

## Towards the effective protection of consumers in E-commerce transactions in Nigeria

**Damilola Sawyerr**

Department of International Law, Nigerian Institute of Advanced Legal Studies, University of Lagos, Akoka, Yaba, Nigeria

### Abstract

Electronic Commerce (E-Commerce) is one of the most distinct feature of the internet as it provides people with the option of purchasing items without delay. E-commerce has fast developed in Nigeria so much that people purchase almost everything via the internet from clothing, to electronics to groceries among others. This development has engendered the need to protect consumers conducting complex transactions in the cyberspace. Unfortunately, in spite of the huge online market in Nigeria and the high number of transactions conducted daily online by consumers, there is presently no legislation which directly addresses consumer rights and protects the interests of consumers in online transactions. The paper focuses on the problems associated with online transactions and the need for the protection of rights of consumers in electronic transactions, as the Federal Competition and Consumer Protection Act which is the legal framework for the protection of consumer rights in Nigeria does not specifically offer protection to consumers in E-Commerce transactions.

Recommendations for further education of consumers on the importance of safe online transactions and knowledge of available remedies will improve consumer and investor confidence in the e-commerce market, while the enactment of the Electronic Transaction Bill into law will further boost confidence in E-Commerce transactions in Nigeria.

**Keywords:** E-Commerce, business transaction, consumer protection, investor confidence

### 1. Introduction

The growth and development in the internet has brought about changes in the way business transactions are conducted. Innovations in Information Technology (IT) have increased the possibilities on how complex commercial transactions can be conducted in the virtual market of the cyberspace in the comfort of living rooms and offices.<sup>1</sup> The information revolution has brought about great changes in the way purchases are made. Consumers make purchases via the internet as it is faster, easier and it also makes it possible to compare prices among buyers within a short span of time. This development has made businesses and consumers resort to this convenient and fast way of performing transactions.

Regardless of the significant advantages associated with online transactions, the consumer is left to decide on how to ensure that the fast and convenient transactions conducted do not literally 'end in tears'. The consumer is left to decide on the choice of goods and services based on the quality of information given by the vendor, this decision is usually based on pictures and description of goods as compared to a consumer who actually goes to the store or service provider to examine the goods and also see the service provider. This is where the challenges arise: vendors can give false or exaggerated description of goods; after engaging in the online transaction, the consumer may find it difficult or impossible to get a refund on the goods or services purchased which are not satisfactory; there are no appropriate channels to register complaints related to online transactions and; there are uncertainties in the method of resolving disputes between sellers and the consumers as well as the issue of data protection of consumers.

There is therefore the need for the promotion of consumer confidence in e-commerce so as to aid the development of e-commerce in Nigeria.

To this end, paper focuses on the problems associated with protecting consumers in electronic transactions and proffer solutions for a better and more satisfying e-commerce transactional experience, as there are several challenges that come with online purchases in relation to consumers.

Aside the introduction, the paper is divided into five parts, the first part gives a conceptual definition of terms used in the paper. The second part considers the challenges consumers encounter in e-commerce transactions from pre-purchase to post-purchase period of transactions. The third part takes a look at the importance of protecting consumers in e-commerce transactions in Nigeria and the legal and regulatory framework for e-commerce in Nigeria. The fourth part considers international cooperation on the regulation of e-commerce transactions and also examines the South Africa Electronic and Communications and Transactions Act (ECTA) 2002 which is the Law that facilitates electronic communications and transactions in South Africa and the paper draws recommendations from the ECTA and ends with a conclusion.

### 2. Definition of Terms

#### 2.1 Consumer

The term '*consumer*' means different things in different circumstances.<sup>2</sup> Generally, a '*consumer*' has been defined as a person who has been supplied or attempted to be supplied goods, services or credit by another in the course of a business undertaken by him.<sup>3</sup>

<sup>1</sup> Organisation for Economic Co-Operation and Development, *21st Century Technologies: Promises and Perils of a Dynamic Future* (OECD1998)

<sup>2</sup> Geraint Howells and Thomas Wilhelmsson, *EC Consumer Law* (1st, Ashgate, Dartmouth 1997)2.

<sup>3</sup> John Mickleburgh, *Consumer Protection* (Professional Books 1979) 3

Black's Law dictionary defines a consumer as "a person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes".<sup>4</sup>

John F. Kennedy, in a special message to the United States Congress on protecting the consumer interest in 1962, defined consumers by stating that:

*"Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision."*<sup>5</sup>All humans can invariably be referred to as consumers and consumption is necessary for humans to survive and endure.<sup>6</sup>

The repealed Consumer Protection Council Act (CPCA) 1992 provides that a consumer means an individual who purchases, uses, maintains or disposes of products and services.<sup>7</sup> However the newly enacted Federal Competition and Consumer Protection Act (FCCPA) has given a broader definition as to who a consumer is. Section 167 of the Act defines a consumer as "any person (a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or (b) to whom a service is rendered."

