THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT OF NIGERIA: AN OVERVIEW

Egondu Grace Ikeatu (PhD)
Alex Iloba Uwadinma
Favour Onoriode Ebbah (PhD)

ABSTRACT

Consumer rights are those rights given to a consumer to protect him from being cheated by manufacturers of goods and services. This is achieved by consumer protection laws. Through the instrumentality of these laws, the government aims to protect the rights of consumers. There is a logical, moral, and political force in the proposition that consumers should have the right to take decision about the allocation of resources for their own needs. This research is an overview of the Federal Consumer and Competition Act of 2018 considering most especially, the provisions that contains the rights, protection and redress afforded consumers of goods and services in other to safeguard themselves against products which are unsafe for consumption, and which may cause serious injury. This research also aims at ensuring that there are adequate publications on this topic which aims at educating the general public on their rights and enforcement of those rights thereto. It also considers some of the lapses in the Act like the dilemma of enforcement of the rights of the consumer and proposes some recommendations to making the Act all-encompassing especially as regards who a consumer really is in order to ensure that the rights of the consumers are protected and enforced correctly and adequately.

Keywords: *Consumer Rights, Protection, Enforcement, Nigeria*

1. INTRODUCTION

1.1 Who is a consumer?

There is no universally acceptable definition for a consumer as different authorities and writers are divided as to the meaning of the term 'consumer.' A consumer has been defined as a person who purchases or offers to purchase goods or services for personal, family, household, or business purposes, except for a person who purchases or offers to purchase for resale or for the purpose of resupplying the goods or services.[1] A consumer has also been defined as the final or end user of all goods and services produced in an economy.[2]

From these definitions, it can be generally agreed that a consumer ought to include individuals, business, or non-profit organizations, as well as the government. The key characteristic from these definitions is that the consumer is the final user of the goods or services, irrespective of whether he or she is an individual or not.

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* Egondu Grace Ikeatu (PhD) is a Lecturer of Law in the Department of Jurisprudence and International Law, Admiralty University of Nigeria, Ibusa, Delta State. She is also a member of several professional bodies. She can be contacted via: Email: egonduikeatu@gmail.com.

** Alex Iloba Uwadinma is a Lecturer of Law in the Department of Jurisprudence and International Law, Admiralty University of Nigeria, Ibusa, Delta State. He is also a member of several professional bodies. He can be contacted via: Email: alle4smith@gmail.com.

*** Favour Onoriode Ebbah (PhD) is a Lecturer of Law in the Department of Public and Private Law, Admiralty University of Nigeria, Ibusa, Delta State. He is also a member of several professional bodies. He can be contacted via: Email: favourism4u@gmail.com.

[1] The Federal Competition and Consumer Protection Act 2018, Section 129

[2] O'Grady: Consumer Remedies 1982, 60 Canadian Bar Review (No. 4) p. 549

1.2 What are consumer rights?

Consumer rights can be said to be the legal and moral entitlements that protect consumers from unfair or deceptive business practices, ensuring that they receive fair treatment and value for their purchases. It is pertinent to point out that these rights were adopted by the United Nations General Assembly in 1985 and revised in 2015 as the United Nations Guidelines for Consumer Protection (UNGCP)

These rights, their protection and enforcement are some of the best things that have happened to humanity as there is an inequality of bargaining power between the consumer and the producer which leads to the exploitation of the consumer.[3] African and some developing countries have been the greatest victims. At international and regional levels, various instruments have been adopted to improve the lot of consumers which member States have made efforts to domesticate. All the same, producers of goods and services still flood the markets with toxic products which endanger human existence. Researchers and law makers globally have expended so much time and resources to see how best consumers can be protected and get the best as they access goods and services. Globally, judicial, and quasi-judicial institutions have been constituted and empowered to help consumers get redress when they suffer harm from the use of harmful products and services. Nigeria as a case study is not left out in terms of research, laws and channels through which consumers can be adequately protected.

At common law, the consumer has two channels for enforcing his consumer rights – under the law of contract in the existence of a contractual relationship: where the consumer can then enforce their rights by either suing the seller or manufacturer for breaching the terms of the contract , such as delivery of faulty goods or by relying on implied terms under the Sale of Goods Act, which implies certain conditions and warranties into contracts such as fitness for purpose and satisfactory quality[4] or under the law of torts: where the consumers can enforce their rights by either suing the manufacturer for negligence or for misrepresentation about the products. It should be noted that consumer rights are enforceable statutorily in Nigeria under the Federal Competition and Consumer Protection Act, Laws of The Federation of Nigeria, 2018[5] and under the various laws that made provision for them. The bottom line is that the rights of consumers are sacrosanct and as such consumers are to be treated like kings because they are the king of the market. This can only happen with proper recognition and the subsequent assurance of the enforcement of those consumers' rights.

