



## Consumer protection regulation in the aviation industry-the need for improved governance in Nigeria

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### Abstract

This paper examines the protection of Nigerian consumers with particular reference to the role of Nigerian Civil Aviation Authority (NCAA) established by Civil Aviation Act 2006, which seeks to regulate and monitor the safety, security, economic and reliability of air navigation oversight in line with international standards as well as economic regulations of the aviation industry. The issue of consumer protection has attracted increasing attention, highlighting instances of flight cancellation, long delays, overbooked flights, lost baggage, boarding denial and other air travel disruptions. Similarly, when flights are delayed, rescheduled or cancelled, many passengers are forced to rearrange transportation at their own expense. The right to seek redress for all irregularities and breach of contract is therefore worrisome. The aim of this paper is to appraise the legal framework of consumer protection in the aviation industry as well as identify the constraints affecting its achievements. Unlike Brazil, the laws are clear on exactly what care passengers should expect from the airline. Where an airline has failed to care for their passengers, Brazil's Consumer Code allows passengers to claim compensation for the inconvenience. This paper recommends that the consumer protection regulation in Nigeria should be strengthened and airline consumers be well informed of their rights and responsibilities so that there are no exceptions for airlines to evade their obligations for breach of contract. Finally, consumer protection laws should play a vital role in advocating for air travelers and passenger rights.

**Keywords:** consumers rights, consumer protection, consumer protection regulations, aviation, breach of contract, compensation, governance

### Introduction

The aviation industry has played a key role in the global economy growth and integration through creating jobs, generating revenue, and facilitating international trade and tourism. Studies show that the aviation industry doubled in size every fifteen years and has grown faster than most other industries (Aviation Benefits Report 2019) [3]. In 2016, the global aviation industry reached USD 2.7 trillion, some 3.6 per cent of the world's gross domestic product (ABBB 2018) [4]. The aviation industry also supported a total of 65.5 million jobs globally. Its direct impact on jobs and GDP in any given nation is reflected by the domestic resources used to deliver all such services.

The growth of the aviation industry and the subsequent expansion of its consumer base have been characterized by an increase in customer complaints, as well as an increase in the demand for better quality of services. However, consumer protection is one of the most trivial issues facing the aviation industry in Nigeria today such as flight disruptions and cancellations, long delays, overbooked flights, lost baggage and boarding denial etc. The rights of passengers have largely been ignored by airlines, a situation which has been exacerbated by the absence of relevant laws in Nigeria. (NCAA Guidelines 2001). The aviation industry has also faced a number of challenges in the year 2020, from sustainability and digitization to the potential fallout from the COVID-19 outbreak.

A question posits whether the law makes provisions for the protection of the air passengers, or whether the protection laws are inadequate? Aside the introduction and clarification of terms, this paper discusses the legal framework regulating

the aviation sector. The third part focuses on the extent to which air passengers are protected and the obligations expected by air carriers within the framework of existing laws in Nigeria. The fourth part examines the impact of Covid-19 pandemic in the Nigerian's aviation sector and factors militating against the enforcement of consumer protection laws in the industry. The fifth part determines the economic impacts on the Nigerian economy making reference to Brazil, and European Union rules on consumer protection in the aviation sector and the need for improved governance. The last part recommends an adequate regulatory measures and standard duty of care to passengers in the aviation sector.

### Definition of Terms

**1. Consumer:** There is no universally acceptable definition of a consumer. Although, different Definitions have been proffered and accepted. The Consumer Protection Council Act, defined a consumer as an individual who purchases, uses, maintains or disposes of products or services. John F. Kennedy gave a very apt definition of who a consumer is in the following words:

*"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. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who are not effectively organized, whose views are often not*

heard”.

A consumer is accessible to justice and protected by law by virtue of sec 36(1) of the 1999 Constitution of the Federal Republic of Nigeria. Any citizen whose rights have been violated under any law including consumer protection laws can approach the court for redress, under section 46 of the same constitution.