In the words of Kanyip, a consumer is "the hirer, the buyer, the patient, the client, the sailor, the hotel guest, the bank customer, the insured or policy holder and indeed all end users of goods and service".<sup>8</sup>

Akomolede and Oladele define a consumer as "any person who purchases or is supplied goods or uses or consumes goods and services at the end of the chain of production".<sup>9</sup>

However, for the purpose of this paper, the definition adopted is one given by Akomolede's which covers a person who purchases goods for private use or consumption as well as anyone who consumes goods and services at the end of the chain of production.

## 2.2 Electronic Commerce

There are several definitions of the concept. According to Reed, it is difficult to determine a definition for e-commerce because "the technology is so flexible that a wide variety of commercial activities are possible".<sup>10</sup>

Electronic Commerce has been defined as the process of conducting business electronically among various entities in order to satisfy an organizational or individual objective.<sup>11</sup>

Andreaa defines electronic commerce as the purchase or

sale activity through the internet which involves the exchange of goods and services between the seller and the buyer. It can also be defined as the process of sale and purchase of products, services and information.<sup>12</sup>

Electronic commerce is one of the most important features of the internet. It permits online real time purchase of goods and services without limitation as to time and distance.<sup>13</sup>

According to the World Trade Organization (WTO) Work Programme on Electronic Commerce, "Electronic Commerce is the production, distribution, marketing, sale or delivery of goods by electronic means".<sup>14</sup>

Organisation for Economic Co-operation and Development (OECD) defines E-commerce transaction as "the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders".<sup>15</sup>

E-commerce involves a variety of deals settled via variety of devices, and purchases made utilising software and computer programmes. E-commerce covers a number of transactions; however, the focus of this paper is business-to-consumer e-commerce transaction.<sup>16</sup>

## 2.3 Business to Consumer (B2C) E-Commerce Transaction

Business to Consumer (B2C) ecommerce transaction is a type of transaction which involves businesses selling directly to the consumers. The Business can connect directly to the consumer without an intermediary and the consumer can also compare prices before making a purchase on the platform.<sup>17</sup> Examples of such platforms in Nigeria are Jumia, Konga and Deal-dey etc.

In a business to consumer transaction, on one hand, the seller puts products for sale online and also accepts the orders made by consumers online. On the other hand, the consumer uses the internet to assess the products and purchases the product online. The form of payment is prescribed by the seller which could be via credit card, bank transfer, electronic money or cash on delivery. The final step is the delivery of the purchased item(s), either to an address specified by the customer, or at a pick-up location agreed by the seller and buyer, and in some instances where the product purchased is a digital content it is delivered online to the buyer.<sup>18</sup>

## 3. Reoccurring Consumer Protection Issues in E-commerce

According to a research carried out by United Nations Conference on Trade and Development (UNCTAD) on consumer protection in e-commerce transactions, which was conducted through consumer protection agencies in

<sup>4</sup>Bryan A. Garner, *Black's Law Dictionary* (8<sup>th</sup>, Thomson West 2004)335

<sup>5</sup> John F. Kennedy: 'Special Message to the Congress on Protecting the Consumer Interest' March 15th, 1962 Online by Gerhard Peters and John T. Woolley, the American Presidency Project.

<<https://www.presidency.ucsb.edu/documents/special-message-the-congress-protecting-the-consumer-interest> >accessed 28 May 2020.

<sup>6</sup> Muhammad Akbar Khan, 'The Role of the Islamic State in Consumer Protection' [2011] *PJIR* 31, 44

<sup>7</sup> s. 32

<sup>8</sup> Kanyip, B. B., *Consumer Protection in Nigeria: Law, Theory and Policy* (Rekon Books Ltd 2005)

<sup>9</sup>Akomolede T.I. and Oladele P.O., 'Consumer Protection in a Deregulated Economy: The Nigerian Experience' (2006) 3 *Research Journal of International Studies*13-23.

<sup>10</sup> Chris Reed and John Angel, *Computer Law: The Law of Regulation of Information Technology* (6th, Oxford University Press, Oxford 2007) 198.