Consumer protection is the practice of safeguarding buyers of goods and services, and the public, against unfair practices in the marketplace.[6] Consumer protection laws are designed to protect and promote consumer interest. Competition rules in Nigeria are made to promote healthy competition in Nigerian markets at all levels, by eliminating monopolies, prohibiting the abuse of a dominant market position, and penalizing other restrictive and destructive trade and business practices.

There are several reasons for Consumer Protection in Nigeria, and some of these reasons include:

1. To ensure that consumers have accurate information to make informed choices based on their preferences;
2. To make sure providers of goods and services observe all laws regarding safety and quality standards;

[3] B.W Harvey & D. L Parry: The Law of Consumer Protection and Fair Trading, 1996, London: Butterworths, pp.13-14.

[4] The Sale of Goods Act 1979, Sections 12-15

[5] Hereinafter referred to as the FCCPA

[6] 'Legal Regime for Consumer Protection and Competition in Nigeria' – S.PA. Ajibade & Co. https://spaajibade.com/1534-2/ Accessed on April 30th, 2024

3. To advance markets for products and services that operate transparently and efficiently to facilitate access and innovation;
4. To ensure restitution and compensation for buyers of defective goods/services;
5. To ensure that consumers get value for money spent; and
6. To promote fair competition through consistent enforcement of Federal consumer protection and competition laws.

2. THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT IN NIGERIA: AN OVERVIEW

The principal legislation which regulates and protects the rights of consumers in Nigeria is the Federal Competition and Consumer Protection Act, 2018. The FCCPA established the Federal Competition and Consumer Protection Commission (hereinafter referred to as the FCCPC)[7] and the Tribunal, to protect the interests and welfare of consumers by providing consumers with a wider variety of products at competitive prices and to prohibit unconscionable business practices. It promotes economic efficiency, consumer welfare and fair market competition by prohibiting anti-competitive practices, regulating, and protecting consumers from unfair and deceptive market and business practices.

The Act is applicable to all commercial activities within or having effect in Nigeria, on all government departments and state-owned corporations, and indeed all commercial activities aimed at making profit and targeted at satisfying demand from the public.[8] It is applicable extraterritorially to any prohibited conduct by a Nigerian citizen or a person ordinarily resident in Nigeria, a corporate body registered in Nigeria or carrying on business within Nigeria, any person supplying or acquiring goods or services into or within Nigeria, any person in relation to the acquisition of shares or assets outside Nigeria which results in the change of the business, part of the business or any asset of the business in Nigeria and aims at creating a level playing field for business and the protection of consumer rights.[9]

Prior to the enactment of the Act, the Consumer Protection Council Act 2004 (the CPA)[10] protected the rights of consumers in Nigeria and established the Consumer Protection Council (CPC). The FCCPA repealed the CPA[11] and the FCCPC assumed all the rights, powers, and functions of the CPC. To aid the FCCPC in discharging its functions and duties, the FCCPA empowered the FCCPC to make rules and regulations for the effective implementation and operation of the provisions of the Act.[12]

Other relevant legislations for the regulation of consumer goods/services include the Standard Organization of [13]Nigeria Act, the National Agency for Food Drugs Administration and Control Act,[14] the Quality-of-Service Regulation,[15] the Utilities Charges Commission (Amendment) Act,[16] Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act,[17] to mention but a few.

It is noteworthy that the FCCPA provides that the provisions of the Act shall override the provisions of any other law in all matters relating to competition and consumer protection,

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[7] The FCCPA, Section 3
[8] The FCCPA, Section 2
[9] The FCCPA, ibid
[10] Cap C25 LFN 2004
[11] The FCCPA, Section 165
[12] The FCCPA, Section 163
[13] 2015
[14] Cap N1, Laws of the Federation of Nigeria, 2004
[15] 2013
[16] 2016
[17] Cap C4, Laws of the Federation of Nigeria, 2004

subject to the provisions of the Constitution of the Federal Republic of Nigeria.[18]

The FCCPA is divided into 18 parts with 168 sections and is the primary consumer protection enactment in Nigeria that outlines and seeks to protect consumer rights. One of the key objectives of the FCCPA is to protect and promote the interest and welfare of consumers by providing consumers with wider variety of quality products at competitive prices.[19]

