Godfrey Nya Eneye', *International Review of Law and Jurisprudence* 2(1), (2020) 78-82.

[16]A Court of Appeal, Abuja Judicial Division Decision, [unreported] Appeal No. CA/A/689/2013- Judgment delivered on 12th May, 2017 pp. 1-58. *Nwali v EBSIEC &Ors.* (2015)2 CAR 477 at 508 -510. The act of spamming or the facts of the MTN's case can found a criminal prosecution under s. 32(2) of the Cybercrimes (Prohibition Prevention etc.) Act, 2015 granting hope to consumers that the law is not asleep and has made adequate provisions.

[17]FO Ukwueze, 'Consumer Protection in the Regulation of Telecommunications Services in Nigeria; Not Yet "Uhuru" for Consumers', *The Nigerian Juridical Review* (12) (2014) 126.

*imperative that brewers and bottlers of beverages in Nigeria ensured a quality control to forestall product liability.*[18]

## 4.0 Legal Framework for Consumer Protection in Nigeria

Until January 2019, the Consumer Protection Act (CPA) No. 66 of 1992[19] was the primary law on protection of consumers. The Act established the Consumer Protection Council to provide a holistic protection of the consumer in line with the United Nations Guidelines for Consumer Protection. However, the CPA was replaced in January 2019 by the Federal Competition and Consumer Protection Act (FCCPA)[20] which is currently the principal legislation on consumer protection in Nigeria, from which all other laws derive their consumer protection provisions. The Federal Competition and Consumer Protection Act was signed into law by President Muhammadu Buhari on the 6th January 2019[21] to promote economic efficiency, maintain competitiveness in the Nigerian market and protect the welfare of consumers. The Act dissolved the Consumer Protection Council, and established the Federal Competition and Consumer Protection Commission ('FCCPC') in its stead. Unlike the defunct CPC, the FCCPC's oversight extends beyond just consumer protection issues, and covers all entities in Nigeria - whether they are engaged in commercial activities as bodies corporate, or as government agencies and bodies. This Act is poised to introduce ground breaking changes into the Nigerian regulatory regime and the highlights include:[22]

### 1. Establishment of the Federal Competition and Consumer Protection Tribunal[23]

The Act provides for the establishment of a Competition and Consumer Protection Tribunal ("the Tribunal").[24] The Tribunal shall adjudicate over conducts prohibited under this Act and exercise the jurisdiction, powers and authority conferred on it under this Act or any other enactment.[25] The Tribunal shall keep records of its proceedings and have jurisdiction throughout the Federation.[26] The jurisdiction of the Tribunal is spelt out in *Section 47 of the Federal Competition and Consumer Protection Act 2018* and interestingly, the Tribunal is also empowered *inter alia* to hear appeals from, or review any decision from the exercise of the powers of any sector-specific regulatory authority in a regulated industry in respect of competition and consumer protection matters.[27]The implication of this interesting appellate

[18]T Okonkwo & FE Okaphor, 'Responsibility for Product Liability in Nigeria', *UNIZIK Law Journal* (12) 2016 Pp. 197 -198.
[19] Cap. C25 Laws of the Federation of Nigeria, 2004
[20]Section 168 of the Federal Competition and Consumer Protection Act 2018 <https://www.fccpc.gov.ng/uploads/FCCPA.pdf> accessed on May 9, 2021.
[21] B Irukera, 'President Muhammadu Buhari Assents to Federal Competition and Consumer Protection Bill' (2019) https://www.fccpc.gov.ng/news-events/releases/2019/02/06/federal-competition-and-consumer-protection-bill/ accessed.
[22]'Federal Competition and Consumer Protection Act' *KPMG* <https://www.proshareng.com/news/REGULATORS/Federal-Competition-and-Consumer-Protection-Act/44557> accessed on May 9, 2021.
[23]Part VII (Sections 39 – 58) of the Federal Competition and Consumer Protection Act2018<https://www.fccpc.gov.ng/uploads/FCCPA.pdf> accessed on May 9, 2021.
[24]*Ibid.*, s. 39(1).
[25]*Ibid.*, s. 39(2).
[26]*Ibid.*, s. 39(3).
[27]*Ibid.*, s. 47(1)(b) & (2).