2. **Consumer Protection:** refers to the laws and other forms of government regulation designed to protect consumers.
3. **Delays:** emerge when interactions between air transport players (carriers, airports and air traffic control entities) and external factors (adverse weather conditions, strikes and other incidents) lead to airport congestion. Delay occur when a planned event does not happen at the planned time.
4. **Flight Disruptions:** is described as ‘situations where a scheduled flight is cancelled, or delayed for two hours or more, within 48 hours of the original scheduled departure time’. These disruptions in the aviation industry comes at a cost to the airline and the consumer.
5. **Air Operator:** Any organization which undertakes to engage in domestic or international commercial air transport, whether directly or indirectly or by a lease or any other arrangement.
6. **Compensation:** means direct and/or indirect monetary and/or non-monetary benefits offered to passengers whose rights have been infringed upon.
7. **Denied Boarding:** means a refusal by an airline to carry passengers who hold confirmed reservation and valid travel documentation, although they have presented themselves for check-in and/or boarding at the time stipulated by the airline, on grounds of oversold service.
8. **Passenger:** means a person in whose name a ticket and a reservation is made or confirmed and who is eligible to travel upon the stated flight pursuant to that ticket whether the ticket is purchased by the person or not and whether the ticket is zero fare ticket for which no fees or fare is paid.

#### **Laws Regulating the Aviation Industry in Nigeria**

Section 251 of the 1999 Constitution (as amended) confers the Federal High Court with the exclusive jurisdiction to hear all matters relating to aviation and the safety of aircraft (*Air France v Majasan*) and by the powers vested in the National Assembly, it enacted the principal legislation-Civil Aviation Act (CAA) 2006 and Nigeria Civil Aviation Regulations (NCAR) 2015 with other ancillary legislation.

The CAA is the principal law regulating civil aviation in Nigeria and by its powers, established the Nigerian Civil Aviation Authority (NCAA) as the principal regulator for technical and safety issues in the industry including the service providers such as the Nigerian Airspace Management Agency, Federal Airport Authority of Nigeria and Federal Ministry of Transportation. The NCAA carry

out the oversight functions of Airports, Airspace, Meteorological Services, and economic regulations of the industry. In the exercise of its powers, NCAA issued the Nigerian Civil Aviation Regulations (NCARs) in 2015 to give specificity to the Standards and Recommended Practices (SARP) of International Civil Aviation Organization (ICAO). The ICAO is the body responsible for setting standards of international civil aviation activities and ensuring that states fulfill obligations provided in the conventions. Nigeria as a signatory to the Convention has the responsibility to put in place measures that conform to international safety standards in its safety oversight obligations. Another organization working with ICAO is the International Air Transport Association (IATA), which aims to be the force for value creation and innovation driving a safe, secure and profitable air transport industry.

Consequently, the rights and obligations of consumers of the aviation industry are therefore regulated by a family of conventions known as the Warsaw Convention of 1929. The Warsaw convention established a unified framework for the liability of air carriers in respect of loss, injury and damage sustained in the course of, or arising out of, international carriage by air. However, the Convention did not expressly make provisions to protect air consumers and as such, the Montreal Convention of 1999 (MC99) came into existence to take care of the defects and other inadequate provisions of the Warsaw convention.

The Montreal Convention establishes airline liability in the case of death or injury to passengers, as well as cases of delay, damage or loss of baggage and cargo. (Art 17). It unifies all of the different international treaty regimes covering airline liability that had developed haphazardly since 1929. The Montreal Convention waives the airline’s liability in cases where the flight disruption was caused by extraordinary circumstances. Such cases include adverse weather, air traffic control restrictions, lightning strikes, bird strikes, strike at the airport, medical emergency, security threats and political unrest, etc. (Art 20). The airline is not obligated to pay compensation if they have taken all reasonable measures to prevent the flight disruption or if there was nothing they could do. In 2002, Nigeria ratified and domesticated the provisions of the Montreal Convention, to be applicable to domestic carriages within Nigeria (Art 1 (1) of CAA 2006).

