

Protecting Consumer Rights in E-Commerce Transaction in Nigeria

**Ahmed Osilama Abu
LCU/PG/ 002370**

**Being a Thesis in the Faculty of Law, Submitted to the Postgraduate College, Lead City
University, Ibadan, Oyo State, Nigeria**

**In Partial Fulfilment of the Requirements for the Award of Master of Laws Degree
(LLM), Lead City University, Ibadan, Oyo State, Nigeria**

2024

Declaration

I hereby declare that this research is the product of my own research efforts undertaken under the supervision of Dr. J. O. Adedeji. It has not been presented elsewhere for the award of a degree or certificate and all sources have been duly distinguished and appropriately acknowledged.

Lead City University Ibadan DO NOT COPY

Certification

This is to certify that Ahmed Osilama ABU with Matriculation Number LCU/PG/002370 completed this thesis titled 'Protecting Consumer Rights in E-Commerce Transactions in Nigeria' in the Faculty of Law, Lead City University, Ibadan, Nigeria for the award of Master of Laws Degree (LL.M), and that this work has not been previously submitted.

Dr. J. O Adedeji
(Supervisor)

Date

Prof. F.O. Abimbola
(Dean Faculty of Law)

Date

Lead City University Ibadan DO NOT COPY

Dedication

This thesis is dedicated to Almighty God, and all those who have brought positivity into my life

Lead City University Ibadan DO NOT COPY

Acknowledgement

My first and foremost appreciation goes to the Almighty God, the All knower, the Cherisher and Sustainer of the Universe, may your Name be exalted for granting me the time and zeal, serenity and good health, to accomplish this thesis.

Next is my Project Supervisor, Dr. J. O. Adedeji. The researcher cannot find the right words to express my profound gratitude to you. You stepped in when it seemed dark and restored light. The researcher is most grateful for all guidance and assistance you rendered me throughout this project work.

My profound appreciation also goes to our most erudite Dean of Faculty, Prof. F. O. Abimbola, and all my amiable lecturers in the faculty: Prof B. K. Omidire, Dr. A. E. Adegbite, Dr. O. S. Oni, Dr. D. O. Akabuiro, Dr. Fatoki, Dr. Adenipekun, and all other staff of the faculty. I am extremely thankful to all of you for the positive difference you brought into my life.

To my classmates in the faculty, that we read and shared ideas together, especially Adetunji Albert, Dele Ezekiel, O.A Aloba, Mrs. Benson, Mrs. Tayelolu and others, I value and appreciate each and every one of you.

To my wife and children, the success is not mine alone but ours.

Even though the above-mentioned institutions and persons have assisted in the process of this research work, the researchers stand responsible for the errors, if any, found in the work.

Table of Contents

Content	Page
Title Page	i
Declaration	ii
Certification	iii
Dedication	iv
Acknowledgements	v
Table of Contents	vi
Table of Cases	x
List of Statues	xi
List of Abbreviations	xiii
Abstract	xv
Chapter One	
Introduction	1
1.1 Background to the Study	1
1.2 Statement of the Problem	7
1.3 Aim and Objectives of the Study	8
1.4 Research Question	9
1.5 Methodology	9
1.6 Scope of the Study	10
1.7 Significance of the Study	10
1.8 Limitation of Study	11

1.9	Operation Definition of Terms	12
1.10	Chapterisation	12
Chapter Two		
Literature Review		15
2.1	Conceptual Clarifications	15
2.1.1.	The Concept of Consumer	15
2.1.2	The Concept of E-Commerce	17
2.1.3	The Concept of Consumer Protection	20
2.2	Theoretical Framework	21
2.2.1	Friedrich Hayek's Spontaneous Order Theory	21
2.3	Literature Review	23
Chapter Three		27
Legal and Institutional Frameworks for Protection and enforcement of E-Commerce Consumer Rights in Nigeria		27
3.1	Legal Framework for the Protection of Consumer Rights in E-Commerce Transaction in Nigeria	27
3.1.1	Constitution of the Federal Republic of Nigeria, 1999	29
3.1.2	Cybercrime (Prohibition, Preventions Etc.) Act 2015	31
3.1.3	Nigerian Electronics Transactions Bills 2015	39
3.1.4	The Federal Competition and Consumer Protection Act, 2018	43
3.2	Institutional Framework for the Protection of Consumer Rights in E-Commerce Transaction in Nigeria	50
3.2.1	The Federal Competition and Consumer Protection Commission of Nigeria	50
3.2.2	The FCCPC and the Rights of E-Commerce in Nigeria	52
3.2.2.1	The Right to Safety	55
3.2.2.2	The Right to be Informed	57
3.2.2.3	The Right to Choose and Disclosure of Price	60

3.2.2.4 Right to Privacy and Data Protection	61
3.2.2.5 The Right to be Heard	62
3.2.3 The FCCP Act, the FCCPC and the Enforcement of E-commerce Rights in Nigeria	64
3.2.3.1 Limitation of Power	64
3.2.3.2 Consumer Awareness	64
3.2.3.4 Consumer Apathy toward seeking Redress	65
3.2.4 Effectiveness of FCCPC in Protecting the Right of Consumers in E-commerce Transactions in Nigeria	67
3.2.5 The FCCPC, and the Judicial Process in Protecting and Enforcing the Rights of E-Consumers in Nigeria	69
3.3. The Legal and Regulatory Framework of Consumer Protection Under E-commerce in South Africa: Lessons for Nigeria	71
3.3.1 Information Disclosure	74
3.3.2 Unfair Contract Terms	75
3.3.3 Payment Mechanism	76
3.3.4 Privacy and Data Security	76
3.3.5 Dispute Resolution and Redress	77
3.4 The Legal and Regulatory Framework of Consumer Protection under E-Commerce in the United Kingdom: Lesson for Nigeria	78
Chapter Four	
Legal and Institutional Framework for E-Commerce Consumer Protection: An Appraisal of International Best Practice	81
4.1 Legal and Institutional Framework for E-Commerce and Consumer Protection	81
4.1.1 The United Nations Commission on International Trade Law (UNCITRAL)	83
4.1.2 Objectives and Scope of the Model Law	88
4.1.3 The OECD 1999 Guidelines for Consumer Protection in the	

Context of E-commerce	95
4.1.3.1 Information Disclosure	96
4.1.3.2 Dispute Resolution and Redress	98
4.1.3.3 Privacy and Data Security	99
4.1.4 The African Union Convention on Cyber Security and Personal Data Protection	99
4.1.5 The ECOWAS Agreements on the Regulation of Internet Activities	102
Chapter Five Conclusion	107
5.1 Summary of Findings	107
5.2 Conclusion	109
5.3 Recommendations	110
5.4 Contribution to Knowledge	115
5.5 Suggested Area for Further Research	114
Bibliography	116
Bio-data	124
The University Compliance Certification	127

Table of Cases

Nigerian Cases:

Osemobor v Niger Biscuits Co. Ltd. (1973) 7 CCHCJ 71 16

Foreign Cases:

Donoghue v Stevenson (1932) AC 562 15

King v State Ex Rel Murdock Acceptance Corp. (1996) 22 F2d 39 82

Lead City University Ibadan DO NOT COPY

Table of Statutes

Nigerian Statutes

Constitution of the Federal Republic of Nigeria, Cap N 23, Laws of the Federation of Nigeria, 2004, 1999 (as Amended)	23, 28, 30, 48, 60, 68, 107,
Consumer Code of Practice Regulations 2007	6
Consumer Protection Act, 1999 (Act No 599)	55,
Consumer Protection Act, Cap C25 LFN 2004	42,
Consumer Protection (Distance Selling) Regulation 2000	76, 78, 79
Cybercrimes (Prohibition, Prevention etc.) Act, 2015	28, 30, 31, 32, 33, 107
Electronic Commerce (EC Directive) Regulation 2002	76, 77, 78
Electronic Transaction Bill, 2015	38, 42, 107
Evidence Act 2011	39, 84
Federal Competitions and Consumer Protection Act, 2018	6, 28, 38, 42, 107
Nigerian Data Protection Regulation 2019	34, 35, 61
Property and Conveyancing Law, 1958 (Western Nigeria)	81
Protection of Personal Information Act, 2013	63
Statute of Fraud 1677 (as applicable in Nigeria)	80

Foreign Statutes

African Union Convention on Cyber Security and Personal Data Protection	98, 119
Consumer Protection Council Act, 1992 South Africa	48, 70, 71, 73, 74, 109, 123
Directive C/DIR.1/08/11 on Fighting Cybercrime within ECOWAS.	101, 104
Directive on Privacy and Electronic Communications (DPEC) 2002	94
Electronic Communications and Transactions Act 25 of 2002, South Africa	37, 73, 75, 109
Ghanaian Electronic Transaction Act 2008	92
Guidelines for Consumer Protection in the Context of	

Electronic Commerce, 1999, Organisation for Economic Cooperation and Development (Paris, OECD, 2000)	41, 57
Indian Information Technology Act (JJTA) 2000	93
OECD Guideline for Consumer Protection in the Context of E-commerce, 2016	64, 94
OECD Consumer Policy Guidance on Mobile and Online Payments, 2014	41
Supplementary Act A/SA.1/01/10 on Personal Data Protection	101
UNCITRAL, Model Law on E-commerce (1996)	27, 81, 82, 83, 85, 86, 92,
Unfair Commercial Practices Directive (UCPD) 2005	94
United Nations Conference on Trade and Development (UNCTAD) 'Manual on Consumer Protection' 2016)	19
United States Federal Trade Commission Act, 1914	7

Lead City University Ibadan DO NOT COPY

List of Abbreviations

ADR	Alternative Dispute Resolution
ALL FWLR	All Federation Weekly Law Report
AU	African Union
CFRN	Constitution of the Federal Republic of Nigeria
CLOUT	Case Law on UNCITRAL Text
CPA	Consumer Protection Act
CPC	Consumer Protection Council
CPDR	Consumer Protection (Distance Selling) Regulation
CPPA	Cybercrime (Prohibition, Prevention etc.) Act
DoE	Directive on E-commerce
DPEC	Directive on Privacy and Electronic Communication
EA	Evidence Act
ECOWAS	Economic Community of West African States
ECTA	Electronic Communications Transactions Act
EDI	Electronic Data Interchange
EFT	Electronic Funds Transfer
ETB	Electronic Transactions Bill
FCCPA	Federal Competition and Consumer Protection Act
FCCPR	Federal Competition and Consumer Protection Regulation
FTC	Federal Trade Commission
GETA	Ghanaian Electronic Transaction Act
ICT	Information and Communication Technology
ISP	Internet Service Provider
LFN	Laws of Federation of Nigeria
LPELR	Law Pavilion Electronic Law Report
NCC	Nigerian Communications Commission

NDPR	Nigerian Data Protection Regulation
NITDA	National Information Technology Development Agency
ODR	Online Dispute Resolution
OECD	Organization for Economic Cooperation and Development
OEEC	Organisation for European Economic Cooperation
NWLR	Nigeria Weekly Law Report
PCL	Property and Conveyancing Law
POPIA	Protection of Personal Information Act
SOF	Statute of Fraud
UCPD	Unfair Commercial Practices Directive
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations General Assembly

Abstract

E-commerce is rapidly emerging as the favoured method for everyday business transactions, particularly in the retail sector. This trend is primarily driven by the significant benefits the platform offers, with convenience being the most notable, due to the fact that it eradicates geographical boundaries and establishes an online marketplace easily accessible to consumers worldwide. However, as more persons accept this convenient mode of business transaction, most Nigerians are displeased with the entire process. They see it as a nightmare characterised by problems such as, poor internet infrastructure, high rates of internet fraud, false advertising, deceptive pricing, late or non-delivery of goods, and the unsupportive business environment and government regulations. Hence, this study examined the legal and institutional frameworks for the protection of e-commerce consumer rights in Nigeria. To achieve this, the doctrinal research method was used, with much reliance placed on both primary sources, and secondary sources. E-commerce consumer rights' related provisions in the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Cybercrimes (Prohibition, Prevention, Etc.) Act, 2015, the Electronic Transmission Bill, 2015, the Federal Competition and Consumer Protection Act, 2018, the African Union Convention on Cyber Security and Personal Data Protection, 2014, and the UNCITRAL Model Law on E-Commerce, 1996, were adequately considered in this study. The study revealed that a primary reason for the reluctance of most Nigerians to shop online is their distrust in the overall process as they feel insecure about sharing their banking and personal details with online retailers. The study further revealed that there is no specific legal framework addressing consumer rights protection in e-commerce transaction in Nigeria, as different disjointed legal and institutional structures govern the multiple facets of consumer rights protection. The study concludes that the laws on consumer protection in e-commerce transactions in Nigeria are grossly inadequate.

