

The Impact of the Telecommunications Regulatory Agency on Consumer Protection in Nigeria

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Abstract

The vulnerability of the consumer in the market place has been attributed largely to the superior position of the manufacturers or suppliers of goods and services. Regulatory Agencies in telecommunications are part of the administrative mechanism for strengthening the position of a Nigerian consumer who almost always is shortchanged by poor services and exploitative prices. The deregulation of the telecommunications sector despite its attendant utilities is still bedeviled with substantial consumer problems. Issues of drop calls, unsolicited adverts, network failure, and ineffective consumer complaint mechanism abound. This and many other problems have continued to attract the comments, remarks and opinions of members of the public and legal writers on the potency or otherwise of the regulatory agencies in telecommunications. This work appraises the legal relevance of the regulatory agencies in telecommunications with a view to repositioning them for better sector consumer protection. The work espouses that there is an urgent need to review telecommunications regulations particularly with respect to competition and unsolicited advertisements. The need for a review of the NCC Act, 2003 and the domestication of US TCPA 1991 has become inevitable.

Introduction

The concern of the regulatory agencies in the telecommunications industry is to ensure consumer satisfaction. Notwithstanding the deregulation of the industry and its attendant consequences, telecommunications services providers have been berated for consistently delivering poor services to subscribers in Nigeria [1]. An assessment of the performance of the telecommunications regulatory agencies in the area of consumer protection is aimed at determining the position of the consumer in the regulatory process. In doing this, it is necessary to discuss about the many stakeholders in the regulatory process.

These stakeholders include the government, consumers, the Media, the international community, among others. The essence of this discourse is to enhance understanding and appreciation of stakeholders that the industry regulator must satisfy and make an objective critique of the impact of the industry regulators.

Government is a very important stakeholder in the job of telecommunications regulation. The policies and the laws being implemented by the Commission have been prepared and enacted into law by government for the good of the society. The government's interest in the process is also varied. Government is interested that services are made available to the Nigerian people in a timely, qualitative and affordable manner, and that activities in the sector are carried out in a legal and orderly manner. Government is also interested in creating an enabling environment that would continue to attract investment in the sector so that its desires for the people are substantially met. The commission in all its activities is therefore mindful of the need to protect, preserve and implement actions and programmes that meet the expectations and objectives of the government. They expect a regulator that will not be arbitrary in decision-making and one that will regulate by the rules as contained in the license agreement and provisions of the laws and regulations.

The Media is also one of the stakeholders in the industry. The government, the operators, and the consumers alike depend on the Media for dissemination of information about activities and services in the telecommunications industry. The Commission depends on the media for the provision of adequate information on the industry.

The international community, especially the global development and regulatory institutions are stakeholders of our telecommunications industry development. An action of a telecommunications regulator in today's world can trigger off multiple reactions that may affect other parts of the world. This is why the regulator needs to adhere to certain international standards in carrying out its functions even in the local operating environment.

International investors are primarily interested in the regulatory process, as no investor would ordinarily be interested in doing business in an unpredictable regulatory environment. The telecommunications regulators, therefore, have to be diligent enough to meet the expectations of such investors for regulatory certainty on a continuous basis, as well as meeting the international obligations expected by the global community.

There are other stakeholders like the staff of the Commission, the vendors and distributors, among others. Suffice it to say that the commission has to always strive to strike a balance in meeting the expectations of the many stakeholders even when the interest of these stakeholders conflict with each other. For instance, the average consumer would want the license of an operator withdrawn because he failed to deliver a text message he sent to his friend, but the regulator knows that withdrawing such a license for the infraction would mean that more than 40 million Nigerians would be adversely affected. It would lead to loss of huge investments already made in the economy, and will lead to a loss of many jobs.

Another example is that an average businessman in Lagos could be very happy with the operators if he gets 100% perfection in service quality if they concentrate all their efforts in service in Abuja and Lagos and few other locations where his businesses are located. He will not be worried if services are not available in other locations of the country. This would run counter to the desire of government to ensure that services are extended to all parts of the country. The typical telecom operator would want to roll out in few locations where profit is guaranteed as against the desire of government to see that all the citizens enjoy phone service.