<sup>11</sup> A. Gunasekaran et.al, 'E-commerce and its impact on operations management' (2002) 75 *Int. J. Production Economics* 75, 186

<sup>12</sup> Nicoleta Andreaa, 'Consumer Protection in Electronic Commerce', (2016)Series V 9(58) No.1 NEACŞU Bulletin of the Transilvania University of Braşov,302

<sup>13</sup> Ibid

<sup>14</sup> WTO, *Electronic Commerce* (MC11Brief 2017)

<sup>15</sup> See <<http://stats.oecd.org/glossary/detail.asp?ID=4721>> accessed 20 May 2018

<sup>16</sup> United Nations Conference on Trade and Development, 'Consumer Protection in Electronic Commerce' Note by the UNCTAD secretariat, TD/B/C.I/CPLP/7 (2017) 2

<sup>17</sup> Oluwaseun Ibikunle, 'E-Commerce in Developing Nations: Issues and Challenges. Consumer Attitude in the Nigerian Market' Unpublished Thesis (2013) 10

<sup>18</sup> United Nations Conference on Trade and Development, 'Consumer Protection in Electronic Commerce' Note by the UNCTAD secretariat, TD/B/C.I/CPLP/7 (2017) 2

developing countries around the world.<sup>19</sup> It was discovered that consumers in developing countries such as Nigeria face challenges in e-commerce transactions during the pre-purchase, purchase and post-purchase stages of transactions.

### 3.1 Pre- Purchase

One of the problems faced by consumers is the imbalance of information as a result of the unstable internet which can be weak, slow and unreliable. Another is the complicated terms and conditions that consumers may find difficult to access or construe or have time to look through. This makes consumers susceptible to misleading and deceptive behaviour by sellers. Consumers should have precise details of the products and seller of the product before supply is made to the consumer. Often times, it can be challenging to identify and locate the provider of a product online,<sup>20</sup> that is why is it important for regulations to be in place to ensure that sellers mandatorily put their location and address when advertising their products online to prospective buyers.

The OECD general principles on consumer protection in e-commerce recommends that online communications should be plain, correct, understandable and clearly visible to consumers so that they can make informed decisions regarding transactions.<sup>21</sup>

Unfair commercial practices impact the bargaining power of consumers in ascertaining the quality and choice of products because of the use of aggressive marketing techniques, using false reviews by representing themselves as consumers in posting reviews and false misleading comments about products to influence consumer's decision.<sup>22</sup> Some traders even mislead consumers by providing deceptive information by amplifying the quality of their products or services at low prices over competing traders who sell better products or even at higher prices for less quality goods and services.<sup>23</sup> There have been several complaints by consumers in Nigeria on social media who purchased certain goods online which looked terrific but when the goods arrived, it looked nothing like the goods advertised or were delivered with defects.

### 3.2 Purchase

The challenges consumers encounter does not end after the pre-purchase period. Consumers still encounter a number of challenges at the time of purchase. Some of these challenges are unfair conditions in contracts, no refund policy, security of payments made online and protection of customer's data.<sup>24</sup>

The terms and conditions stipulated in a contract determines the rights and duties of the parties and the parties are required to fulfil the terms in the contract. In Nigeria, most online merchants have standard terms of contract which is more favourable to the seller who has a stronger bargaining position which the consumer is forced to accept if they are

interested in goods advertised

Contracts may be formed online via the exchange of email between the buyer and the seller which consists of an offer and acceptance. Contracts may also be formed online via websites which is the focus of this paper.<sup>25</sup> For example an online store can put up goods and services for sale on its website and the customer clicks on it. Basically, online contracts may be either unilateral or bilateral. A contract is unilateral where there is no negotiation between the parties, it is only one party usually the vendor who initiates the action and leaves any member of the public to accept or not. However, in a bilateral contract the parties start by negotiating and finally there is a meeting of mind (*consensus ad idem*) and are then bound by their agreement.<sup>26</sup>

An electronic contract is valid and enforceable in Nigeria. The 2011 Evidence Act recognises electronic documentary evidence as proof of electronic transactions and the use of electronic signature for the authentication of electronic contracts.<sup>27</sup>

#### 3.2.1 Online payment security

Online and mobile payments are "payments made using the internet and computers or mobile devices, through an existing personal account, normally a bank account, credit card or debit cards, or a payment service provider".<sup>28</sup> The use of mobile devices by consumers to make payments online has been expanding alongside technological developments. However, online and mobile payment poses a lot of risk for consumers. Consumer data may be accessed by unauthorised third parties without the knowledge and consent of the consumer. Some of the challenges faced in Nigeria are: delayed authentication or verification of payment, network barriers between banks which may result in failed payment transactions.<sup>29</sup> A number of these problems are as a result of poorly developed internet networks.