Keywords: E-Commerce, transaction, consumer rights, protection,

Word Count: 298

Chapter One

Introduction

1.1 Background to the Study

The emergence of Information and Communication Technology (ICT) has had a profound effect on commercial transactions on a global scale. The advent of the Internet has facilitated the automation of corporate processes and enhanced communication with a broader range of consumers, business associates, and regulatory bodies. The advent of mobile technology, including apps, devices, networks, and content management systems, has significantly accelerated organisational transitions, alterations in customer interactions, and the rise of client segments that can be reached irrespective of their geographical location. These technologies have enabled companies to establish a platform for engaging with consumers and providing a significant degree of personalisation, so revolutionising the way firms function and engage with their customers. The proliferation of ICT and the extensive use of mobile technology exemplify the substantial influence of ICT on the commercial industry.

The Internet has fundamentally transformed business transactions, completely altering the relationships between sellers and buyers and ushering in a new age of expedited and highly effective commercial exchanges.¹ E-commerce, often known as electronic commerce, revolutionises conventional trading practices by establishing a worldwide platform for the exchange of products and services. With the advent of the Internet, the world today has grown beyond being a global village, to just being a click away.² Consequently, it has become a crucial element of everyday life for many people, who use online platforms for a wide range of purposes, including purchasing household items and engaging in online trading.

¹ S Chopra. 'The Significance of E-commerce in Modern Business.' Research Gate. (2024) <https://www.researchgate.net/publication/380165926_The_Significance_of_Ecommerce_in_Modern_Business> (accessed on 19th June 2024).

² Adeyemi Adepetun, 'Bridging the Gap of Standards, Consumer Protection in Nigeria's \$13bn E-Commerce' (*The Guardian*, 25th June, 2018) available at <<https://guardian.ng/features/focus/bridging-the-gap-of-standards-consumer-protection-in-nigerias-13bn-e-commerce>> (Accessed 17th September, 2023)

E-commerce refers to the process of conducting transactions including the purchase and sale of items, services, and information via digital electronic communication utilising computer networks, namely the internet. E-commerce often refers to the practice of doing business electronically, using ICT equipment or gadgets instead of traditional physical methods. E-commerce refers to the process of buying items and/or accessing services over an online platform. It also includes related operations including delivery, payment processing, supply chain management, and service administration.³

One significant concern for both scholars and professionals is how e-commerce performs in the business and economic sectors. The importance of e-commerce is increasing for nations, companies, and consumers, as it facilitates the electronic buying, selling, and advertising of goods and services through the internet.⁴ World over, consumers engage in electronic transactions at all hours, benefiting from a rapidly growing sector that allows them to make online purchases of goods and services from the comfort of their homes and offices. This convenience also enables them to easily compare products, gather information, and check prices.⁵ The internet grants online businesses numerous potential advantages, creating a limitless virtual global trade environment. This environment transcends the constraints of time and space, greatly expanding markets, lowering costs, fostering the transformation of traditional industries, and enhancing the efficiency and quality of business services.⁶ It has facilitated the development of an efficient circulation system in modern commerce, becoming a crucial component of the modern service industry by reducing workforce requirements,

³ V Santos, T Augusto, J Vieira, L Bacalhau, B M Sousa, and D Pontes, 'E-Commerce: Issues, Opportunities, Challenges, and Trends' in *Promoting Organizational Performance Through 5G and Angle Marketing Advances in Marketing*, (IGI Global, 2023), 12 pp. 224–244.

⁴ V Panchal and R Shaikh, 'Importance of E-Commerce', *International Journal for Research in Applied Science and Engineering Technology* 10, no. 3 (2022): 1423–1428

⁵ P Kaźmierczak 'Trends in Digital Payments and their Impact on the E-Commerce Sector.' WebMakers Software House. (2024) <<https://webmakers.expert/en/blog/trends-in-digital-payments-and-their-impact-on-the-e-commerce-sector>> (accessed 15 August, 2024)

⁶ M R Guo, 'A Comparative Study on E-Commerce Consumer Right to Learn the Truth: Policies of Major Legal System', *International Conference on Business Management*, Lahore, Vol. 6, 28-29 March 2011, pp. 2496-2499.

offering secure methods for long-distance transactions, enhancing consumer communication efficiency, and improving overall cost-effectiveness.⁷ The wealth of information available online empowers consumers to compare market prices and identify the best purchasing options, allowing online merchants to segment their audiences effectively and maximize profits.⁸

The productivity, efficiency, and effectiveness of e-commerce have significantly expanded access to markets worldwide, especially for enterprises in the developed world.⁹ This expansion is notably prevalent among businesses in developed countries, driven by extensive internet and mobile technology adoption as well as an increasing young demographic. The outbreak of the COVID-19 pandemic, which necessitated the shutdown of physical stores to prevent the virus's spread has given impetus to the digitalization processes of retail trade, which in turn made electronic commerce a very viable natural way of making purchases and sale.¹⁰ Despite the challenges posed by the pandemic, Nigeria's e-commerce sector continued to operate and expand, especially in the business-to-consumer segment on various e-commerce platforms.¹¹ In 2022, 75% of EU internet users had bought or ordered goods or services through the internet.¹² Globally, in 2021, online sales amounted to about 4.9 trillion

⁷ A R Patil, 'Consumer Protection in Electronic Commerce and Online Dispute Resolution through Mediation', in D. Wei, J P Nehf, and C L Marques (eds) *Innovation and the Transformation of Consumer Law*, (Singapore: Springer, 2020). Pp. 177 - 190.

⁸ *E-Commerce 2023: Business, Technology, Society*. (2023, May 1). <<https://www.pearson.com/en-us/subject-catalog/p/e-commerce-2023-business-technology-society/P200000009801/9780138043391>> (accessed 17 September, 2023)

⁹ International Trade Centre 'International E-commerce in Africa: The way Forward' (2015) 4 Microsoft Word-E-commerce_111215 (intracen.org) (accessed 12 April 2023).

¹⁰ Snezhana Sulova, 'A Conceptual Framework for the Technological Advancement of E-Commerce Application' 2023, 3(1), (220 -230) *Innovative Practices in E-Commerce and E-Management, Businesses 2*. Available at <<https://doi.org/10.3390/businesses3010015>> (accessed 23 September 2023)

¹¹ N Okpara, 'Communication Management' in Frantisek Pollak, Jakub Soviar and Roman Vavrek (eds) *Ethics and the Prospects of E-commerce Platforms in Doing Business in Nigeria* (2021) 2.

¹² *ibid*

US dollars forecasts for the next 4 years will reach approximately 7.4 trillion dollars in 2025.¹³

The impact of internet and web access can be likened to the transformative effects of the industrial revolution on agrarian societies, simplifying and speeding up global business operations and fostering virtual international connections. Advancements in telecommunications, the growth of the internet, and the rise of e-commerce have driven market globalization. Businesses now frequently sell products and services and interact with suppliers and customers online. Traditional brick-and-mortar businesses are rethinking their strategies to stay competitive in the e-commerce-driven market. E-commerce, having moved beyond its initial stages, is now a critical part of multi-channel efforts to boost sales and profits, attracting more businesses at a rapid pace. To fully leverage e-commerce benefits, companies are overhauling their processes rather than merely adapting existing tasks. While Nigeria is not a leader in this transformation, it is actively participating as the internet continues to globalize communities. However, implementing successful e-commerce is challenging, involving customers, technology, and financial considerations. The cost of not adopting e-commerce may ultimately exceed the investment required to implement it.

As e-commerce has grown and become a significant tool, it has encountered various challenges. This is because e-commerce transactions possess distinct characteristics compared to traditional goods trade. Research indicates that consumers using e-commerce platforms face several issues. Consequently, this leads to certain negative impacts, with the most significant being the consumer's potential vulnerability. This vulnerability arises because sellers might misrepresent products in some online transactions, or the entire transaction might be fraudulent, especially if the consumer is not familiar with or cannot access the seller outside the e-commerce platform. Additionally, consumers often do not

¹³ J. Shepherd, '21 Essential E-Commerce Statistics You Need to Know in 2023' (available at <<https://thesocialshepherd.com/blog/ecommerce-statistics>> (accessed 23 September, 2023))

understand the range of potential uses of the information they provide, leading to unawareness of possible violations of their rights.¹⁴ Secondly, consumers rely on advertisements to learn about products rather than through direct observation, personal choice, or investigation. If online retailers fail to provide complete or accurate information, it compromises consumer interests. Thirdly, payment for items cannot be transferred immediately. Typically, in e-commerce transactions, consumers pay online sellers in advance and specify the desired products. After receiving payment, online sellers ship the items to the consumer. Fourthly, establishing a legally binding contract is crucial in e-commerce transactions. Since online business contracts are paperless, determining their legality can be challenging, making digital signatures vital for ensuring all parties have entered into a binding agreement. Over the past decade, consumer awareness of their rights has increased, particularly regarding their privacy, prompting the need for e-commerce consumer rights protection legislation. A consumer is defined as the end user of a product or service, while 'consumer rights protection' refers to safeguarding the consumer's interests in matters related to the supply of goods and services.¹⁵ Consequently, "consumer protection" refers to a collection of policies designed to ensure fair treatment of customers and the safeguarding of their rights in business transactions involving goods or services. The universally acknowledged fundamental rights of consumers include protection from substandard goods and services, access to sufficient information about the price, quality, and quantity of goods and services, the availability of a variety of products and services, the right to voice concerns, the right to seek compensation, and the right to representation, among others. Thus, the law functions as a means to safeguard these consumer rights.

¹⁴ R Bandara, M Fernando, and S Akter, 'Privacy Concerns in E-commerce: A Taxonomy and a Future Research Agenda, *Electronic Markets: The International Journal on Networked Business* 30 (2020): 629–647

¹⁵ M F Nwanne, *A Critical Examination of Consumer Protection Law and Practice in Nigeria*. CODESRIA Books Publication System, June 23, 2023.

In numerous developed countries, laws have been implemented to shield vulnerable consumers, ensuring their protection at every transaction stage. This has led to the creation of a comprehensive regulatory framework that guarantees the smooth functioning of the system, adequate protection for both businesses and consumers, and specifies wrongdoings and penalties related to e-commerce. Malpractices can manifest in various forms, primarily financial, product performance, psychological, and time/convenience losses. However, most online purchasing barriers tend to focus on identity protection and consumer satisfaction, highlighting the challenges consumers face in understanding and asserting their rights.¹⁶ Currently, Nigeria lacks a specific or comprehensive data privacy or protection law. However, there are a few industry-specific and targeted regulations that offer some rights-related protections. One example of such an industry-specific regulation is the Consumer Code of Practice Regulations 2007 (NCC Regulations), issued by the Nigerian Communications Commission (NCC), which serves as the country's telecommunications regulator.¹⁷

Another instance is the Cybercrime (Prohibition, Prevention Etc.) Act of 2015, which was regarded as a positive development, yet its enforcement remains a challenge. Subsequently, the National Information Technology Development Agency (NITDA) released the Nigerian Data Protection Regulation (NDPR) in 2019. Notably, following the publication of the NDPR by NITDA, the Federal Competition and Consumer Protection Act (FCCP Act) was enacted on February 5, 2019.¹⁸ With the recent implementation of the new FCCP Act and the formation of the Federal Competition and Consumer Protection Commission, the key question now is how effectively this new Commission will manage and ensure the protection of e-consumers in e-commerce transactions. A vast number of consumers in Nigeria engage

¹⁶ U Udoma, and B Osagie, 'Data Privacy Protection in Nigeria' <<https://www.uubo.org/media/1337/dataprivacy-protection-in-nigeria.pdf>> (accessed 23 April 2023).