There is no gainsaying the fact that managing the interest of different stakeholder is critical to the success of the telecom regulatory body. The role of the NCC is to achieve the common good and not pander to the wishes and desires of any of the stakeholders. In order for it to do this, the Commission must ensure that the consumers of telecom services continue to enjoy services, and see to it that the operators are equipped to provide those services. It is imperative for the Commission to perform this role in a manner that engenders balance and fairness. In accessing the performance of the industry regulatory therefore, it is pertinent to appreciate the various dimension of its role in order to have an objective consideration of this impact.

The Nigerian Communications Commission and Consumer Protection

The role of the NCC in the protection of the consumer include the establishment of the Consumer Affairs Bureau, charged with the responsibility of protecting, informing and educating the Nigerian Telecommunications customers. This the Commission has done through organization of conferences, fora, seminars and the launching of the monthly Telecoms Consumers Parliament, a novel regulatory initiative that earned the Nigerian Government and Commission commendations from International Telecommunication Union (ITU) and Information and Communications Technology (ICT) professionals and groups across the globe [1]. This has helped to create awareness of the rights of consumers and the regulations of service providers in the resolution of their problems and concerns.

Moreover, the Commission has over the years enunciated policies and programmes that served the interest of the consumers. The introduction of price caps allowed operators to charge consumers for services provided in accordance with global best practices, and introduced competition in all segments of the telecoms services portfolio to ensure that consumers have a wide range of products and services to choose from and not held to ransom by any service provider.

Furthermore, the Commission provides incentives to telecoms providers through the Universal Service Provision Fund (USPF) scheme to enhance extension of services to unserved and underserved areas in the pursuit of the universal access. Again, acceptable quality of service thresholds which the operators are expected to meet on the one hand, as well as sanctions in the event of failure to meet have been defined. In order to ensure compliance by operators, regular monitoring by the Commission of the operations of licenses across the length and breadth of the country is undertaken.

The Commission has set up an industry quality of service working group to enhance quality of service on the networks. It has also caused to be gazetted the Consumer Code of Practice Regulation which has become a reference document for both consumers and the operators. Another major stride by the commission apart from creating an enabling environment for consumer movement (consumerism), to thrive, is the introduction of SIM Cards registration. Even though the exercise is being criticized, its advantages far outweigh its disadvantages. The transparent licensing processes and interconnectivity, the development of relevant guidelines, regulations and other related documents such as guidelines on advertisement and promotions to ensure ethical marketing and promotional standard are positive indicators of effectiveness.

From the summary of the role of the Commission above, it can be said that the NCC has impacted greatly in the protection of the consumer in the telecommunication industry. However, notwithstanding the role of the NCC above, the complaints of consumers grow on daily basis mainly due to poor quality of service. It is therefore apt to discuss the criticism against the NCC, the official regulator of the telecommunications industry.

Observable Shortcomings

The NCC has some intense criticism as a result of the poor handling of consumer complaints by telecommunications companies. The NCC has failed in this respects. Since the deregulation of the sector with the introduction of the Global System for Mobile Communications (GSM), Code Division Multiple Access and Internet Service Providers has been a major concern to telecoms services subscribers and other stakeholders in the economy. As critical as prompt customer complaints resolution is for business, based on the popular axiom that “the Customer is King”, the experience among telecoms customers both for telephony and internet services has revealed that subscribers across the telecoms spectrum are not being well treated [2].

Telecoms operators, in the last ten (10) years, have erroneously identified acquisition of more subscribers in their network as a way of showing market leadership without adequate attention to effective customer care services delivery. While there has been astronomical growth in active subscribers on all telecoms networks, operators have not really matched the growth in subscribers with viable customer complaints resolution mechanisms, as there is still a wide margin between the ratio of total subscribers in the country and the facilities put in place by the operators to provide prompt customer complaints resolution to their subscribers [3]. Access to a fair and transparent complaints process is an essential part of an effective consumer protection framework. Consumer complaints have an important role to play in regulation as they provide a useful barometer on consumer losses and unfair practices.