#### 3.2.2 Data protection and privacy

Online shopping involves biometric registration such as name, address, and debit or credit card number.<sup>30</sup> The use of bank cards for payment when buying online has increased the ease of access to the collection and trading of the personal information of consumers by providers and intermediaries. Personal data of consumers is important for the growth of companies who work online as it enables the company to have a full information of the online market and aids the profiling of individual consumers. The major challenge and concern by consumers when it comes to the privacy and protection of their data, is how the gathered data is utilised and what to do in the event such data gets into the

<sup>19</sup> *ibid*

<sup>20</sup> United Nations Conference on Trade and Development, 'Consumer Protection in Electronic Commerce' Note by the UNCTAD secretariat, TD/B/C.I/CPLP/7 (2017) 5

<sup>21</sup> OECD, Consumer Protection in E-Commerce: OECD Recommendation 2016

<sup>22</sup> United Nations Conference on Trade and Development, 'Consumer Protection in Electronic Commerce' Note by the UNCTAD secretariat, TD/B/C.I/CPLP/7 (2017) 5

<sup>23</sup> *ibid*

<sup>24</sup> *ibid* p.7

<sup>25</sup> Edwin Obimma Ezike, Online Contracts in Nigeria –An Overview, (2013) 11 *Nig. J. R.* 57

<sup>26</sup> *Best (Nig) Ltd V. Blackwood Hodge NIG LTD & ANOR, (2011) LPELR-776(SC)*

<sup>27</sup> Sections 84, 258(1) which Act

<sup>28</sup> United Nations Conference on Trade and Development, 'Consumer Protection in Electronic Commerce' Note by the UNCTAD secretariat, TD/B/C.I/CPLP/7 (2017) 7

<sup>29</sup> *ibid*

<sup>30</sup> Michael Dugeri, 'Bridging the Gap Between E-Commerce and The Need for Consumers' Data Privacy', (2015) Austen-Peters & Co. Business Law Digest

possession of fraudulent persons.<sup>31</sup>

Consumers should be able to decide on how and where their personal data is used, to prevent fraud and abuse of their personal information.

### 3.3 Post-purchase

In Nigeria, after goods have been purchased there are challenges when it comes to returning of goods, and the consumer getting a refund when the goods are undelivered, defective or different from the ordered item. At times consumers can buy goods and change their minds about the need for the goods.<sup>32</sup> Whatever may be the reason for the consumer's desire to return the goods or seek a refund, a consumer should be able to easily contact the seller and resolve issues. However, consumers may have difficulties reaching providers or communicating with the seller/business who are mostly not interested in satisfying consumers and may not want to hear the consumer out, with most resorting to blocking such customer's access to them.<sup>33</sup> Consumers can be protected during this period by providing a "cooling off period" for purchases conducted online.<sup>34</sup> Cooling off period "is the right of the consumer to cancel a contract".<sup>35</sup>

For example, section 16 of the South African CPA provides that a consumer can return the goods; cancel the contract without penalty; and receive a full refund for a period of five days after receiving goods bought as a result of direct marketing, however, the consumer must pay the cost to return the goods to the seller.

Although section 122 of the FCCPA gives the consumer the rights to return goods, it does not provide a specific time frame as to when goods delivered or purchased can or should be returned.<sup>36</sup>

When disputes arise whether domestic or cross border, consumers should have access to fair, easy, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden.<sup>37</sup>

## 4. Protecting Consumers in E-commerce Transactions in Nigeria

The internet has become a place for consumers to buy goods and services and for that reason, it is injudicious to encourage the development of e-commerce without establishing a legal framework for consumer transactions.<sup>38</sup> This is because the consumer is at the receiving end of the transaction and can be exploited by the seller or vendor, as a result of this, many developed countries have shown

concern about consumer protection.<sup>39</sup> In Europe there are several legal frameworks that protects consumers in both online and offline settings. Nigeria on other hand still grapples with offering consumers the required protection. Consumer protection is an essential component of legal infrastructure which are meant to make laws work effectively for the growth of e-commerce as it regulates and governs e-commerce issues.<sup>40</sup>

There is the need for consumers to have confidence when making transactions online. This does not only benefit consumers but also has economic benefits. There are still many e-commerce websites that do not offer sale or delivery of goods to the country this is as a result of lack of confidence in the legal regime as it relates to e-commerce so as to facilitate the conduct of domestic and international transactions online and protection of both for all users of e-commerce.