¹⁷ M Nuruddeen, 'An Appraisal of the Legal Requirements of Electronic Commerce Transactions in Nigeria' *Bayero University Journal of Public Law (BUJPL)* 3, no. 1 (2011): 164–183.

¹⁸ D J Ibegbulem, 'The Protection of Consumers: Personal Data in the Era of E-commerce in Nigeria'. <https://www.researchgate.net/publication/315730418_Legal_Framework_for_Ecommerce_Transactions_and_Consumer_Protection_A_Comparative_Study> (accessed 15 December 2023).

in various e-commerce activities.¹⁹ Despite this, there are still no clear and accessible channels for redress, allowing suppliers to set their own company-specific terms and conditions and use redress platforms that may be difficult for consumers to access. This is largely due to the absence of a comprehensive legal, regulatory, and institutional framework to protect consumer rights in e-commerce transactions in Nigeria. Consequently, numerous legal and social challenges have arisen, significantly impacting e-commerce activities in the country. These issues have led to confusion and a lack of consumer confidence in seeking redress, while also discouraging enterprises from engaging in unethical business practices. Therefore, it is essential to protect consumer rights and properly regulate the entire e-commerce industry. The recognized lack of a primary legal instrument for comprehensive consumer protection in Nigeria has increased concerns about consumer safety on various e-commerce platforms.

1.2 Statement of the Problem

The breach of consumer rights in e-commerce transactions is not a fictional concept, but a concrete reality. In 2023 for example, Amazon was sued by Federal Trade Commission of the United States of America for allegedly using anti-competitive and unjust strategies to preserve its monopolistic dominance, thereby infringing on consumer rights. The lawsuit alleges that Amazon's actions impede rivals from lowering prices, diminish shopping experiences, overcharge vendors, impede innovation, and obstruct fair competition.²⁰ Similarly in October 2024, a U.S. District Court judge gave a landmark judgment with major implications for Big Tech and consumer choices when he ruled that Google violated antitrust

¹⁹ F N Monye, 'Protecting Consumers of Products and Services in the Digital Age' News Commentary to mark the World Consumer Rights Day 2017: 15 March 2017 <<http://www.consumerawarenessng.org/events/protectingconsumers-of-products-and-services-in-the-digital-age.html>> (accessed 15 April 2023).

²⁰ Available at <<https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>> (accessed on 27 September, 2023)

laws with an illegal monopoly over online searches.²¹ While we await the judgment in the Amazon case, both cases have shown the alarming global dimension the breach of e-commerce rights has taken.

Despite the appearance that most developed countries have implemented robust e-commerce related consumer protection laws, many developing countries like Nigeria face significant consumer malpractice issues.²² Nigerian consumers using e-commerce platforms often encounter challenges like misrepresentation, fraud, false advertising, deceptive pricing, late or non-delivery of goods, leaving them vulnerable and in a disadvantaged position. This has become a significant challenge for consumerism, necessitating an investigation into the existing legal, regulatory, and institutional frameworks for protecting consumers' rights in e-commerce transactions in Nigeria. If these legal barriers are not promptly and effectively addressed, consumers will be reluctant to engage in e-commerce, businesses will lack motivation to adhere to ethical practices, and the growth of e-commerce will remain slow. Therefore, it is crucial to examine the various consumer rights, extant legislations, institutional bodies in place, their effectiveness, and the judicial processes for resolving issues to ensure adequate protection for the online consumer. This will establish a fair and organized conduct of e-commerce transactions, encouraging consumer acceptance and fostering the growth of e-commerce in Nigeria.

1.3 Aim and Objectives of the Study

The ultimate aim of this study is to identify and address the unique legal challenges faced in consumer rights protection in e-commerce transactions in Nigeria. The objectives of this study is to:

²¹ Available at <<https://www.techtarget.com>> (Accessed)

²² D D Sasu, 'E-commerce in Nigeria: Statistics and Facts' (14th December, 2023). Available at <<https://www.facebook.com/share/3gyo.8AqfkG-8jrv.53/?mibextid=xfxf2>> (accessed 2nd May, 2024)

- i. Examine the adequacy of extant laws for the protection and enforcement of consumer rights in e-commerce transactions in Nigeria, and certain developed countries.
- ii. Evaluate the effectiveness of the institutional bodies put in place by government for the protection of consumer rights in e-commerce transactions in Nigeria through a comparative study of South Africa and the United Kingdom.
- iii. Scrutinize the inherent challenges in the judicial processes for resolving disputes surrounding consumer right protection in e-commerce transactions in Nigeria.

1.4 Research Questions

Given the identified problems above, this study has formulated the following research questions:

- i. What are the extant laws for the protection and enforcement of consumer rights in e-commerce transactions in Nigeria, and certain developed countries?
- ii. How effective are the institutional bodies put in place for the protection of consumer rights in e-commerce transactions in Nigeria in comparison with what is obtainable in developed countries?
- iii. What are the inherent challenges in the judicial processes for resolving disputes surrounding consumer right protection in e-commerce transactions in Nigeria?

1.5 Methodology

In the context of this study, the researcher adopts the doctrinal research method to enable the researcher examine the existing legal and institutional frameworks for the protection of e-commerce consumers' rights in Nigeria and to make recommendations where the frameworks are found inadequate.

However, the types of data for this study consist of primary and secondary sources. Primary sources encompass legislative enactments, such as the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Cybercrimes (Prohibition, Prevention, Etc.) Act, 2015, the Electronic Transmission Bill, 2015, the Federal Competition and Consumer Protection Act, 2018, the UNCITRAL Model Law on E-Commerce, 1996, and case law. Similarly, the secondary source for this research comprises of various forms of writing of legal scholars describing, interpreting, analyzing, and criticizing either statutes or judicial pronouncements, law reviews and legal treaties such as the African Union Convention on Cyber Security and Personal Data Protection, 2014, and the ECOWAS Agreement on the Regulation of Internet Activities, 2010. Furthermore, for the secondary data, the researcher will make reference to academic journals, government publications, textbooks, dictionaries, and encyclopedias bordering on e-commerce and consumer protection rights in Nigeria. Here, references will be made to the practice in certain Africa countries, UK as well as UN and OECD Guidelines and Principles among others which will also help in answering research question and achieving their corresponding objectives.

1.6 Scope of the Study

This study is limited to an examination of the Nigerian laws, regulations, policies and institutions relevant for the protection of consumer's right in e-commerce transaction in Nigeria. It also investigates the various consumer's rights, institutional bodies put in place as well as their effectiveness, the judicial processes for resolving issues as well as enforcing the consumers' rights in e-commerce transaction processes. Furthermore, this study will also carry out critical analysis of regional and international standards relating to international treaties, programmes and policies to mention a few. However, this study did not cover other aspects of ICT law in Nigeria such as cybercrimes and e-banking. except for the purpose of

reference where necessary. In a nutshell, only the relevant laws and institutions dealing with e-commerce and consumer protection issues in Nigeria will be examined.

1.7 Significance of the Study

The findings of the study will address the problems as well as achieve the stated objectives. This study will be of immense benefit to government particularly the legislative arm as well as relevant government agencies, as it will help to stimulate on providing effective legal framework /legislation on how to address consumer rights in e-commerce transaction in Nigeria through legislation.

The findings of this study will benefit the members of the legal profession, that is, lawyers and judges as it will assist in stimulating them to acquire ICT knowledge which will enables them to handle e-commerce consumer disputes with much expertise and thus make them compete in the global legal practice connected with e-commerce consumer protection.

The findings of this study will also be of immense benefit to students and researchers who want to investigate further as it will serve as a reference material and likely open door for further research. Perhaps, subsequent researchers may provide more recommendations for reforms in the area of legal and institutional frameworks for the protection of e-commerce consumers in Nigeria, which may raise the consumer confidence to participate in e-commerce transactions and in the long run, impact positively on the economy and the investment climate in Nigeria.

Nevertheless, this study will also enlighten the general public particularly the business community who will stands to benefit a lot if the government implements the suggestions or recommendations proffered in this study. In a nutshell; the study will add and improve the body of the existing literature in the area of legal and institutional frameworks for the

protection of e-commerce consumers in Nigeria. Hence, contribute to the corpus of knowledge.

1.8 Limitation of the Study

The study considers lack of relevant judicial authorities, and limited time as part of its limitations or constraints which will make the researcher to work tirelessly and assiduously to overcome this constraint. In addition, is the problem of lack of financial resources through the researcher's use of personal savings and collecting soft loans to overcome the constraint.

1.9 Operational Definition of Terms

- i. E-commerce: this encompasses any form of business transaction in which the parties interact electronically buying and selling via the websites of online traders or merchants rather than by physical exchanges or direct physical contact.
- ii. Consumer: this is the end user of goods and services in commercial transactions.
- iii. E-consumer: this is any person who engages in commercial transactions via the internet
- iv. E-trader: these are parties that interacts electronically to sell goods and services via the websites of on line traders or merchants
- v. Legal Framework: the body of rules, laws, policies and guidelines including case law, which governs or regulates e-commerce transactions and consumer protection in Nigeria.
- vi. Institutional Framework: these are agencies, bodies or institutions established by the Nigerian government to regulate the affairs of e-commerce, consumer protection and related issues in the country.

- vii. Transaction: this is the direct business communication between the trader and the buyer that involves buying and selling of goods and services.

1.10 Chapterisation

This study will be laid out in chapters that will highlight the following.

Chapter One: Introduction

It contains the introductory chapter canvassing the background to e-commerce and an overview of e-commerce legislation from a global perspective to a national one. It will also contain an overview of the institutional issues relating to the protection of consumers right in e-commerce transaction in Nigeria. The chapter shall highlight the statement of the problem; its purpose and objectives; the research questions; significance, research methodology, limitation, and operational definitions.

Chapter Two: Literature Review

This chapter reviews the findings from other literature. It contains definitions and broader overview of e-commerce and literature that address the concept of consumers' right and protection in compliance with the law and policies dealing with e-commerce. It also highlights theoretical review that are related to the study and which the study is to be anchored on.

Chapter Three: Legal and Institutional Frameworks for Protection and enforcement of E-Commerce Consumer Rights in Nigeria

This chapter will provide an in-depth analysis of the legal and institutional frameworks for the protection and enforcement of E-Commerce consumer rights in Nigeria. It will carry out a comparative analysis of e-commerce within certain African Community, partner states; and other jurisdictions around the world specifically focusing on South Africa, the U.K, and the E.U that have rather developed infrastructure and systems.

Chapter Four: Legal and Institutional Framework for E-Commerce Consumer Protection: An Appraisal of International Best Practice

It will examine the international legal instruments relating to e-commerce and consumer's right protection. In this respect, the international legal instruments examined in this chapter includes the UNITRAL Model Law, 1996, OECD guidelines for consumer protection in the context of e-commerce 1999 and ECOWAS agreement on the regulation of internet activities.

Chapter Five: Conclusion

This chapter will summarize the findings in light of the objectives and purposes the research sought to achieve. It will also offer conclusion and suggestions for policy and legal reform in light of the ultimate objective to make e-commerce safe, secure and suitable for trade and economic development in Nigeria.

Lead City University Ibadan DO NOT COPY

Chapter Two

Literature Review

2.1 Conceptual Clarifications

There have been several attempts to proffer an acceptable definition for most of the legal terms commonly used in consumer rights protection in e-commerce transactions. Efforts to reconcile some of the definitions only undercut the disagreement among scholars as to the actual meaning of the term. Their perception of term is greatly influenced by their individual philosophical convictions, and ideological inclinations, and background. It is on the basis of these difficulties that it was posited that it is better to explain consumer rights protection concepts than attempting to define them.

2.1.1 Concept of Consumer

The term 'consumer' has been defined to mean a buyer (other than for the purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable State law to enforce against the

warrantor (or service contractor) the obligations of the warranty.²³ The problem with this definition is that it only recognises purchaser and receiver as consumer but failed to recognise the user of the product as consumer.