By the long title of the FCCPA, the Consumer Protection Council Act which was previously the primary legislation that focused on consumer rights protection has been repealed. Also, the enactment of the FCCPA established[20] the Federal Competition and Consumer Protection Commission which replaced the Consumer Protection Council. The FCCPA also recognized several consumer rights that can be protected and enforced on behalf of consumers in Nigeria. Some of these rights include but are not limited to the following:

Consumer's right to information in plain language

The Act requires a producer of any consumable good or of a service, to make a clear and accurate representation of the goods or services offered in a clear language that is direct and unambiguous either through documents, notices, adverts, or any other means. The producer is allowed to use illustrations or headings to give examples of the visual representations.[21]

Right to disclosure of goods and service prices

A vendor is required by law, when displaying goods for sale, to ensure that the price of the goods is also adequately and clearly displayed. According to section 115(2) of the FCCPA, price is adequately displayed when the currency of the Federal Republic of Nigeria is displayed in writing, stamps, or annexed to the goods or covering of the goods or services.

Labelling products and trade description

It is unlawful for an undertaking[22] to knowingly apply to goods a trade description that is likely to mislead consumers in regard to any matter implied or expressed in the trade description or alter, deface, cover, remove or obscure a trade description or trademark applied to any goods in a way calculated to mislead consumers.[23]

Disclosure of reconditioned or second-hand goods

An undertaking that offers or agrees to supply used or refurbished goods must attach a conspicuous notice stating the condition of the goods. For instance, if the goods have been rebuilt or reconditioned, a clear notice should be attached saying so.[24]

Sales record

By virtue of section 118 of the FCCPA, an undertaking should provide a written record of each transaction to a consumer except where it is impracticable. An example of such a written record is a receipt of purchase or an invoice. The sales record should include details such as the vendor's name or registered business name, address, the date of transaction, description or name of goods sold, the unit price and quantity and total price before tax, amount of tax and total price including taxes.

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[18] The FCCPA, Section 104
[19] The FCCPA, Section 1 (c)
[20] The FCCPA, Section 3
[21] The FCCPA, Section 114; UBA PLC v. Oyewole (2008) 16 NWLR (pt. 1113) 341
[22] In this context, an undertaking refers to a commitment, promise, or guarantee made by a manufacturer or seller to a consumer. It can be express or implied, stating that what the consumer expects of the goods or services, is what they will get.
[23] The FCCPA, Section 116
[24] The FCCPA, Section 117

Consumer's right to select a supplier

An undertaking shall not require, as a condition of offering to supply or supplying any goods or services, or as a condition of entering into an agreement or transaction, that a consumer shall buy any goods or services from that undertaking or a third party unless the vendor can demonstrate that such condition would be of convenience or benefit to the customer.[25] One of the purposes of forbidding such conditions is to prevent anti-competitive agreements and conducts.

Right to cancel an advance reservation booking of order

A consumer has the right to cancel any advance booking reservation or order for any goods or services, subject to a reasonable cancellation fee of the order or reservation by the supplier or service provider.[26]

Right of consumers to choose or examine goods

Where goods are displayed openly by a supplier, the consumer has the right to choose and reject any item displayed before the transaction is completed. Where a consumer has agreed to purchase goods solely on the basis of a description or sample, or both provided by a supplier, the goods delivered to the consumer should in all material respects and characteristics, correspond to what an ordinary alert consumer would have been entitled to expect based on the description, or on a reasonable examination of the sample. A consumer is not liable for damage to goods displayed by the supplier except where such goods were damaged by the consumer's action which amounts to gross negligence, recklessness, malicious behaviour, or criminal conduct.[27]

Consumer's right to return goods

The right to return goods is one of the most useful consumer rights in Nigeria and it is also a right that many consumers are not aware of. A consumer has the right to return delivered goods within a reasonable time if the goods are incapable of being used for the required purpose for which they were bought. By virtue of section 122(1) (a) of the FCCPA, such required purpose must have been communicated to the supplier. A consumer also has the right to return goods that do not correspond with description, sample or the type and quality reasonably contemplated in the sales agreement.[28]

Right to fair dealings

It is unlawful for an undertaking or its representative to apply physical force or harass a customer or a potential consumer when goods are being marketed, supplied, or negotiated. This also applies when an undertaking is demanding payment from a consumer. It is unlawful for an undertaking or its representative to knowingly take advantage of a potential consumer's 'mental disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor'.[29]

False or deceptive misrepresentation

It is unlawful for an undertaking or its representative to either directly or indirectly by words or conduct mislead a consumer as to the representation of material facts in respect of goods or

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[25] The FCCPA, Section 119
[26] The FCCPA, Section 120
[27] The FCCPA, Section 12
[28] The FCCPA, Section 122 (1) (b)
[29] The FCCPA, Section 124

services.[30]