Many suggestions have been made in respect of ways in which consumer confidence can be promoted in e-commerce such as<sup>41</sup>:

*"establishing a good Internet infrastructure for e-commerce; setting up a robust legal and institutional framework governing e-commerce and redress processes; adapting existing regulatory systems to the particular requirements of e-commerce; ensuring effective enforcement of relevant laws; providing e-commerce consumers with a level of protection not less than that afforded in other forms of commerce; Requiring full disclosure of all necessary information related to businesses, goods and services and transaction; Ensuring the reliability and security of online payments regardless of the payment method, and protecting consumer privacy and data; Preventing misuse of consumer data; Guaranteeing authenticity of online reviews and ratings; Providing consumers with access to effective dispute resolution mechanisms and redress; Ensuring consumer education and empowerment; Ensuring the delivery of goods and after-sale services; Improving customer support to fully respond to after-sale requests; Ensuring regional and international cooperation to fight unfair commercial practices and to overcome legal limitations impeding consumer protection authorities from taking action in the event of cross-border breaches of consumer protection law".*<sup>42</sup>

The Oxford Business School also suggests that it should be a requirement that the seller discloses the physical address of the online business so that in the event that a consumer complains about the goods purchased, the complaint can be addressed.<sup>43</sup>

All these suggestions are valid and relevant, however, the legal regime applicable in Nigeria for e-commerce has made it difficult for consumers to adequately get the desired protection from regulatory agencies and this has been a major challenge.

<sup>31</sup> United Nations Conference on Trade and Development, 'Consumer protection in electronic commerce' Note by the UNCTAD secretariat, TD/B/C.I/CPLP/7 (2017) 8

<sup>32</sup> *ibid*

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*

<sup>35</sup> Pathak Akhileshwar, 'Cooling-off and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directive.' (2016) *Vikalpa*, 41(1)

<<https://journals.sagepub.com/doi/full/10.1177/0256090916632080#>> accessed June 20 2020.

<sup>36</sup> "Within a reasonable time"

<sup>37</sup> United Nations Conference on Trade and Development, 'Consumer Protection in Electronic Commerce' Note by the UNCTAD secretariat, TD/B/C.I/CPLP/7 (April 2017)10

<sup>38</sup> Clive Gringas, *the Law of the Internet* (1st, Butterworths, London 1997) 55.

<sup>39</sup> Ahmad Alhusban, 'The Importance of Consumer Protection for the Development of Electronic Commerce: The Need for Reform in Jordan' (2014)26

<sup>40</sup> *Ibid* 27

<sup>41</sup> United Nations Conference on Trade and Development, 'Consumer Protection in Electronic Commerce' Note by the UNCTAD secretariat, TD/B/C.I/CPLP/7 (April 2017) 10

<sup>42</sup> *ibid*

<sup>43</sup> Oxford Business Group, *The Report: Nigeria 2015* (Oxford Business Group 2015)271 these are the recommendations made in report on Nigeria.



#### 4.1 Legal and Regulatory Framework for E-Commerce in Nigeria

The advancement of technology creates legislative challenges to all countries especially developing countries of which Nigeria is not an exception. There is the need for laws to be dynamic so as to meet these challenges when existing legal frameworks become out dated. Electronic commerce is new to an extent and fast growing in Nigeria as well as in other developing countries. There is therefore need for a well detailed legal and regulatory framework to protect consumers in e-commerce transactions which Nigeria is yet to have.

Treaties and international conventions on electronic transactions are yet to be domesticated into National laws in Nigeria. Aside the National Information Technology Development Agency Act, 2010 and the Cyber Crimes (Prohibition, Prevention, Etc.) Act, 2015 which provides a legal framework that prohibits, detects, investigate and prosecute cyber-crimes and other relevant subjects, several draft bills which are intended to regulate electronic transactions in Nigeria are awaiting the approval of the National assembly for passage into law. Some of the pending legislation are: Electric Commerce (Provision of Legal Recognition) Bill of 2008; Electronic Fraud (Prohibition) Bill of 2008; Cyber security and Data Protection Agency (Establishment) Bill of 2008; Computer Security & Protection Bill of 2009; Electronic Transactions Bill of 2017 and so forth.

##### 4.1.1 The Electronic Transaction Bill 2017

The Electronic Transaction Bill 2017 which is meant to regulate e-commerce transactions in Nigeria, is still in the process of becoming a Law. So, it can be said that Nigeria is yet to have a law that regulates e-commerce in Nigeria.

The UN in 1996 in recognition of the need for the regulation of e-commerce adopted the *United Nations' Commission on International Trade Law (UNCITRAL) Model Law on E-commerce* (the Model Law). The aim of the model law was to ensure a uniform standard of practice in e-commerce transactions by member states. Member states were also encouraged to enact laws and establish institutions that are in line with provisions of the model law.

The United Nations Conference on Trade and Development (UNCTAD) also emphasised the need for consumer protection and review of existing consumer protection policies to accommodate the special features of e-commerce. Member states are encouraged to prepare or revise their consumer protection laws to meet up with international standards. That is the *UN Guidelines on Consumer Protection 1985* and the *OECD Guidelines for Consumer Protection in the Context of E-commerce 1999*; which is intended to harmonise consumer protection laws and promote consumer confidence in e-commerce.