A consumer has also been defined as a natural person who enters into a commercial transaction with supplier as the end user of the goods and services offered by the supplier.²⁴ This definition is too restrictive because by reference to natural persons alone, it failed to acknowledge the fact that non-natural persons like corporate entities can also be end users of goods and services. It is against this backdrop that Badaiki, defines a consumer as a person, natural or corporate, to who goods, services or credit facilities are supplied or likely to be supplied, otherwise than in the course of business and for ultimate use in the course of business carried on by the supplier.²⁵

Under Section 167 of the FCCP Act, consumer is defined as any person who purchase or offers to purchase goods, otherwise than for the purpose of resale but does not include a person who purchases any goods or articles for sale or to who a service is rendered. The problem with this definition of consumer is that it is limited to only purchaser consumer, and does not extend to non-purchaser consumers.

The term consumer is also defined as a person who pays to consume the goods and services produced by a seller.²⁶ This definition limits the consumer to the purchaser only, it is safe to

²³ LII US Code Title 15 Chapter 50 2301. Available at LII/Legal Information Institute <https://www.law.cornell.edu> (Accessed 29th September, 2023)

²⁴ I k Ilobinso, 'Paving the Path to an Enhanced Consumer Protection for the Nigerian Online Market: Theories and Concepts' (2017) Available at (African Journals Online) <<https://www.ajol.info>> (Accessed 29th September, 2023)

²⁵ A D Badaiki, 'Effect of Privatisation and Commercialisation Policy on Consumer Protection in Nigeria,' in Adedeji Adekunle and Shankyula Tersoo Samuel (ed.) *Law and Principles of Consumer Protection*, (Lagos, Nigeria: Nigerian Institute of Advanced Legal Studies, 2013).

²⁶ Available at <https://www.courses.lumenlearning.com/boundless-marketing/chapter/introduction-to-consumers/> (Accessed on 29th September, 2023).

say that a consumer is a person who purchases or received or uses any product or service and is affected by a product or services.

By and large, one is of the view that in defining the term ‘consumer’ the emphasis should be placed on the final end user of a product or service; if we take a cue from the dictum of Lord Atkin in *Donoghue v Stevenson* ²⁷ where his Lordship stated that we must take reasonable care to avoid acts or omissions which you can reasonable foresee would likely to injure your neighbour. In his hypothetical question, ‘Who then in law is my neighbour?’, he answered that it ‘seems to be persons who are so closely and directly affected by my act that I ought reasonable to have them in contemplation as being so affected when I am directing my mind to acts or omissions which are called to question.’ The same view was expressed by a Nigerian court in *Osemebor v. Niger Biscuits Co. Ltd.* ²⁸ where the claimant found a decayed tooth in the biscuit she was eating as a result of which she became hysterical, agitated and vomited. She also had a running stomach.

Premised on the above analysis, a consumer can best be defined as the end user (whether natural or juristic persons) of goods and services (whether for personal or business purpose) in a defined contractual or tortious relationship.

2.1.2 The Concept of E-Commerce

Definitions of e-commerce vary, as scholars, governments, and international organizations have different interpretations, resulting in a range of definitional approaches.

E-commerce lacks a single universal definition and is interpreted differently across various international legislations and by researchers. The Organization for Economic Cooperation and Development, (OECD) used a common interpretation to defines e-commerce as the buying or selling of goods and services over computer networks, designed specifically for order

²⁷ (1932) AC 562

²⁸ (1973) 7 CCHCJ 71

placement or receipt. The payment and delivery of these goods or services don't necessarily need to occur online.²⁹

On a broader approach, e-commerce is said to cover any commercial transaction that is carried out electronically particularly with the aid of telecommunication services. This approach describes e-commerce as a business activity conducted electronically. E-commerce is defined as the production, advertising, sale and distribution of products electronically via a telecommunication network.³⁰ This perspective on the definitions asserts that e-commerce includes trading through any form of electronic communication, essentially referring to conducting commercial activities via electronic media. The specific medium used for the transaction is irrelevant as long as it is electronic. Another, more focused approach, limits the definition to transactions conducted exclusively over the internet. E-commerce as commercial transactions carried out electronically on the internet, where businesses use the web to promote and sell products and services to consumers worldwide.³¹ Additionally, it encompasses the promotion and advertising of goods and services online, often utilizing social networking platforms for these activities. Whenever a business transaction is completed and paid for online, it constitutes e-commerce, which involves the distribution, buying, selling, and marketing of products and services via the Internet. This process includes both pre-sale and post-sale activities. While the Internet facilitates these transactions, they specifically occur through the websites of e-traders. Consequently, modern e-commerce

²⁹ Organization for Economic Cooperation and Development, 'OECD Guide to Measuring the Information Society' (OECD Publishing, 2011) Available at: <http://www.oecd.org/sti/measuring-infoeconomy/guide> (accessed 19 August 2023)

³⁰ S G Saydam and M E Civelek, 'Problems in Cross-Border E-Commerce and Development of Cross-Border e- Commerce Performance Scale', Zenodo (CERN European Organization for Nuclear Research), 2022, <<https://doi.org/10.5281/zenodo.6618779>>.

³¹ M Nuruddeen, Y Yusof, and N A Abdullah, 'Electronic Commerce Transaction in Nigeria: A Critical Legal Literature Review', in *Public Law Remedies in Government Procurement: Perspective from Malaysia*, vol. 52, eds. A Abdul Rahim, A A Rahman, H Abdul Wahab, N Yaacob, A Munirah Mohamad, and A Husna Mohd. Arshad, European Proceedings of Social and Behavioural Sciences (2018), 857-872.

generally utilizes the World Wide Web at some stage of the transaction, although it can also incorporate other technologies like email.³²

E-commerce involves a location-based approach, which views the internet as the primary medium for transactions.³³ This method emphasizes the use of mobile phones and other portable devices like laptops and iPads, which connect to the internet via wireless technology to facilitate online transactions. This concept of mobile e-commerce highlights the trend of using these devices to start or complete transactions, enabling e-commerce to occur anywhere. Consequently, commercial activities can be conducted at any time and place, as long as there is internet connectivity and mobile devices are available. E-commerce transactions can involve entities like businesses, households, individuals, governments, and other public or private organizations.

An alternative perspective describes e-commerce as commercial transactions conducted online.³⁴ Terms like online sales, shopping, and transactions are synonymous with e-commerce. This definition focuses on transactions initiated through web platforms, excluding those done entirely via fax, telex, telephone, or email, as they don't allow consumers to see the products or services. However, it does acknowledge that follow-up communications may involve these electronic channels. Specifically, if such is done for tracking, returning or lodging any complaint regarding the subject matter of any e-commerce transactions.³⁵ Put differently, as far as pre-sale activities are concerned only website of the e-traders shall fall within the ambit of this definition. Post-sale communications or correspondences can be done via any other means than the websites of the e-traders.

³² Ibid

³³ N Adetoro and O Sodipe, 'Undergraduates' Use of Internet Capable Handheld Devices at Babcock University, Nigeria.' *Library Hi Tech News* 30, no. 2 (2013): 9.

³⁴ Charles Oppenheim and Louise Ward, 'Evaluation of Web Sites for B2C E-Commerce', *Aslib Proceedings: New Information Perspectives* 58, no. 3 (2006): 241.

³⁵ A O Oloveze, C Ogbonna, E Ahaiwe, and P A Ugwu, 'From Offline Shopping to Online Shopping in Nigeria: Evidence from African Emerging Economy,' *IIM Ranchi Journal of Management Studies* 1, no. 1 (2022): 55-68.

Another commonly accepted definition of e-commerce is the one given by World Trade Organization (WTO).³⁶ It defines e-commerce as the buying and selling of goods or services over computer networks using systems specifically designed for order processing. It can also be described as the process of offering, purchasing, or providing products and services through digital means, including computer systems and telecommunications networks such as the internet, utilizing electronic, optical, or similar media for remote information exchange. E-commerce is also described as conducting trade in goods and services with the aid of telecommunications and digital tools. Essentially, it refers to business transactions involving the ordering of products and services via internet-based platforms, allowing direct interaction between sellers and buyers without physical meetings. Clarke,³⁷ opines that definitions like this excludes transactions made through phone calls or manually typed emails, aiming to provide a clear, practical explanation focused on widely recognized and significant e-commerce methods.

By and large, e-commerce involves variety of transactions which takes place through mobile telephones and other devices such as personal computers and tablets either between parties within the same jurisdiction or parties in different jurisdictions, and purchases are completed using different applications and platforms.³⁸ In an e-commerce transaction, products are mostly marketed, advertised, sold, remunerated for, and delivered through services of a website via the internet and other computer networks.³⁹ It is also characterized with the sharing of business information, maintaining business relationships, and conducting business

³⁶ World Trade Organization (WTO) 'Work Programme on Electronic Commerce' Available at: <https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/bfecom_e.htm> (accessed 17 July 2023).

³⁷ Roger Clarke, 'Electronic Commerce Definitions', Available at <www.rogerclarke.com/EC/EDefns.html> (accessed on 29 July 2023).

³⁸ UNCTAD, 'Trade and Development Board Trade and Development Commission Intergovernmental Group of Experts on Consumer Protection Law and Policy' < https://unctad.org/system/files/officialdocument/ciclpd7_en.pdf> (accessed 28 July 2023).

³⁹ Gboyega Phillip Ogundele, 'Developing Legal Framework for Electronic Commerce in Nigeria: Some Lessons from The UK and Singapore' <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3719431_code2992951.pdf?abstractid=3182325&mirid=1> (accessed 29 July 2023).

transactions by means of telecommunications networks.⁴⁰ It also involves the exchange of data to aid the financing and payment features of business transactions because every time e-commerce transactions are rendered, the services or products rendered are paid for on the internet.

2.1.3 The Concept of Consumer Protection

The reasoning behind consumer protection as identified by Huffman,⁴¹ is to prevent the abuse of superior bargaining power by the sellers and suppliers of foods and services, and to regulate the inequality of bargaining power between them and the consumers. The researcher believes that in addition to regulating inequality of bargaining power, consumer protection is needed at all stages of the transaction especially after the parties have concluded. Consumer protection ensures that right of the consumer at all stages of the transaction are not denied.

Though some consumers continue to visit physical stores, most consumers are tilting towards e-commerce as it save the consumer from travelling to the physical store of the seller.⁴² E-commerce affords consumers the opportunity to compare prices from different vendors and make their decision. A researcher expressed a view which strongly disagrees with, that consumers in Nigeria only access online outlets to compare prices before patronizing bricks and mortar outlets.⁴³

2.2. Theoretical Framework

2.2.1 Friedrich Hayek's Spontaneous Order Theory

⁴⁰ V Zwass, 'Structure and macro-level impacts of electronic commerce: from technological infrastructure to electronic marketplaces', <http://www.mhhe.com/business/mis/zwass/ecpaper.html> (accessed 18 June 2023)

⁴¹ H Huffman, 'Consumer Protection in E-commerce' (University of Cape Town, South Africa, 2004)

⁴² R Sivanesan, 'A Study on Problems Faced by Consumers in Online Shopping with Special Reference to Kanyamukari District' available at <https://www.gooole.Com/url?sa=http:ijrmb.Com/vol4issue3SPL1/sivanesan.pdf&ved=2ahUKew@MojahrrnAhULV8AKHaabaHIQFjAAegQIARAB&usg=AOvVaw2h4GSLmLTqtqtkNCDtProhp>, accessed on 23rd August, 2023.

⁴³ C K Ayo, et.al. 'Business-to-Consumer E-Commerce in Nigeria: Prospects and Challenges' *African Journal of Business Management* (Vol. 5 (13), 2011) pg. 5509.

Friedrich Hayek introduced the Spontaneous Order Theory in 1988. This model explains how language, science, technology, markets, economies, and ecosystems develop naturally without any deliberate design or intention. When an environment with established rules, diverse behaviours, and structures exists, a coherent order naturally arises. In all human cultures, language developed organically without intentional design, driven by human interactions, emerging intelligence, and community behaviors. Hayek's theories, particularly regarding spontaneous order, have been applied to the concept of the rule of law. The theory suggests that the rule of law involves the government adhering to pre-established rules, making the use or misuse of coercive powers in specific situations predictable. Hayek distinguishes between two types of order: 'cosmos,' which is spontaneous and self-generating, and 'taxis,' which is imposed or engineered. He posits that human society predominantly exists within a 'taxis' order. According to Hayek, the rule of law does not emerge artificially but is a spontaneous outcome of societies that value the principles of a free market.