#### **Legal framework Regulating Consumers’ Protection in Nigeria’s Aviation Sector**

##### **a. Federal Competition and Consumer Protection Act (FCCPA) 2018**

The FCCPA established the Federal Competition and Consumer Protection Commission (FCCPC) and Competition and Consumer Protection Tribunal (CCPT) for the development and promotion of fair, efficient and competitive markets in the Nigerian economy to facilitate access by all citizens to safe products and secure the protection of rights for all consumers in Nigeria. The key functions include the issuance of rules and regulations to govern competition and consumer protection matters; conducting investigations; resolution of disputes or complaints, issuance of directives and application of sanctions. (Sec 17(h)). The Act sets out in detail, the rights of consumers and the available modes of redress where those rights are infringed upon. The Commission,

therefore, has the power to investigate complaints; issue and register appropriate orders in the Court.

**b. Federal Airport Authority of Nigeria Act (FAAN)**

FAAN, established by the Federal Airport Authority of Nigeria Act 1996, is the body responsible for Maintaining and managing airports in Nigeria and its principal functions include the development, provision and maintenance of all necessary services and facilities at airports and within the Nigerian airspace, for the safe, orderly and economic operation of air transport. Thus, the authority performs its statutory functions following the policy and guidelines of the Federal Government through the Federal Ministry of Transportation (sec 1&3).

**c. Nigeria Airspace Management Act (NAMA)**

NAMA is an air navigation service provider with the mandate to manage the Nigerian Airspace to a level consistent with the requirements of the ICAO SARPs and make it rank among the safest in the world. The aim and functions is to provide safe, efficient, effective and economic air navigation services to airspace users, through deployment of new technologies and dedicated workforce. (s.7).

**Air Passengers' Rights.**

Traveling by air confers certain rights to passengers which among others, include: right to the full value of passengers money; right to book and confirm tickets with an airline of passengers choice; right to the provision of a conducive airport environment before, during, and after flights; right to seek redress for all irregularities during flight; right to timely feedback in respect of matters/complaints lodged with service providers; right to be fully informed about flight status; right to be treated with respect and dignity irrespective of race or physical condition. A question posits whether consumers enjoy these rights. In reality, this is not as air passengers experience difficulties in resolving their delayed/cancelled flights (Aliyu Mustapha).

Part 19 of NCAA Consumer Protection Regulations prescribes minimum rights and responsibilities of passengers and airlines' obligations to passengers, where:

- a. There is an incidence of overbooking and passengers are denied boarding against their will;
- b. A scheduled flight is delayed;
- c. A scheduled flight is cancelled; and
- d. Passengers fail to discharge their responsibilities.

**Delay:** The NCAA prescribes the obligations of carriers to passengers under Part 19 (7) of NCARs for delays in domestic and international flights. For domestic flights, carriers are expected to inform passengers of the reason(s) for the delay within 30minutes after the scheduled time of departure.

In addition, depending on the length of delay, they are required to provide some form of compensation including refreshment, telephone calls, reimbursement and hotel accommodation.

Similarly, for international flights, when an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure, it shall provide compensation to passengers. In addition, the Montreal Convention domesticated in Nigeria as schedules 2 and 3 of the CAA

2006 provides for monetary compensation for delays. When passengers are informed of cancellation, an explanation shall be given concerning possible alternative transport.

**Cancellation:** An operating airline shall not be obliged to pay compensation, for cancellation if it can prove that the cancellation is caused by extraordinary circumstances. The burden of proof rest with the operating airline. Airlines can cancel flights provided booked passengers are informed 24hours before scheduled departure time in the case of domestic flights; and 7 days before scheduled departure time for international flights. Where this time frame is not observed, passengers shall receive the following

**Compensation at least**

1. 25% of the fares or passenger ticket price for all flights within Nigeria.
2. 30% of the passenger ticket price for all international flights.

**Airline's Obligation to Inform Passengers of their Rights.**

At the time of ticket purchase or check in, the airline or its agent shall inform passenger of his right under the contract of carriage. The operating airline shall ensure that at check-in, a clearly legible notice containing the following text is displayed in a manner clearly visible to passengers: *"If you are denied boarding or if your flight is cancelled or delayed for at least one hour, ask the airline officials for a written statement of your rights, particularly with regard to compensation and assistance"* (pt 16)

Part 20 of the Nigeria Civil Aviation Regulations provides special rules for complaints by passengers. Upon receipt of complaint, the authority will conduct an investigation, after which an assessment report is prepared and recommendations made. The assessment report will be reviewed by the authority, which may either strike out the complaint; advise parties to use mediation; determine that the complaint be made subject to the authority's administrative hearing procedure; or take another action that it deems necessary.