jurisdiction is that the Tribunal can sit on appeal over the decisions of the regulatory authorities such as Central Bank of Nigeria, Nigerian Communications Commission and Nigerian Electricity Regulations Commission which are, for instance, the authorities regulating the Nigerian banking, telecommunication and power sectors including the corporate service providers in those sectors. The Tribunal shall, for the purpose of discharging its duty under the Act have power to: summon and enforce the attendance of any person, including the power to examine a person under oath; require the discovery and production of documents; call for and examine witnesses under oath; receive evidence on affidavits; and do anything which, in the opinion of the Tribunal, is deemed necessary to issue a final and reasoned decision on the merit of the matter before it.[28] The Tribunal can impose administrative penalties for breaches of the Act, and oversee forced divestments, partial or total, of investors from companies.[29] Appeals against the Tribunal's decisions lie directly to the Court of Appeal,[30] although its decisions are to be enforced after registration at the Registry of the Federal High Court.[31]

2. **Voidance of Restrictive Agreements**

The Act prohibits and voids restrictive agreements between business entities.[32] The description of restrictive arrangements which are likely to prevent, restrict or distort trade is very wide-ranging, and includes prohibition of minimum resale prices (even for patented goods), direct or indirect price fixing, collusive tendering, withholding supply of goods and services from a dealer, exclusionary contractual provisions, etc. However, some of the prohibited arrangements may be approved by the Commission, if the Commission is satisfied that they are fair and do not eliminate competition.[33]

3. **Price Regulations**[34]

The Act enables the President to declare price regulations for the purpose of regulating and facilitating competition, by an order published in the Federal Gazette. Such regulations are required to be for a stipulated period and narrowly designed. The Act directs that suppliers of regulated products are required to keep their accounting records for their supply for three years.

4. **Prohibition of Abuse of Dominant Position**[35]

The Act prohibits the abuse of a dominant position in any industry by any business undertaking. The penalty for a recalcitrant abuser upon conviction is prescribed as not less than 10% of the previous year's turnover however, the penalty may be suspended once the Commission is satisfied that the abuse would cease.

[28] *Ibid.*, s. 50(2).
[29] *Ibid.*, s. 51.
[30] *Ibid.*, s. 55.
[31] *Ibid.*, s. 54.
[32] *Ibid.*, s. 59.
[33] *Ibid.*, s. 60.
[34] *Ibid.*, s. 88.
[35] *Ibid.*, ss. 18(3)(d), 70, 71, 72, 73, 74 & 75.

5. **Prohibition of Monopolies**[36]

The Commission's powers extend to investigation of monopolies. Where any monopoly is found to exist, the Tribunal's remedial efforts may include prohibition of an acquisition transaction, business break-up, forced publication of price lists, *etc*.

6. **Regulation of Mergers**[37]

The power to approve mergers is now granted to the Commission, instead of the Securities and Exchange Commission ("SEC").

7. **Oversight of Regulated Industries**[38]

The Act gives the Commission oversight powers in every sector, including presently regulated industries.

8. **Offences and Stiff Penalties**[39]

The Act stipulates offences and stiff penalties against competition such as price-fixing, conspiracy, bid-rigging, obstruction of investigation or inquiry, offences against records, giving of false or misleading information, *etc.*

## 5.0 Interrogating Consumers' Rights and the Enforceability of the Rights in Nigeria

*The Federal Competition and Consumer Protection Act 2018* has made ample provisions for the protection of all consumers in Nigeria including consumers of corporate services. The Act did not just establish the Federal Competition and Consumer Protection Tribunal but went ahead to provide certain legal rights which can be ventilated in the Tribunal by a consumer who is desirous of justice and remedy/redress for the violation of his/her rights by sellers and/or service providers including corporate service providers. The said consumer rights provided/guaranteed for under the *Federal Competition and Consumer Protection Act 2018* are summarily set out as follows:

1. **Right to be given Information in Plain and Understandable Language:**[40]

A consumer is entitled to be given information in plain and understandable language where such is required to be given by an undertaking ("this includes a seller, supplier, distributor, importer and a manufacturer"). The test of whether information is in plain and understandable language is the reasonable man's test of the standard of persons which the information is disseminated to.