Second, the non-substantial employment of powers of sanctions to ensure compliance by operators has remained a source of weakness in the NCC. The NCC Act empowers the NCC to employ sanctions to enforce adherence to good quality service to consumers. Though the NCC had drawn up clear Key Performance Indicators (KPIs) for boosting quality of services and other customers experience on operator’s networks, operators had hardly met with some of the KPIs for ameliorating the challenge of quality of service and other sundry issues affecting subscribers on their various networks. The Key Performance Indicators measured by the Commission included Call Set Up Success Rate, Call Completion Rate, Stand Alone Dedicated control Channel and Handover Success Rate. The study revealed that network congestion has continued to be a problem. There are too many drops calls, poor network availability, poor customer service accessibility and poor voice quality [4]. The employment of sanctions would have ensured compliance by operators, to KPIs and general industry benchmarks. A glaring example of the seeming lack of will on the part of the NCC is the recent imposition of a fine of ₦1.17b on the big four telecoms operators: MTN, GLOBACOM, AIRTEL and ETISALAT Nigeria. The directives to pay the fines not later

than May 25th, 2012 was defied and the industry regulator took too long to get the erring operators to comply.

Third, the NCC has substantially abused the licensing powers conferred on it by the Act. The power to grant the operating license is vested on the NCC [5]. The implication here is that no network provider can commence the business of telecommunications without the grant of a license by the NCC, which can be revoked at any time [6].

Ogunbanjo, explained the above clearly when he stated that the Nigerian Communication Commission was busy granting new numbering plans to telecoms operators and collecting licensing fees for the new numbering plans without enforcing strict network expansion on the part of the operators to accommodate the surge that would accompany it [7]. According to him, MTN, for instance has about seven different numbering plans and that each plan accommodates ten million subscribers on its network without expanding its network infrastructure in the same way [8]. The same applies to Globacom, Airtel and Etisalat. The liberty to have several numbering plans, made telecom operators to forget the real issue of quality services offering.

Further, the NCC has not been able to enforce the establishment of substantial consumers interface centers by operators. The number of consumer interface centres for consumers in some parts of the country is abysmally low and this has affected the quick attendance to customers' issues. Each state should have a minimum of three well equipped and well staffed consumer service centres to attend to consumers issues.

Fifth, the over dependence on mobile network, rather than fixed lines, accounts for the poor quality of services in the country. In the United Kingdom, about 40 percent of voice traffic is routed through fix landlines, while about 60 percent are routed through mobile devices. In Nigeria however, over 90 percent of all voice calls are routed through mobile devices and less than 10 percent passes through landline[9]. The NCC as a regulator has not been able to redirect more traffic to fibre and depend less on mobile. The challenge of poor quality of service will remain if the NCC do not address this anomaly. Nigeria has a substantial number of which the NCC can be direct telecom operators to use for this purpose.

Sixth, mention must be made of the exploitation advertisements and promotional activities of operators. The NCC has not been able to check cases of exploitative advertisement and promotional activities. The guidelines on advertisement and promotion issued by the NCC were intended to ensure ethical marketing and promotional standards and to set minimum regulations and standard for advertisement and promotions by licensed telecommunications operators. These guidelines seem not to have been implemented at all judging by the number of misleading promotional advertisements that are being rolled out. Now, sales promotions under various guises such as SIM Registration promos, free credit promos, anniversary promos, and many others are in full swing and the congestions on the networks are back.

Generally, although the NCC has received both local and international accolades for its contribution in making the consumer to be properly positioned to enjoy better services the above criticism and challenges call for concern. The NCC has the responsibility of protecting the Nigerian telecoms subscriber, ensuring that top quality services are rendered. It behooves on the NCC to identify the causes of poor quality of services and put an end to the suffering telecom subscribers go through currently.