**Impact of Covid Pandemic in Nigeria's Aviation Sector**

The COVID-19 pandemic has had a large impact on civil aviation, particularly commercial passenger airline operations. The combination of travel restrictions; state and local mandates to stay at home, shelter-in-place, and self-quarantine after travel from certain areas; and public concerns over the risk of contracting COVID-19 from travel-related activities resulted to a significant decrease in air travel demand since March 2020 (Bart Elias).

As a result of the commercial flights ban, the airline industry was virtually grounded and recovery muted in most markets due to travel restrictions. The effect of deep recession and weak consumer confidence hampered recovery as well (IATA). All flights were cancelled and air passengers were given the grace to revalidate within two (2) years, as this falls under extraordinary circumstance. As air travel is not recovering quickly, total employment in the airline industry was under pressure. Statistics show that total employment by airlines declined in year 2020 to 1.9 million but expectantly to improve in 2021. Consequently, the NCAA developed several COVID-19 protocols and guidelines for the safe restart of flights. People were advised

to take the coronavirus vaccinations as it is likely to be the standard for international travel. In the meantime, procedures such as temperature screening, polymerase chain reaction (PCR) test, rapid antigen test and social distancing cues are implemented as the new norm. Passengers on board are required by the crew to fill a Passenger Locator form, after which the forms are submitted to Port Health Services (PHS) on arrival at the designated point of entry.

### **Factors Militating Against the Enforcement of Consumer Protection Laws in Nigeria Aviation Sector**

Although the NCAA interventions on Consumer Protection Regulations are commendable. All airlines, foreign and domestic, are subject to the provisions of the Regulations which prescribes minimum rights and duties of passengers and obligations of airlines relating to flight delay, boarding denial and lost baggage, etc. However, in reality, these regulations are not implemented. For instance, the regulation states that all airlines establish consumer protection desks at airports where they can receive and resolve complaints from their customers. It is regrettable to note that most airlines operating in Nigeria do not have this desk (consumer protection desk) to handle consumer issues. It has also been argued that airlines facing financial exigencies often resort to various cost-saving measures; and as such, have a potential negative effect on the safety standards and security of operations (Uhuegho).

It is regrettable that Nigeria have no express provisions for the protection of Consumer rights in her constitution, unlike Spain, Portugal, Poland, and Lithuania, which made express provisions in their constitution. For instance, sec 36(1) of the constitution provides that:

*“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its dependence and impartiality.*

The right to fair hearing addresses the principle of access to justice which is a cardinal principle of consumer protection. However, this section does not make any mention of consumer redress. In view of the foregoing, it is suggested that an amendment of the 1999 Nigerian Constitution include Consumer Protection Rights under Chapter IV.

The problems facing the aviation industry in Nigeria lies in the variance between policy formulation and the Government’s political will to implement such policy. While the Nigerian Constitution is silent on consumer protection rights, the aviation laws do not provide for damages in case of breach of basic fundamental human rights of passengers. Other factors include:

- a. Lack of efficient customer service delivery. For instance, passengers are usually not informed of flight delay nor reasons for cancellation. The responsibilities of the Nigeria Airspace Management Agency to manage the Nigerian airspace efficiently are restricted, as they are not given free hand to improve on their social service delivery.
- b. Poor compensation for lost luggage and non-provision of accommodation for passengers after flight cancellation and lack of compensation when a flight is unduly delayed for hours. An instance was Aero

Contractors Airline who was investigated for shoddy treatment of passengers, delayed flight for over 11hours all through the night, and failing to provide either refreshment or hotel accommodation for the affected passengers, and afterwards refused to fly until the next morning, yet no apology was officially tendered (Idris Akinbajo). Upon investigation, the airline violated sections of the Passenger Bill of Rights, referred to the Consumer protection regulations.