2. **Right of Disclosure of prices of Goods and Services:**[41]

The prices of all goods and services must be displayed clearly so a consumer can take notice of it. An undertaking must also not require a consumer to pay a price higher than that displayed for the good or service.

[36]*Ibid.*, Part X (ss. 76 – 103).
[37]*Ibid.*, Part XII (ss. 92 – 87).
[38]*Ibid.*, Part XIII (ss. 104– 106).
[39]*Ibid.*, Part XIV (ss. 107 – 113).
[40]*Ibid.*, s. 114.
[41]*Ibid.*, s. 115.

3. **Right to Adequate Trade Description and to have Products Labelled:**[42]

A trade description is any description, statement or indication as to the number, quantity, and quality *i.e.* of goods. An undertaking is mandated to ensure that trade descriptions are applied to goods either directly, in close proximity or by any commercial communication and that they are labelled appropriately for the benefit of a consumer. An undertaking shall not supply a trade description which is misleading or likely to mislead a consumer or which is false.

4. **Right to Disclosure of Second-Hand or Reconditioned Good:**[43]

Any person who offers to sell goods that are second hand or have been reconditioned, rebuilt or remade must clearly notify the consumer of the nature of the goods.

5. **Right to be Given Adequate Information of Every Transaction:**[44]

A consumer must be provided with a written record of every transaction by the undertaking. This record should contain the business details of the undertaking, the full details of transaction, tax payable etc.

6. **Right not to be Given a Condition Before Making a Purchase:**[45]

A consumer must not be given a condition to fulfil first before entering into any transaction with the undertaking or a third party for the supply of goods and services.

7. **Right to Cancel Advance Reservation, Booking or Order:**[46]

The consumer reserves the right to cancel advance reservation, booking or order for goods and services. The supplier or service provider may require the consumer to pay a fee upon cancellation but such fee must be fair and not excessive, taking the transaction into consideration.

8. **Right to Reject Goods Before Completing the Transaction:**[47]

A consumer has the right to reject goods displayed in open stock before completion of the transaction.

9. **Right to Goods Corresponding with Samples and Descriptions:**[48]

Where a consumer cannot examine goods offered by a supplier and the consumer relies on the samples and description offered by the Supplier. Upon delivery of the goods, they must correspond in all material aspects with the sample and description offered by the supplier. This is especially relevant to e-commerce and internet marketing, goods displayed by vendors must correspond with the goods supplied to the consumer.

[42] *Ibid.*, s. 116
[43] *Ibid.*, s. 117.
[44] *Ibid.*, s. 118.
[45] *Ibid.*, s. 129.
[46] *Ibid.*, s. 120.
[47] *Ibid.*, s. 121(2).
[48] *Ibid.*, s. 121(3).

10. **Right to Reject/Return Goods:**[49]

A consumer has the right to reject and return goods in the three following instances: -

a) Where the goods are intended to satisfy a particular purpose which is communicated to the supplier and upon delivery, the goods are not fit for that purpose.
b) Where the consumer did not have the opportunity of examining the goods before purchase for example e-commerce and upon delivery the goods do not match the sample and/or description or they do not meet up to the quality and type envisaged in the sales agreement.
c) Where the goods are defective and unsafe.

Where a consumer returns goods in any of these circumstances the consumer is entitled to a full refund of money paid for the goods.

11. **Misleading, False, Fraudulent and Deceptive Information:**[50]

No producer, importer, distributor, retailer or service provider shall in pursuance of trade or for the purpose of marketing goods or services to a consumer make any representation which is misleading, erroneous, fraudulent and deceptive. Such a person shall also not use physical force, coercion, undue influence, pressure, harassment etc. to get a consumer to enter into a transaction for goods and services with him or take undue advantage of consumers with physical, mental or educational disabilities. Any undertaking that violates these rights of a consumer will be liable to the consumer for damages and restitution.

12. **Right Against Unfair Prices And Terms:**[51]

An undertaking shall not supply, offer to supply, market or negotiate goods and services to consumers in a manner and/or for prices that are unfair, unreasonable and unjust. The undertaking shall also not require waiving the consumer's rights or the consumer assuming the liability of the undertaking or assuming any obligation in a manner that is unfair or unjust.