The consumer protection council which operates under the Consumer Protection Council Act No. 66 of 1992, which provides for the holistic protection of the consumer in line with the United Nations Guidelines for Consumer Protection of 1985, is not playing its role effectively. The Consumer Protection Agency of the Federal Government of Nigeria was established to promote and protect consumer's interests in all areas, especially product and service quality. It is also expected to offer speedy redress to complaints, inform, educate and ensure that consumers receive fair treatment in the market place. However, the CPC notes that there is disparity in the power relations between consumers and producers of goods and services. But due to the consumers' lack of knowledge of the characteristics and technical component of goods and services, the superior bargaining power of the suppliers of goods and services over the consumer, and the fact that producers of products and services are much more endowed in terms of resources, the consumers are inevitably, the weaker party in the power relations. This is why the CPC was set up as a government agency that would assist in balancing the power relations between consumers and producers.

With the way things are going, telecoms consumers are concerned, because The CPC has had negligible impact on consumers. The services are still poor and consumers hardly get compensated. On 19th December, 2005, the NCC and the CPC entered an agreement for collaboration. While the NCC prides itself as the sector specific regulator in the telecommunications industry with a statutory mandate to protect consumers as well as operators in that sector. The CPC is the apex agency of the Federal Government with a statutory mandate to seek redress for and protect consumers in all sectors of the economy including the telecommunications industry but it is yet to start performing its duties. At this juncture, it is pertinent to ask whether the regulatory institutions in Nigeria are too many and thus unwieldy, thereby making it impossible to function along clear, unclogged operational lines? Regulatory institutions for the telecommunication industry in Nigeria are consumer protection bodies fully legally empowered to make the consumer get value for his money.

The NCC is empowered under section 1(2) 2(h) 4(b) of the NCC Act 2003 to set up departments, establish standards and ensure the safety and quality of telecommunication services by determining technical standards and regulating technical execution and performance. The technical research and standard department has the responsibility of approving all mobile phones that come into the country. The Commission is by law empowered to work with handset manufacturers and vendors to ensure compliance. This in practical terms apart from being herculean in nature, conflicts with the functions of other regulatory agencies such as the Standards Organisation of Nigeria (SON) Act 2004, and the Department of Customs and Excise.

Matters relating to exploitative advertisement and promotional activities are not within the direct control of the NCC. The regulatory bodies in Nigeria for the control of advertisement and other promotional activities include the National Lottery Regulatory Commission and the Advertisement Practitioners' Council of Nigeria (APCON). It will require collaboration between NCC and these bodies to ensure that exploitative advertisement is checked. Most recently, the National Environmental Standards Regulatory and Enforcement Agency (NESREA), created under the NESREA (Establishment) Act 2007 and the Nigeria Communication Commission, NCC created under the NCC Act 2003, bickered over the regulation of telecommunications mast. The two Government agencies first clashed about two years ago over a mast belonging to Globacom located within the OAU quarters at Maitama, Abuja. NESREA had decommissioned the mast for allegedly violating the country's environmental regulations. This, however, did not go down well with the NCC, which saw the action as encroaching into its constitutional mandate.

In May 2012, the agency decommissioned two base stations belonging to MTN and Glo, and in July, the agency decommissioned another base station belonging to Visafone in Akure, Ondo State for the same offence; failure to erect their masts in compliance with the NESREA's guideline of 10 meters to the nearest building and also failure to carry out environmental impact assessment, EIA. The NCC maintained that the closure of the base station without consultation with the NCC would hinder the development of the telecom industry.

The crux of the matter is that though the law setting up the NCC give it overwhelming powers to regulate the telecom sector, the NESREA Act also empowers it to regulate the environment even in cases involving telecom companies with regard to their infrastructural drive as it concerns environmental hazards. As provided in S.136(3) of the NCC Act 2003, "all licensees shall in connection with installation of their respective network facilities, take all responsible steps to protect the safety of persons and property, ensure that the activities interferes as little as practicable with the use of land and environment".

In the case of the NESREA Act 2007 as provided in S.2, "the Agency shall be the enforcement agency for environmental standards, regulations, rules, laws, policies and guidelines." The NCC Act permits it to regulate licensed telecoms operators in the entire country and the NESREA Act designates it as the overall regulator of the nation's environment. However, there are instances of function overlap and difference in function implementation. For example while the NCC Act requires that a base station should be mounted 5 meters from residential buildings, NESREA requires 10 meters. The differences, among others, remains that bone of contention.