Right pertaining to quality of goods and services
When a vendor is performing a service or installing goods the customer has a right to receive quality goods or services.[31] If the undertaking fails to render quality service or uses goods with defects, the consumer has the right to demand a remedy or a refund.[32]

Consumer's right to safe and quality goods
Every consumer has the right to receive goods that are suitable and durable.[33] This right entails that a manufacturer owes a duty of care to ensure that their goods are safe for use by the ultimate consumer.[34] This was further reiterated by the Supreme Court in the case of Longe v. First Bank of Nigeria Ltd.[35]

3. AN OVERVIEW OF SOME SELECTED PROVISIONS OF THE FCCPA

Part 3 of the FCCPA spells out the functions and powers of the Federal Competition and Consumer Protection Commission in sections 17 and 18, respectively. Part 7 of the Act establishes the Competition and Consumer Protection Tribunal.[36] The Competition and Consumer Protection Tribunal is vested with jurisdiction to hear appeals from or to review decisions of the Federal Competition and Consumer Protection Commission; appeals from or review of decisions of authorities exercising powers with respect to regulated industries under the Act on competition and consumer protection related matters; and make orders arising from the Tribunal's exercise of its functions.[37] The Tribunal is headed by a Chairman.[38] Matters from the Tribunal can be taken to the Federal High Court for enforcement only[39] but appeals from the rulings, awards and judgments of the Tribunal lie directly with the Court of Appeal.[40] In the first quarter of 2021, the Governing Council of the Federal Competition and Consumer Commission and the Competition and Consumer Protection Commission Tribunal were inaugurated to boost the activities of the Commission with Hajia Saratu Shafii appointed as the Chairman of the Tribunal.[41] Presently, other members of the tribunal working with the Chairman are George Mbonu for the South-East, Thomas Okosun for the South-South, Umar Duhu for the North-East, Ibrahim El-Yakubu for the North-West, Sola Salako-Ajulo for the South-West and Kenneth Gyado for the North-Central.

Part 15 of the FCCPA outlines consumer rights that are enforceable on behalf of consumers in Nigeria. Part 16 of the Act spells out the duties of manufacturers, importers, distributors and suppliers of goods and services in the best interest of consumers.

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[30] The FCCPA, Section 125
[31] The FCCPA, Section 130
[32] Ojukwu v. YR Suleiman & Sons Ltd (2001) 12 NWLR (pt.727) 303; Nwakuche v. Fidelity Bank PLC (2015) 15 NWLR (pt. 1483) 1
[33] The FCCPA, Section 131
[34] Donoghue v. Stevenson (1932) AC 532
[35] (2010) 6 NWLR (pt. 1189) 1 SC
[36] The FCCPA, Section 39
[37] The FCCPA, Section 47 (a) – (d)
[38] The FCCPA, Section 48
[39] The FCCPA, Section 54 (b)
[40] The FCCPA, Section 55
[41] Ojeme V. 'FG Inaugurates FCCPC Governing Board, Consumer Protection Tribunal' Retrieved from https://www.vanguardngr.com/2021/03/fg-inaugurates-fccpc-governing-board-consumer-protection-tribunal/ on April 30th, 2024.

4. EXEMPTION CLAUSES UNDER THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT

The FCCPA contains some provisions which prohibit the inclusion of exemption clauses in contracts with consumers. Section 127 prohibits undertakings from contracting with consumers on terms that are unfair, unreasonable, or unjust. In addition, section 141 prohibits evasion of liability by means of a secondary contract. A person is not bound by any contract term prejudicing or taking away the person's rights arising under, or in connection with the performance of another contract, as far as those rights extend to the enforcement of another's liability which this Act prevents that other from excluding or restricting.[42] The prohibited acts are listed as follows:

a. The exclusion or restriction of any liability;
b. Making any liability or its enforcement subject to restrictive or onerous conditions;
c. Excluding or restricting any right or remedy in respect of the liability or subjecting a person to any prejudice in consequence of the person pursuing any such right or remedy; and
d. Excluding or restricting rules of evidence or procedure.[43]

Section 137 (1) provides that in the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage arises from the goods proving defective while in the consumer use or results from the negligence of an undertaking concerned in the manufacture or distribution of the goods, liability for the loss or damage cannot be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods.

Furthermore, section 138 prohibits the exclusion of certain obligations implied by law. As against a person dealing as a consumer, liability for breach of the seller's implied obligations as to conformity of goods with description or sample, quality, or fitness for a particular purpose, shall not be excluded or restricted by reference to any contract term.