Nigeria is yet to comply with the UN Guidelines and have a law for the regulation and protection of consumers in e-commerce transactions. This is without prejudice to the fact that there is a pending bill awaiting the President's assent styled the Electronic Transaction Bill 2017 which is modelled after the UNICTRAL Model law on e-commerce. However, the model law is yet to be adopted by the Nigerian Government.

Although the Electronic Transaction Bill (ETB) 2017 is yet to be adopted; it aims at easing the process of e-commerce transactions in Nigeria.

Part VII of the ETB 2017 provides for Consumer protection. Section 32 (1) of the bill provides that service providers and vendors provide sufficient and relevant information to consumers to enable them to make informed decisions. Paragraphs a-d of the aforementioned provision give further details of the content of the information.

Section 32(2) provides that businesses should ensure that their marketing practices and information are current, accurate, not deceptive and misleading to consumers. This provision will curtail service providers and vendors who use deceptive marketing practices and advert to mislead consumers into buying goods that are damaged or not available, all in the name of having ridiculous price slashes and sales for online products in Nigeria. Many Nigerians have fallen victims of such deceptive marketing practices. As earlier mentioned many Nigerians have complained over the social media on how they saw the picture of a particular good and purchased it only for the item delivered to be totally different from the purchased item and they did not get any form of redress from the seller or business owner.

Section 32(3) and (4) places a duty on service providers or vendors to provide adequate information about its business policies, practices and other support services related to the goods and services before the commencement of the transaction.

Section 33 allow consumers to cancel contracts before processing and also provides that businesses inform consumers where there is a material change in the goods or services purchased by the consumer

Section 33(4) (a-e) protects consumers from unscrupulous vendors. It further provides that where the consumer returns a good, the seller should refund any payment made by the consumer or costs incurred directly in the return of the goods.

According to Section 34 of the Bill, service providers and vendors are required to protect the personal information collected from consumers except where the consent of the consumer is obtained or where the law demands disclosure. The passing of the ETB Bill into law will protect the rights of online consumers and also increase their confidence in e-commerce transactions in Nigeria. However, another challenge that can clog the wheel of progress of the ETB Bill when enacted is implementation. The consumer protection agencies have a significant role to play in implementing and enforcing the Law. Where implementation is haphazardly done, consumer protection in e-commerce transactions in Nigeria will still remain a challenge.

#### 4.3 The Federal Competition and Consumer Protection Act 2018

The Federal Competition and Consumer Protection Act 2018 established the Federal Competition and Consumer Protection Commission which is an institution responsible for the redress of consumer complaints, elimination of hazardous products from the market, increasing consumer awareness and safeguarding the interests of consumers.<sup>44</sup> The Federal Competition and Consumer Protection Act repealed the Consumer Protection Act Cap. C25, Laws of the Federation 2004. Before the Consumer Protection Act was repealed, the Act contained detailed provisions that

<sup>44</sup> Functions of the CPC are contained in Section 17 paragraphs (a-z) of the Act

protect consumers, however the Act made no mention of protecting consumers of online transactions. The newly enacted FCCP Act also contains detailed provisions that protect consumers, but still does not make mention of online transactions. Parts XV-XVII of the Act does not apply to e-commerce transactions. This is quite surprising despite the fact that there is still no formal exclusive legislation for the protection of consumers who purchase goods online, it would have been expected that the newly enacted law would have included ecommerce transactions. However, with the growth of technological advancement the passing of the Electronic Transactions Bill (ETB) into law is overdue since the FCCPA still does not have express provisions protecting online consumers.

The FCCPC has been able to make significant achievement in protecting consumers generally. However, they may encounter challenges when it comes to protecting the rights of consumers who purchased goods or services online. There is the need for the FCCPC to also prepare for the challenges that come with protecting parties to e-commerce transactions if eventually it is incorporated in the Act or when the ETB is enacted as this will mean more complaints will be received by the council due to the immense consumer abuse in almost all sectors of the economy and hence the need for more manpower to ensure complaints are speedily addressed whilst also monitoring online service providers and vendors to ensure they provide quality and standard services and goods.

Recently in a stakeholder meeting organised by the Standard Organisation of Nigeria (SON) the organisation along with other consumer protection agencies like FCCPC, recognised the need to have a harmonised regulatory framework for e-commerce as a result of many complaints received from customers over alleged sub-standard goods and services offered online.<sup>45</sup> Also, the FCCPC in a meeting with online marketing companies in Nigeria stated that it would come up with guidelines to effectively regulate the conduct of online marketing companies in the country.<sup>46</sup> examples of e-commerce websites in Nigeria include Konga which recently merged<sup>47</sup> with Yudala, Jumia, Mall for Africa, Dealdey, Gloo.ng, Wakanow among others.