- c. Lack of skilled manpower and adequate technical guidance materials pose safety and security threat to civil aviation.
- d. Lack of consumer awareness on their rights. many people are not aware that the law is on their side. Achieving an efficient system for the enforcement of passenger rights in the aviation industry would require the cooperation of both agencies and passengers in ensuring that each party fulfils its obligations to the other. Regulation 19.13 of the Consumer Protection Regulation requires airline operators to display a notice at check-in stating that passengers can ask airline officials for a written statement of their rights in the event of denied boarding or a flight cancellation, particularly with regard to compensation and assistance.
- e. The need to protect consumers’ interests on matters bordering on boarding denial, flight delays/cancellations, lost baggage and various compensation levels are being undermined.

### **Consumer protection regulation in other countries.**

#### **a. Brazil**

In accordance with the Brazilian Aeronautical Code and National Civil Aviation Agency (ANAC) regulations, air passengers are protected of their rights. The laws clearly set out airlines’ responsibilities to their passengers whenever there are flight issues. Where an air carrier fails to care for their passengers, Brazil’s Consumer Code protects passengers to claim compensation for the inconvenience. Usually, airlines follow the rules of the Brazilian Aeronautical Code or the Montreal Convention when offering compensation in extrajudicial and judicial procedures. Special courts are also established in Brazil to address consumer cases and no fees are paid to file suit in those special courts (Nicole Rene)

#### **b. The European Union (EU)**

The EU Regulation establishes common rules on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights. Depending on the circumstances, and subject to certain conditions, it may give rise to a claim for compensation of between €250 and €600 per person. However, if flight is cancelled due to coronavirus outbreak, no passenger is entitled to compensation because the crisis is considered as an extraordinary circumstance. Furthermore, the EU inaugurated the consumer protection policy in 1975 which defined five fundamental consumer rights: the right to protection of health and safety, the right to protection of economic interests, the right to claim for damages, the right to an education, and the right to legal representation.

### **The Need for Improved Governance in Nigeria**

For years, air travel passengers in Nigeria have had to



tolerate poor service from airlines due to absence of corporate governance principles by their owners and managers. Major challenges lie from failure to adhere to the code of corporate governance; business plan and technical knowledge of the industry. Therefore, the NCAA should assert its regulatory position as provided for by the law, to ensure compliance with rules by airlines and other service providers (Gabriel Olowo). Nigerian airline operators are also expected to strike a balance between the quest for profit and good ethical conduct in the provision of airline services. Nigeria's political leadership should embrace the four pillars of corporate governance - Accountability, Fairness, Transparency, and Independence, to build foreign and local investor's confidence, and attract better credit rating and tourism in the interest of the nation's overall economic development. Lastly, Nigerian government should concentrate on providing conducive environment for airlines' establishment and safe operations rather than attempting to establish or run an airline.

### Recommendations and Conclusion

The importance of consumer protection in Nigeria's aviation industry cannot be overemphasized. The legal framework within which the aviation industry operates is apparently governed by International Conventions, bilateral treaties and national laws especially Civil Aviation Act 2006. All these laws are put in place to guide the Aviation Industry in Nigeria. Obviously, the laws are sufficient enough to guarantee efficient aviation industry. However, the implementation of the legal policy constitutes a problem to air transportation due to absence of government political will to back up the policy. The role of institutional agencies such as National Civil Aviation Authority (NCAA), National Airspace Management Agency (NAMA), Federal Airport Authority of Nigeria (FAAN) etc. as the legal framework for consumer protection in air services needs to be explored and the extent of their powers, functions and duties be fully accessed. Secondly, customer service delivery in Nigeria's aviation sector has become alarmingly poor. Air passengers' satisfaction should be the basis on any public policy in civil aviation matters. It is pertinent that consumer education is aggressively pursued to raise effective awareness concerning consumer rights and responsibilities. The 1999 Nigerian constitution with other laws should be amended and implemented to explicitly cater for the overall welfare and protection of air passengers (consumers). Such amended laws should align with regulations adopted by Brazil and EU, such that every consumer is adequately protected when challenges emerges.

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