13. **Notices Detrimental to Consumers:**[52]

Any notice which seeks to limit in any way the risk or liabilities of a supplier of goods or services, constitute an assumption of risk by the consumer, impose an obligation on the consumer to indemnify the supplier or is an acknowledgment of fact by the consumer must be brought to the attention of the consumer in a conspicuous manner and form that a reasonable man won't miss such a notice and the consumer must be given adequate opportunity to receive and comprehend the notice.

14. **Right to Quality Service:**[53]

A consumer who enters into any transaction for the performance of services has a right to timely performance, quality performance and completion of the service. The consumer also has a right to the use, delivery or installation of goods that are free from defects for the performance of the

[49]*Ibid.,* s. 122.
[50]*Ibid.,* s. 125.
[51]*Ibid.,* s. 127.
[52]*Ibid.,* s. 128.
[53]*Ibid.,* s. 130.

service. If there will be any delay in the performance of the service, then the consumer must be given timely notice. Failure of a provider of a service(s) to adhere to these rights of the consumer, the consumer will be entitled to have the defects remedied and a refund of a reasonable portion of the price paid for the service having regards of the extent of the failure.

15. **Right to Safe and Quality Goods:**[54]

Every consumer has the right to receive goods that are suitable for the purpose which they are generally intended (if the consumer has a specific purpose and has informed the supplier, they must be suitable for that purpose), be of good quality, free from defects. The goods must also be useable and durable for a reasonable period of time and comply with any applicable standards set by industry sector regulators. There is an implied warranty that all goods and services must comply with these requirements.

The foregoing rights can be ventilated before the Federal Competition and Consumer Protection Tribunal or before a Court of competent jurisdiction.

## 6.0 Consumer Protection vis-à-vis Other Specific/Sector Regulatory Authorities

Though the Federal Competition and Consumer Protection Act 2018 is now the principal, primary and superior legislation providing a general legal framework for consumer protection in Nigeria and for legal accountability of suppliers or service providers,[55] there are other specific-sector regulatory authorities which by virtue of their respective laws in addition to their primary responsibilities, have to protect the consumers of the goods and services in the sector. Although, the Federal Competition and Consumer Protection Act recognizes those other consumer protection legislations, rules and regulations, those other consumer protection legislations are to be read and applied with such modifications as are necessary to bring them *in tandem* with the provisions of the Federal Competition and Consumer Protection Act.[56] In so far as the Federal Competition and Consumer Protection Act applies to an industry or sector of an industry that is subject to the jurisdiction of another government agency by the provisions of any other law, in matters or conducts which affect competition and consumer protection, the Federal Competition and Consumer Protection Act shall be construed as establishing a concurrent jurisdiction between the Federal Competition and Consumer Commission and the relevant government agency, with the Commission having precedence over and above the relevant government agency.[57] The other specific regulators in Nigeria established or enabled by other consumer protection legislations include:

1. **Central Bank of Nigeria ("CBN"):**[58] Pursuant to the powers conferred it (CBN) by the Central Bank of Nigeria Act 2007 and the Banks and Other Financial Institutions Act 2020, the Central Bank of Nigeria issued the Consumer Protection Framework 2016, the Consumer Protection Regulations 2019 and the extant Consumer Protection Guideline to

[54]*Ibid.,* s. 131.
[55]*Ibid.,* s. 104.
[56]*Ibid.,* s. 164.
[57]*Ibid.,* s. 105(2).
[58]*The Central Bank of Nigeria Act 2007,* s. 2.

guide the effective regulation of consumer protection practices of financial institutions under the regulatory province of the Central Bank of Nigeria.

2. **Nigerian Communications Commission (NCC):**[59] The Nigerian Communications Commission as the regulatory authority of the Nigerian Communications including telecommunications industry/sector, is vested with powers to protect and promote the rights and interests of consumers of communication including telecommunication services.

3. **Nigerian Electricity Regulatory Commission (NERC):**[60]The Nigerian Electricity Regulatory Commission (NERC) is empowered by the Electric Power Sector Reform (EPSR) Act, 2005 to ensure an efficiently managed electricity supply industry that meets the yearnings of electricity consumers for stable, adequate and safe electricity supply. The NERC is empowered among other things, to: (a) that the prices charged by electricity supply/distribution licensees are fair to the consumer; (b) the safety, security, reliability and quality of service in the production and delivery of electricity to consumers.