Nigeria's e-commerce sector is estimated at \$13 billion, with 400,000 orders daily.<sup>48</sup> According to the Nigerian Communications Commission (NCC) the number of internet users in Nigeria increased to 91.6 million as of June 2017<sup>49</sup> which has exceeded the projection of 76.2 million envisaged

in 2014 by a statistic portal.<sup>50</sup> There has been a significant increase in the number of internet users in 2014 which was 57.7 million.<sup>51</sup>

## 5.0 International Cooperation

The General Assembly of the United Nations, has considered the need for member states, businesses, consumers and consumer representatives to concentrate on how to effectively protect consumers in e-commerce so that when issues relating to applicable law and jurisdiction arises, they can be resolved through international cooperation and consultation. When there are e-commerce disputes, the applicable laws and courts are governed by international private law rules of member states. As such there is need for a consensus in implementing the necessary measures to address cross border e-commerce issues as well as national e-commerce issues.<sup>52</sup>

Nigeria is a member of the International Consumer Protection and Enforcement Network (ICPEN) which consists of consumer protection law enforcement authorities from around the world. ICPEN creates an avenue to focus on consumer protection concerns and also develop and maintain contact between consumer protection agencies. The aim of ICPEN is to enable its members to have a greater impact with their consumer laws and regulations.<sup>53</sup> Econsumer.org is an initiative by ICPEN where international scams and internet fraud can be reported.<sup>54</sup> Nigeria is presently one of the only four members in Africa.<sup>55</sup>

One of the core strategies of ICPEN is to share best practices information about key consumer protection laws, enforcement powers and regulatory approaches to consumer protection.<sup>56</sup> The paper posits that Nigeria needs to make full use of being a member of ICPEN by learning from members with good and working consumer protection laws and regulations. Nigeria should not only be a nominal member but should strive for the improvement of its consumer protection laws pursuant to protecting consumers in e-commerce transactions.

## 5.1 South Africa Electronic Communications and Transactions Act

The Electronic Communications and Transactions Act (ECTA), 25 of 2002, was passed in the South African parliament on 31 July 2002. The Act came into operation on 30 August 2002 by a proclamation in the Gazette. The objectives of the Act are '*... to enable and to facilitate electronic communications and transactions in the public interest*'<sup>57</sup>

Although the Act is divided into 14 chapters, however this part will focus on chapter 7 of the Act which deals with the subject of consumer protection. Chapter 7 provides for disclosure requirements by suppliers offering goods or

<sup>45</sup> Thisday Live 'SON, CPC Others Canvass Regulatory Framework for eCommerce Sector' 24 May 2018  
<<https://www.thisdaylive.com/index.php/2018/05/24/son-cpc-others-canvass-regulatory-framework-for-ecommerce-sector/>> accessed 24 June 2020

<sup>46</sup> Harrison Edeh, 'Updated: CPC Unveils Regulatory Principles to Protect Online Consumers' *Business Day News* (15 March 2018)  
<<http://www.businessdayonline.com/cpc-online-marketers-set-guiding-principles-robust-e-commerce-nigeria/>> accessed March 19, 2020.

<sup>47</sup> Both companies merged on 15 April 2018

<sup>48</sup> Thisday Live 'SON, CPC Others Canvass Regulatory Framework for eCommerce Sector' *ThisDay Live* (24 May 2018)  
<<https://www.thisdaylive.com/index.php/2018/05/24/son-cpc-others-canvass-regulatory-framework-for-ecommerce-sector/>> accessed July 15, 2020

<sup>49</sup> Nigeria Communication Commission, 'Nigeria's Internet Users Rise To 91.6m' *The Communicator* issue 22- quarter 3, 2017  
[https://www.ncc.gov.ng/thecomunicator/index.php?option=com\\_content&view=article&id=1572:nigeria-s-internet-users-rise-to-91-6m&catid=32&Itemid=179](https://www.ncc.gov.ng/thecomunicator/index.php?option=com_content&view=article&id=1572:nigeria-s-internet-users-rise-to-91-6m&catid=32&Itemid=179)

<sup>50</sup> Number of internet users in Nigeria from 2013 to 2019 (in millions)  
<<https://www.statista.com/statistics/183849/internet-users-nigeria/>> accessed 04 June 2020

<sup>51</sup> Ibid

<sup>52</sup> United Nations Conference on Trade and Development, 'Consumer protection in electronic commerce' Note by the UNCTAD secretariat, TD/B/C.I/CPLP/7 24 April 2017 p.15