The NCC cannot effectively carry out its enforcement functions due to political interference, lack of co-operation by other arms of government and overbearing nature of the executive. The fine of one billion naira imposed on MTN, GLOBACOM, AIRTEL, and ETISALAT was not paid at the expiring of the 25 May 2012 deadline, due to interference from the executive arm and the seeming lack of will by the industry regulatory to carry out its mandate of enforcement. Corruption in the system also affects the regulatory regimes in the country.

There have been numerous allegations of operators gratifying the regulatory personnel with airtime. It appears, therefore, that the inherent poor performance of the service providers is partly attributable to institutional and human factors and not the legislation itself. There is need for collaboration by all institutions of government and amendment of the legislations to remove areas of conflict in the law. Interestingly, the bottom line of the collaboration is to avoid regulatory overlaps and engender certainty for the benefit of all stakeholders in the telecommunications sector. The parties should recognize the need for collaboration in the discharge of their functions as it relates to consumer protection in the sector. It would be a dream come true where every telecoms consumer in the country see the implementation of this collaboration to the letter.

Global Best Practices

At this juncture, it is pertinent to outline some of the global best practices in the regulation of the telecommunications industry which has greatly added value to consumer protection in the market place. First, the existence of explicit mandates in the telecommunication law to deal with anti-competitive practices in the sector, as has been done by the Federal Communications Commission in the US is significant and effectively deals with anti-competition matters. Unfortunately, the NCC Act, 2003 does not explicitly make provision for anti-competition practices. It is only statutorily mandated to discourage monopoly without being provided with the means.

Second, a separate competition authority with statutory responsibility for competition matters exists in the US and Peru.[10] If competition is to benefit consumers, they must be able to exercise choice. In Nigeria, the assumed regulatory “best practices” to date has been to focus on the consumer detriment that arises where there are information asymmetries in favour of the supplier.

Third, the efficacy of regulatory intervention depends equally on consumers being aware of and taking responsibility for their choice of providers and their online security. Moreso, consumer active involvement is actively promoted by a legislative framework that clearly lays out consumers’ responsibilities, including letting the regulator know when things go wrong (as required by the Kenyan Consumer Protection Bill). Access to a fair and transparent complaints process with sanctions for non-compliance remains an essential part of an effective consumer protection framework. With the internet generating many small cross-border transactions, regulators also need to consider ways of securing collective redress (as currently explored by the European Commission).

Again, with the expansion of networks and cross-border communications, possibly the most daunting challenge to ICT regulators is how to tackle cyber-security. The fight against scams is not something that regulators or consumers can tackle on their own. It is a challenge that requires global co-operation between systems operators and software providers, law enforcement agencies, policy makers, industry and business organization.

Global consumer best practices encourages the establishment of Telecom Disputes Settlement and Appeals Tribunal (TDSAT) or Consumer Dispute Redressal Commission to adjudicate disputes between licensee, between two or more service providers, between a service provider and a group of consumers.

Another international best practice is the provision of Mobile Number Portability service (MNP). MNP is the ability of a mobile telephone service provider to change his/her service provider while still retaining his/her mobile telephone number. The ability of subscribers to retain their phone number, when changing service providers will give subscribers flexibility in quality, price, and variety of telecommunication services they can choose to purchase. Number portability promotes competition between

telecommunications service providers by, among other things, allowing the consumers to respond to price and service changes without changing their telephone number. In other words a customer is less likely to switch carrier if he/she cannot retain his/her telephone number.[11]

Conclusion

With the level of deregulation of the Nigerian economy and particularly the telecommunications sector, the adoption of these international best practices in the Nigerian regulatory regime will address existing lapses and reposition the industry for effectiveness and efficiency. The combined effect of the institutional conflicts and the absence of international best practices coupled with the executive interference and high corruption militate against the effectiveness of the institutional mechanism of enforcement of the provisions of the regulatory framework.

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