A similar exclusion is made by section 144 with regard to services. It provides:

1. Where a right, duty or liability would arise under a contract for the supply of a service, it may be negated or varied by express agreement or by the course of dealing between the parties or by such usage as binds both parties to the contract provided that an express term does not negate a term implied by this section unless it is inconsistent with it.
2. A supplier of service shall not, while dealing with a consumer, exclude or restrict its liability for breach of any term implied under sections 142(3) and 143 of this Act.
3. Nothing in this section shall prejudice any rule of law which imposes on the supplier a duty stricter than that imposed by section 143 of this Act.

The above provisions can be utilized by the courts in the interpretation of exemption clauses in contracts thereby reducing the burden of strained judicial intervention.

5. ENFORCEMENT OF CONSUMER RIGHTS UNDER THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT

By virtue of section 146 of the FCCPA, a consumer can enforce his/her rights in a transaction or agreement in the following ways:

1. By referring the matter directly to the undertaking that supplied the goods or services.
2. The consumer can refer the matter to the applicable industry regulatory body within the jurisdiction if the undertaking is subject to the jurisdiction of the regulator.
3. A complaint can be filed directly with the Commission. However, a distressed consumer can directly approach a court within appropriate jurisdiction to seek redress. The

[42] The FCCPA, Section 141 (1)
[43] The FCCPA, Section 141 (2)

available remedies include penalties/fines, monetary restitution, or compensation for the aggrieved consumer and or term of imprisonment for the defaulting party.

In my opinion, the above-mentioned section of the FCCPA is inadequate in ensuring the enforcement of the provisions of the Act. There is a vagueness in some of the provisions of the FCCPA that would lead to an inconsistent application of the Act. The Act also does not provide for sufficient penalties to deter violations by manufacturers and sellers, neither does it take into cognizance, the need to streamline the powers of the Commission with respect to sector-specific goods and services. If it had, it would have incorporated the very important requirement of having sector-specific regulatory agencies which would help checkmate the excesses of some manufacturers and sellers of goods and services in those sectors. The unavailability of most of these issues being addressed by the Act, has led to there being a dearth in the reported cases of consumers legally seeking redress for an infringement of their rights in Nigeria.

Worthy of note however, is the inherent power of the FCCPC to investigate and prosecute consumer protection cases as well as any violations of the provisions of the FCCPA.[44]

6. CONCLUSION AND RECOMMENDATIONS

Since the FCCPA was passed into law in January 2019, the regulatory landscape of Nigeria's competition and consumer protection regime has been greatly improved. Citizens have more confidence in demanding respect for their rights and the Commission by extension also has been very responsive in instilling and enforcing consumers' rights and stabilizing competition in the Nigerian economy. The FCCPA is an interwoven legislation encompassing competition law, consumer rights, consumer protection, product liability, misleading advertisement, and other unfair trade practices. The Act is laudable in that it went a long way to bring to the limelight the need to enable competition as a veritable tool for the protection of Nigerian consumers and stated unconscionable acts of which redress that could be sought over within the ambits of the law. However, there are unsettled issues arising from the operation of the Act, for instance, the supremacy provision under section 104 of the Act. Furthermore, the definition of 'consumer' under the Act is also quite narrow. It also excluded individual online consumers and corporate consumers from its definition which is should not be so. The definition of a consumer under the Act should be made broader to include all these dimensions. The penalty provisions appeared not to be deterrent enough and the time limitation for bringing an action is also too short and the penalty provisions under the Act lack sufficient deterrent value. This researcher, after an overview of the FCCPA, recommends that at the earliest opportunity of an amendment, there is a need to streamline the limits of the powers of the Commission with respect to sector-specific regulatory agencies while clarifying the guidelines and interpretations of the provisions of the Act for a better understanding by the users of the Act, manufacturers, sellers and consumers alike. This would clear up any vagueness therein. The term' consumer' should also be given a wider interpretation and definition so as not to exclude important end users of products and services. The time limitation for action pursuant to the FCCPA should be expanded to include a reasonable and objective timeframe from the date of the accrual of the cause of action. Also, it is recommended that the penalty provisions of the FCCPA should be reviewed upward so as to increase its deterrent value. That way, the rights of the consumers would be better protected and vendors who are prone to breaching the clauses of the FCCPA would be deterred from doing so. Furthermore, there is a need for an even greater awareness that should get to the grassroots to ensure that the average Nigerian knows that as a consumer, he has the right to legally ensure that his rights are not infringed upon and if they are, he can

[44] The FCCPA, Section 43

seek redress to correct same. This can be done via grassroots consumer education where a 'door-to-door campaign' and would see to an adequate education of these consumers' rights and the attendant consequences of infringing on them.