Some study suggests that the regulation of the Internet segment of cyberspace emerged naturally, with acceptable behavior being governed by spontaneously developed rules. These studies assert that this spontaneous or endogenous order is a process rather than regulation or control. The cyberspace community is shaped firstly by human nature and usage, driven by our desire for information and entertainment; secondly by laws and regulations, reflecting our inclination to control for specific purposes; and thirdly by protocols inherent in its architecture or in forms of etiquette and netiquette. These elements coexist and blend together. Changes in any one aspect can alter cyberspace, but the process itself creates order. Attempts

to control cyberspace will cause structural shifts and fluctuations in order; however, complete control over cyberspace is unattainable.⁴⁴

In contrast, another study contends that there exists a systematic rivalry between cyberspace and physical space, which sheds light on the concept of spontaneous order. This study posits that cyberspace has a structure similar to the real world, indicating that its foundations must be intentionally established rather than spontaneously emerging. It suggests that the basis for freedom in cyberspace will not naturally materialize; instead, the opposite is likely. The author asserts that there is a strong reason to believe cyberspace will evolve into an effective tool for control. This control may not necessarily come from the government or serve a malevolent purpose. The commercial forces within cyberspace are crafting a framework that enhances regulation and control, diverging from the open nature of cyberspace's origins.⁴⁵ However, while spontaneous order provides a solid theoretical framework for the evolution of cyberspace and e-commerce, it does not completely account for their emergence, development, and expansion. Credit must also be given to the contributions of individual designers and program developers, despite the varied timing and motives of their efforts. The growth of cyberspace is largely driven by spontaneous factors but is also shaped by social norms and economic demands.

Be that as it may, one is of the view that Friedrich Hayek's Spontaneous Order Theory that the rule of law does not emerge artificially but is a spontaneous outcome of societies that value the principles of a free market, is very limited in scope, because it represents only the sociological perspective of thoughts and ideas as against that of positivist and the naturalist schools.

2.3 Literature Review

⁴⁴ A Morris, 'The Wild West Meets Cyberspace, 48': The Freeman: Ideas On Liberty, (July, 1998), 427 - 431. World Encyclopedia of Slavery (Junius Rodriguez ed.) Available at the Bush School of Government & Public Service at Texas A&M University. <<https://bush.tamu.edu>> (accessed 27 September, 2023).

⁴⁵ L Lessig, 'The Law of the Horse: What Cyber Law Might Teach?' 113 Harvard Law Review (1999) 501.

The laws that regulate the protection of consumer rights in e-commerce transaction in Nigeria are very intricate. These governing laws include contract law, sales of goods law, banking law and regulations, consumer protection law and the laws on e-commerce. Eseyin and Chukuemeka,⁴⁶ posited that consumer protection is usually premised on contract, negligence or criminal provisions of our laws, but that the scope of consumer protection under contract and the tort of negligence is quite limited. They posited further that under contract, the doctrine of privity of contract constitutes an impediment. They hold the view that under the tort of negligence, the scope is wider but the aggrieved consumer must prove the three key elements of tort of negligence (duty + breach + damages) to stand any chance of success. They contend that the absence of a legal structure of consumer protection in terms of general code leaves the consumer vulnerable of disjointed rules and the discretion of the judge. They further contend that the protection of the consumer in Nigeria, and even in international law does not give adequate consideration to the rights of the consumer, and that where it does, it put the peg at second generation rights which are usually cumbersome to redress. The researchers concluded that there is a necessary nexus between consumer rights protection and fundamental human rights. However, unlike Atiyah et al,⁴⁷ the researchers failed to examine the law of sale of goods as one of the legislative safeguard in contract of sale of goods which, is a departure from the common law doctrine of *caveat –emptor* (buyers beware) to ensure quality merchantable quality of goods and fitness for purpose for which, the consumer requires them. They also failed in their study to evaluate how the provisions of section 36, 37 and 39 of the 1999 Nigerian Constitution or any other related law have fallen short of granting consumer protection the status of a fundamental human right.

⁴⁶ A M Eseyin and C W Chukuemeka ‘Articulating Consumer’s Rights as Human Rights in Nigeria’ in *Journal of Law, Policy and Globalization* ISSN 2224 – 3240 (Paper) ISSN 224 – 3259 (Online) Vol. 72, 2018 (Available at <42220-45477-1-PB.pdf> (Assessed 17th October, 2024)

⁴⁷ P S Atiyah, J N Adams, and H MacQueen ‘Atiyah’s Sale of Goods’ (Longman Pearson: London, 2010) 55, 83 – 107

Saliu, et al, ⁴⁸ examines how the ability of the Internet facilitates global electronic market and how sharing of information has a beneficial impact on developing economics, such as Nigeria and discussed the overall level of business transaction conducted via the Internet from 1999 to 2019 was impressive and growing, aggressively. It also examines the challenges that are negating the advancement of e-commerce in Nigeria and made suggestions on how some of the critical challenges identified can be overcome, so that e-commerce would become an asset for all online shoppers. However, in analysing the challenges and solutions to consumer rights protection under e-commerce transactions, the researchers only discussed finance, capturing quality leads, skilled staff hire, retaining customers, building online trust, right choice of technology and partners, generating targeted traffic, product delivery, quality control and inability to examine the product physically as the only challenges online shoppers face, without proffering short term and long term solutions to overcome the challenges. The researchers in the study also failed to consider the legal and institutional framework of consumer rights protection under e-commerce transactions in Nigeria, let alone their effectiveness or otherwise.

The diverse location of people living within the continent of Africa makes intercity, interstate, or inter-country transactions difficult and that where it does happen, comes with huge transaction cost.⁴⁹ As regards Nigeria, they state that many Nigerians still treat the issue of e-commerce with scepticism because of fear of security of their bank accounts while making payment through an e-payment site and the genuineness of the business and the business partner involved in the online transaction. Their study only identified improved ICT

⁴⁸ L A Saliu, A T Otapo, and K Sodiq 'Overview of the Challenges and Solutions of E-Commerce in Nigeria' (A Conference Paper presented at the School of Engineering National Conference, held at Federal Polytechnic, Ilaro, 25th – 28th November, 2019. (ResearchGate) Available at <https://www.researchgate.net/publication/358566160_OVERVIEW_OF_THE_CHALLENGES_AND_SOLUTIONS_OF_E-COMMERCE_IN_NIGERIA> (Accessed 17th October, 2024)

⁴⁹ E O Ibam, O Boyinbode and M O Afolabi 'E-Commerce in Africa: The Case of Nigeria' ResearchGate AI Endorsed Transactions on Game-Based Learning 4(15): 153536, DOI:10.4108/eai.5-1-2018.153536 Available at <<https://www.research.gate.net/publication>> (2018) (Accessed 17th October, 2024)

infrastructure (Internet, broadband) as the main panacea for overcoming the challenges facing e-commerce transaction in the continent of Africa and Nigeria in particular, without any mention of the various legal and institutional framework for protecting the rights of consumers in e-commerce transactions.

On the very important issue of improving Internet infrastructure, particularly in the area of data security to restore consumer trust, some researchers postulate that the growing adoption of e-commerce has led to an increase in the number of persons providing their personal information in various application and that to ensure security of private data during e-commerce transactions, Internet users must prioritise data security to safeguard personal transaction from hackers.⁵⁰ They further stated that safeguarding Internet users' information and security transactions in e-commerce is of utmost importance. They further highlighted some of the critical risks and attacks that information faces to include camera and double swipe attacks, , collusive attacks, impersonalization, pharming, smishing, snooping, unfair evaluation and vishing. They also stated that these attacks attempts to penetrate transaction information or penetrate personal information by vishing, and stealing consumers' personal information in e-commerce transaction application. They then recommended the deployment of encryption algorithms, namely: the ElGamal algorithm and the Fernet algorithm, as the best way to address this security concern. However, the study failed to mention or consider the legal and institutional framework for ensuring the deployment and application of the encryption algorithms, by government and Internet providers particularly in developing countries, like Nigeria, with very low technological advancement.

By and large, in most of the literature examined above on consumer right protection in e-commerce transactions, there seem to be lack of proper exposition in relation to the inadequacies of our extant laws on protection and enforcement of consumer rights in e-

⁵⁰ M Al-Zubaidie, and G S Shyaa, 'Applying Detection Leakage on Hybrid Cryptography to Secure Transaction Information in E-Commerce Apps' (*Future Internet* 2023 15, 262), (Published 1st August 2023), Available at <<https://www.mdpi.com/journal/futureinternet>> (Accessed 17th October, 2024)

commerce transactions, and the lack of effectiveness of the institutional bodies put in place by government for the protection of consumer rights in e-commerce transactions in Nigeria, hence this present study.

Chapter Three

Legal and Institutional Frameworks for Enforcement of E-Commerce and Consumer Right Protection in Nigeria

3.1 Legal Framework for the Protection of Consumer Rights in E-Commerce Transactions in Nigeria

The legal framework for consumer protection comprises both consumer laws and organizations dedicated to advocating for and defending consumer rights. This framework ensures that customers receive appropriate protection from institutions and legislation. In e-commerce transactions, consumers are typically at a disadvantage, with their interests often overshadowed by the powerful e-commerce companies. To prevent consumers from being

subjected to various unfair corporate practices without adequate means of defense, consumer protection institutions are legally obligated to protect, promote, and safeguard consumer interests. Effective enforcement is crucial for safeguarding the rights of consumers, especially online shoppers.

Nigeria's youthful population, with an average age of 18 years, is driving exponential growth in e-commerce. This surge is attributed to the country's high internet penetration, widespread use of mobile phones and gadgets, and a robust human capacity index. The digital landscape in Nigeria is evolving rapidly, creating a fertile ground for online businesses to thrive and innovate.⁵¹ In Nigeria, there are currently about 104.4 million internet users and over 170 million mobile phone customers. Despite the country's sizable population, it also boasts a rapidly expanding middle class with increasing purchasing power. Additionally, Nigeria hosts more than 100 e-commerce platforms. Between 2017 and 2022, Nigeria's e-commerce market experienced a total of 250.7 million online visits, showcasing the significant engagement and potential for growth in the sector.⁵² Nonetheless, many online retailers saw a rise in customer numbers as a result of the COVID-19 pandemic. By 2020, it was estimated that e-commerce platforms in Nigeria brought in more than \$6 billion in yearly revenue. In 2023, the e-commerce market in Nigeria reached a volume of US\$15 billion and is expected to reach US\$33 billion by 2026.⁵³ These elements have together speed up the acceptance of online shopping and significantly boosted the growth of Nigeria's e-commerce industry.

In brief, the e-commerce industry in Nigeria is now valued at over USD 13 billion. Despite this significant progress, the sector is still in its early stages and continues to expand rapidly.

For sustained growth, it is crucial to boost consumer trust in the e-commerce environment by

⁵¹ Population of Nigeria <<https://www.worldometers.info/world-population/nigeria-population/>>

⁵² S Vanella, 'E-commerce in Nigeria-Statistics and Facts' Statista, (14 December 2023) <<https://www.statista.com/topics/6786/e-commerce-in-nigeria/>> (accessed 24 January 2024)

⁵³ According to PCMI research and analysis, this data, specific to B2C e-commerce sales, differs from the figures shared by WorldPay (2024). Available at 'Nigeria E-commerce Data 2024' <<https://paymentsci.com>... > (accessed 27 September, 2024).

implementing existing laws that protect consumer rights. At present, most legislation aimed at regulating e-commerce and electronic data protection in Nigeria is still in draft form. It is worth noting that the UN adopted the UNCITRAL Model Law on E-commerce globally back in 1996.⁵⁴ The main objective of the Model Law is to eliminate any barriers that impede the use of electronic documents, especially those that impact their enforceability in legal proceedings.⁵⁵

The existing legal frameworks on consumer protection in Nigeria are crucial, especially for e-commerce. However, Nigeria has not enacted a comprehensive e-commerce law. Instead, various legal aspects related to cybercrimes, consumer protection, payments, and data protection are addressed by different frameworks. Similarly, there is no single institution or regulator overseeing all these areas. This section explores these laws, focusing on their relevance to consumer protection in e-commerce. Additionally, it is important to note that privacy and data protection provisions in Nigeria are found in selected legislation⁵⁶. These frameworks include the Constitution of the Federal Republic of Nigeria 1999, the Cybercrimes Act of 2015, and the Nigeria Data Protection Regulation 2019. Additionally, laws protecting e-consumers from unfair trade practices can be found in various Nigerian legislations, such as the Nigerian Electronic Transmission Bills 2015, and the Federal Competition and Consumer Protection Act 2019, which also addresses privacy and data protection. Therefore, this chapter will analyze these legislations to determine the extent of protection they offer to e-commerce consumers in Nigeria.