<sup>53</sup> <https://www.icpen.org/who-we-are> accessed 04 June 2020

<sup>54</sup> <https://www.econsumer.gov/AboutUs#crmt> accessed 04 June 2020

<sup>55</sup> <https://www.econsumer.gov/MemberCountries#crmt> accessed 04 June 2020

<sup>56</sup> <https://www.icpen.org/what-we-do> accessed 04 June 2020

<sup>57</sup> See section 2 of the ECTA

services for sale, hire or exchange via electronic transaction. Section 43 of the ECT Act provides that the vendor must provide the consumer with specified information, it also states that the supplier must provide the consumer with an opportunity to review, correct or withdraw from a transaction; the vendor must implement a specified secure payment system.

Section 43(2) of the Act provides that the supplier must provide a consumer with the opportunity to review the entire transaction; correct any mistakes; and withdraw from the transaction before finally placing any order.

If a supplier does not comply with provisions of Section 43 subsection 1 and 2 of the act, consumer may cancel the transaction within 14 days of receiving the goods or services under the transaction.<sup>58</sup>

The consumer has a cooling off period of 7 days during which the consumer can cancel an electronic transaction without penalty.<sup>59</sup> However, the "cooling off" period does not apply to certain kinds of transactions, including financial services, auctions, supply of foodstuffs and other transactions where a right to rescind after seven days would be impractical or unfair to the providers of the goods and services.<sup>60</sup>

A significant aspect of Chapter 7 of the Act is the criminalisation of persistent dispatching of unsolicited commercial communication to a person who has advised the sender that such communications are unwelcome.<sup>61</sup> Section 46 of the act provides that a supplier must execute an order within 30 days of receipt of the order, or a time period duly agreed with the consumer. In the event that a supplier failed to execute the order within 30 days or within the agreed period, the consumer may cancel the agreement with seven days' written notice. If a supplier is unable to perform in terms of the agreement on the grounds that the goods or services ordered are unavailable, the supplier must immediately notify the consumer of this fact and refund any payments within 30 days after the date of such notification.<sup>62</sup>

## 6. Recommendation and Conclusion

Consumer confidence in the E-commerce platform is crucial and has a cascading effect on the economy of any country as the consumers play an important role in the economic development of any country. However, this development can only be achieved where there is a legal framework that addresses consumer protection in e-commerce transactions.

To duplicate the economic growth and development being experienced in other countries in Nigeria, there is a need for the urgent passing of the Electronics Transactions Bill (ETB) into Law so that consumers can have confidence and have recourse to the law when transactions are performed through e-commerce.

The consumer protection agencies also have a significant role to play in protecting consumers. Implementing the laws and also providing adequate awareness of the existence of such law to consumers. So far, Nigerians have been cheated

by unscrupulous sellers who sell substandard goods to consumer's online hiding under the guise of not having physical contact with the seller. Many consumers have fallen victim of the purchase of goods which after delivery is nothing like what was described or advertised to the consumer.

There is need for the consumer agencies such as FCCPC to educate consumers and to generate consumer awareness. There is a need for consumers to be informed of their rights and responsibilities so that they can make informed choices of goods and services and be aware of online frauds and scams. This can be done by governments, businesses and consumer representatives cooperating to educate consumers about the protection of their online transactions. When consumers know their rights and the remedies available to them, and the bodies that would handle their complaints and ensure disputes are effectively settled, they would have more confidence in the e-commerce market.

The State also has a role to play in the development of minimum standards which suppliers and the general market have to meet.

There is also need for the FCCPA to be amended to recognise e-commerce transactions and protect consumers in such transactions as there have been many reports of unfair practices on the part of the e-sellers/e-traders. There is also need for the establishment of appropriate institutions for monitoring e-commerce in Nigeria. It is worth noting that a proper legal framework for e-commerce and consumer protection will promote trust and confidence of both consumers of e-commerce transactions and investors in the country.

Another issue is the enforcement of laws that are meant to protect consumers from harmful practices in online transactions. It is a herculean task for the appropriate compliance or enforcement bodies to deal with consumer issues because of the lack of physical interaction during the business transaction. In Nigeria business transactions which are physically conducted have hiccups already and turn out to be very difficult to resolve, how much more when the parties do not physically make the transaction. This is a big challenge that needs to be addressed and looked into by the concerned bodies.

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<sup>58</sup> See Section 43(3) of the Act.

<sup>59</sup> Section 44 of the ECTA

<sup>60</sup> John Peter, 'The Electronic Communications and Transactions Act', Advocate, (April 2003) 30

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