4. **National Agency for Food and Drug Administration and Control (NAFDAC):** NAFDAC, an agency under the Federal Ministry of Health was established by the National Agency for Food and Drug Administration and Control Act[61] to *inter alia* ensure consumer protection by regulating and controlling the manufacture, importation, advertisement, distribution, sale and use/consumption of food, drugs, cosmetics, medical devices, chemicals and packaged water and beverages in Nigeria.

5. **Standards Organization of Nigeria (SON):**[62]The Standards Organization of Nigeria is established pursuant to Standards Organization of Nigeria Act 2015and is empowered to *inter alia* ensure that: locally manufactured products in Nigeria give the required degree of satisfaction to consumers; and products imported into Nigeria are safe and import conditions are met.

6. **National Broadcasting Commission (NBC):**[63]The National Broadcasting Commission is established by the National Broadcasting Commission Act[64] and as part of its regulatory role, it is vested with the responsibility of *inter alia*: 'receiving, considering and investigating complaints from individuals and bodies corporate or incorporate regarding the contents of a broadcast and the conduct of a broadcasting station'[65]

7. **Nigerian Civil Aviation Authority (NCAA):** Nigerian Civil Aviation Authority has regulatory oversight over the aviation industry in Nigeria and as part of its regulatory role, the Nigerian Civil Aviation Authority created a Consumer Protection Department which ensures that all consumers in the aviation industry obtain the best services in air transportation. The Nigerian Civil Aviation Authority also issued the Nigerian Civil

[59]*The Nigerian Communications Commission Act 2003,* s. 3.
[60]*Electric Power Sector Reform Act, 2005,* ss. 31 & 32.
[61]Cap. N1, Laws of the Federation of Nigeria 2004.
[62]*The Standards Organization of Nigeria Act 2015,* s. 1.
[63]*The National Broadcasting Commission Act 1992 (as amended), Cap. N11, LFN 2004*, s. 1.
[64]Cap. N11, Laws of the Federation of Nigeria 2004.
[65]*The National Broadcasting Commission Act 1992 (as amended), Cap. N11, LFN 2004*, s. 2(1)(f)

Aviation Regulations 2015, which broadly address consumer protection issues including compensation for denied boarding, delays and cancellation of flights.

## 7.0 Conclusion, Finding(s) and Recommendation(s)

It is the researchers' finding and conclusion that consumers in Nigeria including consumer of corporate services cannot really be said to be helpless because the relevant laws have made ample provisions for consumer protection, and for the legal accountability of corporate service providers.

There is therefore, no dearth of legal framework in Nigeria for consumer protection and for legal accountability of corporate service providers in Nigeria. The laws (the principal legislation and other relevant legislations) are in existence but the regulatory authorities (the Federal Competition and Consumer Protection Commission and other specific/sector regulatory authorities) have a lot of work to do in the aspect of discovering and/or rediscovering the relevant laws, rules and regulations, and going further to sensitize the consumers of their rights under those laws, rules and regulations. The Nigerian Bar Association should equally rise up to the occasion as a unique national association of lawyers who seek to promote the rule of law, and play her role in discovering, rediscovering and applying the relevant laws, rules and regulations relating to consumer protection and the legal accountability of corporate service providers. Judges should equally put on not only the robe of justice but also of judicial activism in this regard.

Conclusively, the opinion of Ukwueze which we concur with, remains apt that vide legislative intervention through the years:

> *legitimate rights of the consumer, has been recognized, which governments globally are required to guarantee and protect in legislations and policies. These include rights to satisfaction of basic needs, safety, choice, information, consumer education, redress, representation and healthy and sustainable environments. The jurisprudential rationale for protecting the consumer by means of law lies in the adjustment of the acknowledged imbalance in the relationship between the supplier of goods and services and the consumer, resulting in the vulnerability of the consumer to exploitation by supplier of goods and services*[66]

Striking a balance between the rights and interests of both stakeholders remain the challenge of a reformist legal order anchored on probity, service, transparency and ultimately accountability. Taking the lead in enforcing our various laws on Consumer Protectionism vis-à-vis these institutional or corporate service providers will make the legal profession redirect our apparently lawless society in "rediscovering law as a tool for social change" in Nigeria.

[66]FO Ukwueze, *op.cit.* p 133.