3.1.1 Constitution of the Federal Republic of Nigeria 1999

⁵⁴ T I Akomolede, 'Contemporary Legal Issues in Electronic Commerce in Nigeria' (2008) *Potchefstroom Electronic Law Journal (PELJ) On-line version ISSN 1727-3781*. (accessed 20 November 2023).

⁵⁵ M T Ladan, 'Recent Trend in Legal Response and Judicial Attitude towards Electronically Generated Evidence in Nigeria,' *The World Jurist Association, Law/Technology* 47, no. 1 (2014): 54

⁵⁶ I S Nwankwo, 'Information Privacy in Nigeria.' In *African Data Privacy Laws: Law, Governance and Technology Series (Volume 33)*, edited by Alex B. Makulilo, 45-75. Cham, Switzerland, 2016.

The Constitution of the Federal Republic of Nigeria 1999 is the supreme law of the land through which all persons and authorities derive their rights and obligations.⁵⁷ The supremacy clause has been a consistent feature in all Nigerian Constitutions from independence to the present day. Consequently, the Constitution is binding on all individuals and authorities across Nigeria, requiring all legal statutes, including customary laws, to align with its provisions. Any legal rule that contradicts the Constitution is invalid to the extent of the inconsistency. Essentially, the Constitution is a fundamental principle of Nigerian law, binding on all authorities, institutions, and individuals nationwide. As the supreme law of the land, the Constitution takes precedence over all other enactments, statutes, or laws. Its provisions cannot be overridden by any other Act or legislation unless explicitly stated in the Constitution.

However, it should be noted from the onset that while the Nigerian constitution does not specifically mention consumer protection, issues related to consumer protection are encompassed in many of its sections.⁵⁸ Notably, Chapter IV, Section 36 of the Constitution, which guarantees right to fair hearing addresses the principle of access to justice, which is a cardinal principle of consumer protection.⁵⁹

Section 37 of the Constitution guarantees the right to privacy as a fundamental right in Nigeria, protecting citizens' privacy in their homes, correspondence, telephone conversations, and telegraphic communications.⁶⁰ Nonetheless, the provisions of Section 37 of the Constitution revealed that the right to privacy is guaranteed to citizens only.

⁵⁷ T. A. Olaiya, 'Interrogating the Non-Justiciability or Constitutional Directive Principles and Public Policy Failure in Nigeria,' *Journal of Politics and Law* 8, no. 3 (2015): 24.

⁵⁸ F Monye, 'Law of Consumer Protection Volume One: Statutory Liability 2nd Ed.' (Ibadan, Nigeria: Kraft Books Limited, 2021) p 3

⁵⁹ Ibid, p 5

⁶⁰ D Erugoh, 'Right To Privacy And Data Protection In Nigeria: What Companies Should Know' *Forvis Mazars*, (27 September, 2023), available at <<https://www.mondaq.com>> (accessed 2 November 2023)

Section 37 of the Constitution implies that the privacy of non-citizens living or conducting business in the country is not protected. Additionally, the straightforward language of Section 37 indicates that the privacy of online consumers is not specifically addressed in the Constitution.⁶¹ The Constitution exclusively mentions privacy in relation to telephone and telegraphic communications. The 1979 Constitution does not address the privacy of online communications. This is understandable, as the Constitution was drafted before the Internet and e-commerce became prevalent in Nigeria, which occurred in the mid-1990s. As a result, neither the 1979 nor the 1999 Constitutions considered the privacy needs of online consumers. Scholars have therefore argued that Section 37 of the 1999 Constitution is overly simplistic and vague, failing to account for the evolving nature of modern societies, communication technologies, and businesses like e-commerce.⁶²

Finally, on the Constitution, Section 39 guarantees the right of every Nigerian to hold opinions and to receive and impart ideas and information without interference. Against this backdrop, e-commerce consumer protection advocates can engage in any campaign of choice to raise consumer protection awareness in the country.⁶³

Unfortunately, the Constitution lacks definitions for these terms. This gap could prevent e-consumers from fully enjoying their right to privacy online. International law and developed countries acknowledge the limited exercise of the right to privacy and data protection. However, it is argued that such limitations should be narrow and explicitly stated by law; otherwise, the right will be meaningless. Thus, the Constitution states that a violation of an

⁶¹ Esher & Makarios, 'The Extent of the Right to Privacy & Data Protection in Nigeria', (May 24, 2024) available at <<https://esherandmakarioslaw.com>> as...PDF (accessed 11 August, 2024); J. A. Dada, "Human Rights under the Nigerian Constitution: Issues and Problems." *International Journal of Humanities and Social Science* 2, no. 12 (2012): 33-43.

⁶² U Akpojivi, 'Rethinking Information Privacy in a 'Connected' World.' *Censorship, Surveillance, and Privacy: Concepts, Methodologies, Tools, and Applications*, (IGI Global Research Books, 2019) p 18

⁶³ F Monye (n80) p5

individual's right to privacy allows them to seek redress in a high court.⁶⁴ Given the highlighted problems, it could be argued that the protection or redress mechanism offered by the Constitution may not be favorable to a Nigerian e-consumer.

3.1.2 *The Cybercrimes (Prohibition, Prevention, Etc.) Act, 2015 (as amended 2024)*

Cybercrimes are offences committed with the aid of computer technology⁶⁵ which involves the use of computers, computer networks, and electronic superhighways⁶⁶ or through the internet. Against the backdrop that a secure cyberspace environment is necessary for the smooth operation of e-commerce transactions in Nigeria, the Nigerian Cybercrimes (Prohibition, Prevention, Etc.) Act, No. 17, 2015 was enacted into law by National Assembly on 5 May 2015. The Act has just been amended in 2024 by the Cybercrimes (Prohibition, Prevention, Etc.) (Amendment) Act, 2024 to insert some consequential words that were inadvertently omitted in the 2015, Act. Its main objective is to provide a comprehensive legal and regulatory framework for detection, prevention, and punishment of cybercrime in Nigeria.⁶⁷ It also seeks to ensure the protection of computers systems, electronic communication and privacy.⁶⁸ As it relates to consumer protection in e-commerce, the Act delineate the following activities as cybercrimes: hacking,⁶⁹ unauthorized interference with computer systems, unlawfully obtaining details from emails, credit and debit cards under false pretenses,⁷⁰ electronic fraud,⁷¹ fraudulent manipulation of payment systems,⁷² identity

⁶⁴ Section 46(1)(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended): B A Haruna, 'An Analysis of the Fundamental Rights Enforcement Instruments in Nigeria: Past and Present,' Bayero University Journal of Public Law (BUJPL) 2, no. 1 (2010): 1-7;

⁶⁵ Encyclopedia of Criminology and Criminal Justice,' Gerben Bruinsma, and David Weisburd, (eds.) (SpringerReference, 2014). (accessed 14 April 2024)

⁶⁶ Ukasha Ismail, 'The Nigeria Police Force and Cyber Policing: A Synopsis', (ResearchGate, 2020) available at <DOI: 10.13140/RG.2.2.30325.60647>. (accessed 14 April 2024)

⁶⁷ Cybercrimes (Prohibition, Prevention, Etc.) Act, 2015, Section 1(a).

⁶⁸ Ibid, Section 1(c)

⁶⁹ Ibid, Section 6 (1).

⁷⁰ Ibid, Section 12(2).

⁷¹ Ibid, Section 13(2).

⁷² Ibid, Section 14 (4).

theft,⁷³ impersonation,⁷⁴ child pornography,⁷⁵ cyber stalking,⁷⁶ bullying,⁷⁷ phishing,⁷⁸ and spamming.⁷⁹ The Act places a duty on financial institutions,⁸⁰ and service providers,⁸¹ to ensure that they provide security measures for the protection of the information of customers to prevent online breaches. The Act equally provides that the National Security Adviser will supervise the administration and enforcement of its provisions.⁸² In addition, the act permits international cooperation; the Attorney General of Nigeria is vested with the power to ask for assistance from foreign jurisdictions for the investigation and prosecution of cybercrimes.⁸³

Therefore, the Cybercrimes Act brings to life a legal framework for the prohibition, prevention, detection, investigation and prosecution of cybercrimes and other related matters.⁸⁴ The Act reflects the government's commitment to upholding privacy rights in Nigeria's cyberspace. Its primary objective is to enhance cybersecurity and prevent or combat cybercrimes in the country.⁸⁵ The aim of the Act is to among other things define what constitutes cybercrimes and provide penalties against the perpetrators of the crimes in Nigeria. It was also enacted to provide a platform for cybersecurity that will ensure the protection of computer systems, data, and privacy rights.⁸⁶ The Cybercrime Act's Explanatory Memorandum explains that the Act aims to establish a cohesive and thorough legal, regulatory, and institutional framework to prohibit, prevent, detect, prosecute, and punish cybercrimes in Nigeria. It also aims to safeguard critical national information infrastructure,

⁷³ Ibid, Section 22(1).

⁷⁴ Ibid, Section 22 (2).

⁷⁵ Ibid, Section 23 (2).

⁷⁶ Ibid, Section 24 (1).

⁷⁷ Ibid, Section 24(2).

⁷⁸ Ibid, Section 32 (1).

⁷⁹ Ibid, Section 32(2).

⁸⁰ Ibid, Section 19(3).

⁸¹ Ibid, Section 38 (2).

⁸² Ibid, Section 41(1)(a).

⁸³ Ibid, Section 52(1).

⁸⁴ Ibid,

⁸⁵ The relevant Sections of the Cybercrimes (Prohibition, Prevention, Etc.) Act 2015, (as amended, 2024) dealing with these issues include: Sections I(c) and (3) (I), 41 (2) (a) and 43(1) (a).

⁸⁶ I S Nwankwo, 'Information Privacy in Nigeria.' *In African Data Privacy Laws: Law, Governance and Technology Series (Volume 33)*, Alex B. Makulilo, (ed) 45-75. (Cham, Switzerland, 2016).

enhance cybersecurity, and protect computer systems, networks, electronic communications, data, computer programs, intellectual property, and privacy rights. This description is reiterated in Part 1 of the Act, outlining its objectives: (a) to create an effective and unified framework for tackling cybercrimes in Nigeria; (b) to protect critical national information infrastructure; and (c) to promote cybersecurity and the protection of various digital and intellectual assets. Consequently, scholars believe that the Cybercrime Act indeed prioritizes privacy protection.⁸⁷ The relevant Sections of the Cybercrimes Act on data/privacy protection are Sections 1, 38 and 39 respectively.

Section 38(1) focuses on the storage and safeguarding of personal data. It mandates Nigerian service providers to retain subscriber data and information for a period of two years. "Service providers" encompasses both private and public telecommunications companies in Nigeria and extends to organizations utilizing their services, such as e-traders, banks, and cyber cafes, as well as other entities that store or process computer data for these companies. Additionally, Section 38(2) outlines the conditions under which personal data held by these entities may be disclosed, specifying that such data can be released upon request by the relevant authorities, law enforcement agencies, or courts.⁸⁸ The relevant authority referred to in this section is the Nigeria Communications Commission (NCC).

However, Section 38 (4) of the CA requires e-traders and other specified entities to use personal data solely for purposes authorized by the CA. This means that personal information must be used exclusively for legally defined reasons and not for unauthorized purposes. Moreover, Section 38(5) of the CA obligates service providers, including e-traders, law enforcement agencies, and the NCC, to adhere strictly to the constitutional provisions

⁸⁷ Adeyemi O. Owoade, 'A Review of the Cybercrime Amendment Act and the CBN Cybersecurity Circular' Jackson, (Lagos, Etti & Edu, 2024) <www.jee.africa>; O V Ojo, 'An Assessment of Nigeria's Cybercrimes (Prevention, Prohibition Etc.) Act 2015.' The Lawyers Chronicle. Jos, Nigeria, 2015.

⁸⁸ Section 38 (2) and (3) of the Cybercrimes (Prohibition, Prevention, Etc.) Act 2015, (as amended, 2024).

concerning the right to privacy.⁸⁹ They are required to take all necessary steps to safeguard the confidentiality of personal data they hold, process, or retrieve. Violating Section 38 of the CA constitutes an offense, punishable by up to three years in prison, a fine of up to ₦7,000,000.00 (Seven Million Naira Only), or both. Section 38 of the CA aligns with the OECD's principles on data protection, which emphasize security measures to prevent data loss, unauthorized access, destruction, misuse, modification, or disclosure. The primary goal is to ensure proprietary information remains confidential, its integrity is preserved, and it is accessible only to authorized individuals.⁹⁰

The CA prescribes penalties against persons who destroy or grant unauthorized access to personal information of others. The philosophy behind is to preserve the personal information for criminal investigation and prosecution.⁹¹ Therefore, CA is not enacted to protect the interest of the consumers regarding their data. This shortcomings of the CA showed that the CA has failed to accord privacy and/or data protection rights to e-consumers.

Therefore this Nigerian legal framework for privacy is inadequate because it lacks specific privacy provisions.⁹² To address these privacy issues, the National Information Technology Development Agency (NITDA) launched the Nigerian Data Protection Regulation (NDPR) in 2019, aiming to protect personal data and prevent its misuse by unethical individuals. The roots of the NDPR can be traced back to the government's initial efforts to regulate e-commerce and similar matters in Nigeria, beginning with the introduction of the National Information Technology Policy (NITP) in 2001. The NITP outlined over thirty broad

⁸⁹ Section 38 (5) of the Cybercrimes (Prohibition, Prevention, Etc.) Act 2015, (as amended, 2024)

⁹⁰ R A SpineHo, 'Cybercrime, Encryption, and Government Surveillance,' in *Regulating Cyberspace: The Policies and Technologies of Control* (Westport, CT, USA: Greenwood Publishing Group Inc., 2002), 207.

⁹¹ O O Viyon, 'An X-Ray of Nigeria's Cybercrimes Act 2015, Vis-a-Vis the Right to Privacy.' *The Lawyers Chronicle*. Jos, Nigeria, 2016.

⁹² U Akpojivi, 'Rethinking Information Privacy in a Connected World.' in A M Nhamo and T Chari, (eds.) *Media Law, Ethics, and Policy in the Digital Age*, 268-285. (IGI Global, 2017) 435; The Nigerian Data Protection Regulation 2019, Paragraph 1.1 (a).

objectives.⁹³ The goals encompass advocating for laws that safeguard online business dealings, privacy, and security nationwide. The NITP was established to support e-communication, e-governance, and e-commerce in the country. Additionally, in 2001, the National Information Technology Development Agency (NITDA) was formed under the Federal Ministry of Science and Technology to enforce the NITP's guidelines.

In 2007, the National Information Technology Development Agency (NITDA) gained autonomy with the passage of the National Information Technology Development Agency Act (NITDA Act) 2007. This legislation authorizes NITDA to ensure the privacy, integrity, accuracy, confidentiality, security, availability, and quality of personal information within the country. To fulfill these responsibilities effectively, Section 6 of the NITDA Act grants NITDA the authority to create guidelines, policies, and standards to oversee the seamless operation of e-commerce, e-governance, and e-communications. Additionally, NITDA is tasked with safeguarding the personal information and data of Nigerian citizens. Accordingly, under Section 6 of the NITDA Act, NITDA introduced the Nigerian Data Protection Regulation (NDPR). The NDPR was officially released in 2019, providing specific guidelines for government entities, their agencies, and private organizations to follow when handling citizens' data.⁹⁴

The NDPR purpose is to prescribe rules for the protection of personal data in the hand of organization or persons who control, collect, store and process such data (whether within and outside Nigeria). The NDPR defines a "Data Controller"⁹⁵ as any person or body that determines how data is to be processed, while a "Data subject"⁹⁶ is any person who can be

⁹³ Nigerian National Policy for information Technology (IT) 200); Muhammad Nuruddeen, 'Analysis of the Legal Framework for the Operations of E-Commerce: A Nigerian Perspective,' Ahmadu Bello University Zaria Journal of Private and Comparative Law (JPCLJ 6 & 7 (2014): 268-271.

⁹⁴ I S Nwankwo, 'Information Privacy in Nigeria.' In African Data Privacy Laws: Law, Governance and Technology Series (Volume 33), (ed) Alex B. Makulilo, 45-75. Cham, Switzerland, 2016.

⁹⁵ The Nigerian Data Protection Regulation 2019, Paragraph 1.3 (x).

⁹⁶ The Nigerian Data Protection Regulation 2019, Paragraph 1.1 (xiv).

identified by reference to an identification number or peculiar factors such as cultural, physiological or social characteristics. Upon all the legislation dealing with data and/or privacy protection in Nigeria, the NDPR is said to be the most comprehensive. The NDPR is in tandem with international standards and best practices and contains far-reaching provisions of data protection as contained in the OECD Guidelines. It is worth noting that NDPR binds both local and foreign companies in so far as they receive and process the data of people residing in Nigeria.⁹⁷ Non-compliance with these provisions constitutes a breach of the NITDA Act. Unlike earlier laws, the NDPR takes a non-discriminatory stance on data protection. It ensures that personal data and privacy are safeguarded not only for citizens but also for all residents in Nigeria, including those engaged in e-commerce. Section 1 (1.5) (1) of the NDPR clearly states this intent. The NDPR guarantees privacy and data protection for everyone residing in Nigeria, regardless of their nationality, covering details such as names, addresses, photos, email addresses, bank information, and social media posts.

Section 2 of the regulation contains the guidelines on collection, processing and accessing of personal data. The section prescribes the operation or set of operations to be observed in the course of collecting, recording, Organizing, storing, altering, and granting of access in respect of personal data of individuals in the country.⁹⁸ The section also deals with the issue of consultation with data subject particularly for the purpose of retrieval, use, transmission, cross-usage, combination, blocking, erasure or destruction of his/her personal information in the hands of the data controllers. Also, it expressly prohibits the collection of personal data which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership save as provided by the NDPR. It further prohibits the processing of personal data concerning health or sex life of individuals except stipulated by the NDPR. The

⁹⁷ B O Jemilohun, and T I Akomolede. 'Regulations or Legislation for Data Protection in Nigeria? A Call for a Clear Legislative Framework.' *Global Journal of Politics and Law Research* 3, no. 4 (2015): 1-16.

⁹⁸ M L Ahmadu, 'Background Study on Cyber-Legislation in the South Pacific,' in *Principles of Cyber Legislation for Pacific Island Countries* (Auckland, New Zealand, 2007), 98.

NDPR requires data controllers to obtain the consent⁹⁹ of data subjects before processing their data. Data controllers must ensure that they use effective security¹⁰⁰ measures to protect the data belonging to data subjects. The data subject has a right to reject the data being processed.¹⁰¹ Also, the NDPR provides for penalties in the event of a breach of its provisions.¹⁰² The Attorney General of the Federation must supervise any data meant to be transferred out of Nigeria.¹⁰³ The NDPR also establishes the Administrative Redress Panel¹⁰⁴ responsible for investigating complaints and determining the appropriate redress.

Although the NDPR is said to have complied with the universally accepted principles of data protection, yet scholars have criticized it to be a soft law and thus has no binding force¹⁰⁵ and thus cannot be sufficient to protect individuals from information privacy violations in Nigeria. It was argued further that the NDPR still does not qualify as a specific legal document for e-commerce and consumer protection in Nigeria because it did not make reference to e-commerce or consumer protection. On this premise, it is of the view that e-commerce needs to have a specific data protection law that will cover all angles of data protection. For instance, the South African Electronic Communications and Transactions Act 2002 which incorporated, *mutatis mutandis* the OECD privacy rules¹⁰⁶ provides means to regulate and protect the process of personal data from being misused through commercial transactions and matters relating to foster security, transparency and infrastructural commercial development.¹⁰⁷ Thus it is an explicit piece of legislation on e-commerce and consumer

⁹⁹ The Nigerian Data Protection Regulation 2019, Paragraph 2.2.

¹⁰⁰ Ibid, Paragraph 2.6.

¹⁰¹ Ibid, Paragraph 2.8.

¹⁰² Ibid, Paragraph 2.10.

¹⁰³ Ibid, Paragraph 2.11

¹⁰⁴ Ibid, Paragraph 4.2

¹⁰⁵ L A Abdulrauf, 'New Technologies and the Right to Privacy in Nigeria: Evaluating the Tension between Traditional and Modern Conceptions.' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 7 (2016): 113- 124.308 25 of 2002,

¹⁰⁶ The United Nations Commission of International Trade Law (UNCITRAL) Model Law on Electronic Signatures (MLEs).

¹⁰⁷ J Hofman, D Johnston, S Handa & C Morgan, 'Cyberlaw: A Guide for South Africans Doing Business Online', (Cape Town, South Africa: Ampersand. Dunlop (2005), 6.

protection. In effect, the ECTA seeks to protect the personal data and information of e-consumers. Perhaps, Nigeria needs to have a specific data protection legislation for e-commerce just like the ECTA. Noting that the ECTA does not only protect the data of e-consumers but also ensures that those who misuse such personal data are brought to book and punished accordingly. Therefore, without the existence of an adequate digital data protection legislation, personal information of e-consumers in Nigeria may continue to be misused without their knowledge and consent. This invariably creates doubts and mistrust in the minds of the e-consumers.¹⁰⁸

As previously noted, both offline and online commercial transactions are often marred by unfair trade practices. These practices involve deceptive or fraudulent actions by traders towards consumers. Unfair trade practices include making false claims, whether spoken, written, or displayed, about the standard, quality, quantity, grade, composition, style, or model of goods. Additionally, they involve providing false or misleading information about the necessity or benefits of goods or services. These unethical and questionable behaviors are detrimental to trade and commerce. Examples include deceptive advertisements, failure to deliver paid goods (especially in e-commerce), and withholding essential information needed for informed purchasing decisions. Consumers frequently suffer at the hands of dishonest traders, with little recourse, particularly in e-commerce, highlighting their vulnerability and weakness in the marketplace.¹⁰⁹

¹⁰⁸ R Alghamdi, S Drew, and T Alhussain, 'A Conceptual Framework for the Promotion of Trusted Online Retailing Environment in Saudi Arabia,' *International Journal of Business and Management* 1, no. 5 (2012): 144.

¹⁰⁹ Roshazlizawati Mohd Nor and Naemah Amin. 'E-Consumer Protection in Delivery of Goods: A Malaysian Perspective' *Journal of Education and Social & Sciences* 3 (Feb.) (2016): 39.

Scholars have claimed that there is no clear provision of the law which protects the e-consumers against unfair trade practices in Nigeria¹¹⁰ the legal frameworks, including the Nigerian Electronic Transmission Bills of 2015 and the Federal Competition and Consumer Protection Act of 2019, appear to fall short in addressing the issue effectively. Hence, this section will examine these laws to determine the accuracy of this assertion. The analysis will start with the Electronic Transmission Bills of 2015.

3.1.3 Nigerian Electronic Transactions Bills 2015

The Electronic Transactions Bill 2015 (ETB 2015), introduced during the 7th Assembly, marked significant advancements over the earlier draft sponsored by NITDA. Besides acknowledging electronic communication as a legitimate means for commercial dealings, the ETB 2015 establishes a legal framework for conducting transactions through electronic or related media, protecting e-consumer rights, and promoting e-commerce in Nigeria.¹¹¹ The ETB 2015 includes provisions designed to safeguard the interests of online consumers in their interactions with online traders. It mandates that online traders provide essential details about the individuals behind the business, the business location, and full contact information. Additionally, the bill recognizes the legitimacy of electronic records,¹¹² electronic signatures¹¹³ and electronic contracts.¹¹⁴ Whilst the bill has not been passed into law, the Evidence Act 2011 is the existing legal framework that recognizes the validity of contracts signed electronically.¹¹⁵ Online businesses are required to provide clear and precise

¹¹⁰ A Oyewunmi and A O Sanni, 'Challenges for the Development of Unfair Contract Terms Law in Nigeria' University of Western Australia Law Review (UW Austl. l. Rev) 37, no. 1 (2013): 86. <<https://www.austlii.edu.au>>

¹¹¹ *ibid*

¹¹² Section 3, ETB, 2015.

¹¹³ Section 11, ETB 2015

¹¹⁴ *Ibid*, Section 26.

¹¹⁵ Section 93 (2) (3) Evidence Act, 2011

information about their products and services.¹¹⁶ They are also required to provide accurate and verifiable information about the business itself.¹¹⁷

The rationale behind this is to ensure that e-consumer do not fall into the trap of fake and fraudulent e-traders. This is because, it is very easy for one to create and operate e-commerce website from any location in the world. It is also very easy to remove the website after committing fraud. Thus, Section 21 of the ETB 2015 provides that e-traders must provide accurate, clear and accessible information about themselves, sufficient to identify the legal name of thee-traders together with their full addresses and other means of contact including a telephone number;¹¹⁸ facilitate quick and effective communications between the consumer and e-traders;¹¹⁹ and allow for service of court process when the need arises.¹²⁰ Section 21 of the ETB 2015 goes further to place a similar obligation on e-traders with regards to the goods they offer for sale.¹²¹ According to this section, a consumer must not be held liable for charges where the goods or service does not match the description¹²² displayed by the vendor or was not delivered in good condition.¹²³ The vendor must refund the consumer's money within a reasonable time.¹²⁴ The information with regards to online goods must be accurate and accessible to the consumer.¹²⁵ The e-consumer's decision to make purchases depends solely on the information provided on the e-traders' website.¹²⁶ However, the major challenge faced by the e-consumer is the inability to taste, feel or inspect the goods he/she intends to purchase. This is because E-commerce is not like the traditional commerce where the consumer can examine, feel or taste the goods he/she intends to purchase. Hence, Section 21

¹¹⁶ Section 33, ETB 2015

¹¹⁷ Section 33 (3), ETB 2015

¹¹⁸ Section 21 (1) (a) and b of the ETB 2015

¹¹⁹ Section 21 (1) (b) and b of the ETB 2015

¹²⁰ Section 21 (1) (c) and b of the ETB 2015

¹²¹ Section 21 (2) (a) and b of the ETB 2015

¹²² Electronic Transactions Bill 2015, Section 34 (4) (b.)

¹²³ Ibid, Section 34 (d).

¹²⁴ Ibid, Section 34 (5).

¹²⁵ Section 21 (2) (a) of the ETB 2015

¹²⁶ I K Iloinso, 'Consumer Protection in the Context of Electronic Commerce: A Nigerian Perspective.' In Faculty of Law Seminar Series, 1-25. Lagos, Nigeria: Faculty of Law, University of Lagos, 2015.

provides that e-traders must clearly, sufficiently and accurately describe the goods to the e-consumer perhaps by using images and other product specifications. Even though this provision is yet to become law in Nigeria, evidence of compliance with the provision is seen on the website most of the Nigerian e-traders' website.

In the same vein, Section 21 of the ETB 2015 provides that information relating to terms/conditions including charges and taxes must equally be clearly and sufficiently disclosed before the transaction is concluded.¹²⁷ The Section goes further to stipulate that e-traders must give the e-consumer, at the appropriate stage, the right of withdrawal, termination, exchange, cancellation as well as the right to return goods and get refunds. Also, conditions relating to all these issues must be conspicuously provided on the e-traders' website.¹²⁸ Consequently, Section 21 of the ETB mandates e-traders in Nigeria to maintain adequate records of all transactions conducted on their websites.¹²⁹ It made provision for the protection of consumers' data; it requires that vendors keep the personal data of consumers confidential and make their privacy policies public and easily accessible to consumers.¹³⁰ The bill also admonishes vendors to give consumers the option to refuse to receive unsolicited messages.¹³¹

Even though the ETB 2015 includes extensive consumer protection measures, it falls short in several areas. Critics point out that the ETB 2015 lacks provisions for the delivery of goods purchased with credit cards. Additionally, the ETB 2015 does not address data protection for online consumers, which remains a significant issue. While the ETB 2015 mandates electronic payments, it does not ensure the security of these transactions. This oversight means the ETB 2015 does not comply with the OECD Payment Principle standards, which

¹²⁷ Section 21 (2) (b) (i) of the ETB 2015

¹²⁸ Section 21 (2) (b) (ii) of the ETB 2015

¹²⁹ Section 21 (2) (b) (i) of the ETB 2015.

¹³⁰ A Oluchi, 'Analyzing the Adequacy of Electronic Transactions Bill 2015 in Facilitating E-Commerce in Nigeria.' Social Science Research Network (SSRN) (2015): 1-7.

¹³¹ Electronic Transactions Bill 2015, Section 36.

require online merchants to offer secure and user-friendly payment options. As a result, e-consumer data could be at risk of being lost, stolen, or misused.¹³²

Despite the ETB 2015 outlining the expected behaviours for e-traders in their marketing activities, it falls short in providing penalties for non-compliance, unlike foreign jurisdictions that impose sanctions on e-traders for unfair trade practices, misuse of consumer data, and failure to meet information disclosure requirements. Therefore, it is crucial for the ETB 2015 to include prescribed punishments. Without effective sanctions, there is a high likelihood that dishonest e-traders in Nigeria will disregard the law. A law becomes ineffective when it is ignored without consequence, making enforcement against non-compliant e-traders essential;¹³³ which is the best way to protect consumers who engage in e-commerce from fraud and deceptive practices. Therefore, from the preceding section, it is evident that this legal framework in Nigeria tried to adopt the provisions of the Model Law in the country.

Although this is a laudable achievement,¹³⁴ Scholars have critically examined the provisions of the ETB, pointing out significant issues. For instance, Section 6 of the 2015 ETB fails to differentiate between an ordinary electronic signature and a digital signature. Given Nigeria's high incidence of cybercrimes, it is crucial to promote the use of digital signatures. Enhanced cybersecurity measures would bolster the trust and confidence of e-consumers. Although there was some alignment with The Model Law, it is unfortunate that the ETB 2015, which was approved by the National Assembly, was not signed into law by the former President before his departure from office on May 29, 2015. This lack of assent might be attributed to the shortcomings identified in the ETB 2015. Scholars have noted that the ETB 2015 was among the 46 bills hurriedly passed by the 7th Assembly at the end of its term, without

¹³² OECD, *Consumer Policy Guidance on Mobile and Online Payments*, OECD Digital Economy Papers (Paris: OECD Publishing, 2014), 12.

¹³³ V Reding, 'Towards a More Coherent Enforcement of EU Consumer Rules,' In *European Consumer Summit 2013* (Brussels: European Commission, 2013), 2. Available at <<https://europa.eu>>

¹³⁴ A S Abubakar, and F O Adebayo., 'Analysis of Electronic Transactions Bill in Nigeria: Issues and Prospects.' *Mediterranean Journal of Social Sciences* 5, no. 2 (2014): 215-220.

adhering to due process. Furthermore, investigations reveal that the ETB 2015 was reintroduced to the National Assembly as the Electronic Transaction Bill 2016, aiming to refine and update the bill to align with global practices. The ETB 2016 was successfully passed by the House of Representatives on June 7, 2016, and is now awaiting Senate concurrence. Following this, it will be harmonized and sent to the President for approval. Based on the above discussion, it is clear that Nigeria currently lacks specific laws for e-commerce and consumer protection. Efforts to establish such laws are still in the form of bills pending before the National Assembly.

3.1.4 The Federal Competition and Consumer Protection Act, 2018

The Federal Competition and Consumer Protection Act (FCCP Act) serves as the main law governing consumer protection in Nigeria. It was enacted to replace the Consumer Protection Act Cap. C25, Laws of the Federation of Nigeria, 2004, and Sections 118-128 of the Investment and Securities Act, Cap.124, LFN 2004. This legislation is consumer-focused, outlining the process for consumers to seek redress. It also created the Federal Competition and Consumer Protection Commission (FCCPC) to oversee the Act's implementation and regulate economic activities. Additionally, the Competition and Consumer Protection Tribunal (CCPT) was established to address disputes and ensure proper enforcement of the Act's provisions. The FCCP Act applies to all business activities and enterprises in Nigeria, including those conducted by individuals, corporations, and government bodies. Its scope also extends to activities outside Nigeria carried out by Nigerian citizens, residents, or businesses incorporated or operating in Nigeria.¹³⁵

However, the FCCP Act contains some provisions aimed at promoting fair, efficient and competitive markets as well as checkmating unfair trade practices while facilitating access to all citizens to safe products and secure the protection of rights for all consumers in Nigeria

¹³⁵ FCCPA 2018, s2

for related matters. The provisions could be found in Part XV of the FCCP Act. To start with, Section 114 to 118 of the FCCP Act specifically seeks to protect consumers against non-disclosure or lopsided information by business or e-traders in Nigeria.¹³⁶ This provision focuses on traders who fail to disclose all the relevant information practices in commercial transactions. Also, the provision seeks to protect consumers and those who might be discouraged from purchasing goods to take care of themselves while making purchases. Therefore, section 114-118 stipulates that; a consumer is entitled to be given information in plain and understandable language where such is required to be given by an undertaking (this includes a seller or supplier, prices of goods and services,¹³⁷ adequate trade description,¹³⁸ Right to disclosure of second-hand or reconditioned goods as well as Right to be given adequate information of every transaction). In summary, the FCCP Act mandates that e-commerce businesses in Nigeria must clearly identify the seller, including their name, business or company registration number, email, phone number, and business address. They must also provide key product or service details, full pricing (inclusive of delivery and related costs), payment options, terms and conditions, and estimated delivery times. Additionally, advertising products for sale without the intention to supply them is an offense under this Act, which is considered an unfair trade practice. Violating these provisions constitutes an offense in Nigeria¹³⁹.

Consequently, the FCCP Act provides that any trader found guilty of any form of deceptive or misleading information is liable on conviction to 5-years imprisonment or pay fine of N10,000, 000.00 or the combination of both. The punishment for a deceptive or wrong information does not only apply to traders alone; the punishment is extended to any corporate body who knows that the information provided is deceptive, but goes ahead and disseminated

¹³⁶ Section 114, FCCP Act 2018

¹³⁷ Section 115, FCCP Act 2018

¹³⁸ Section 121, FCCP Act 2018

¹³⁹ Section 122, FCCP Act 2018

same. The FCCP Act provides a stiffer monetary penalty against disseminators of the wrong commercial information.¹⁴⁰ This is the limit to which the FCCP Act dwells on the issue of false information, obnoxious and unscrupulous practices in Nigeria.

It has been noted that the Nigerian FCCP Act does not address e-commerce and fails to protect e-consumers from deceptive information practices. A detailed examination of the sections requiring full disclosure, as specified in the Act, indicates that they do not extend to online commercial transactions. The FCCP Act mandates that e-traders include information disclosure requirements for consumers' benefit, as outlined in Section 118 (a) and (b). These sections require the seller to provide a written record of each transaction to the consumer, including the undertaking's full name or registered business name and the address of the premises from which the goods or services were sold or supplied. The Act's provisions on information disclosure, as reviewed, are considered adequate to protect consumers' interests. The duty to disclose material information applies to both pre-sales and post-sales activities, ensuring that consumers are well-informed about market discrepancies.¹⁴¹ Although the section on consumers' right of the FCCP outline the requirement for disclosing information about the trader of the goods; however, it did not provide comprehensive or sufficient ground for distance transaction which e-commerce entails. It means that the Act did not mandate e-traders to provide functional contact information that will allow e-consumers to communicate with the seller from a distance either an email or phone number. Besides, it has been argued that the FCCP Act does not even contemplate e-commerce nor does it aim at protecting e-consumers against lopsided or non-disclosure of business information practices. From careful observation of section 188 (a) and (b) of the FCCP Act, it is clear that the sections do not apply to e-commerce transactions which is not surprising giving the fact that the FCCP Act

¹⁴⁰ Section 155, FCCP Act 2018

¹⁴¹ S. Jayabalan, 'E-Commerce and Consumer Protection: The Importance of Legislative Measures,' *Journal of the National University of Malaysia* (2012) (16) 94; Y Akdeniz, C Walker, and D Wall, "The Internet, Law and Society" (New York: Longman, 2000), 156.

was formulated without considering that e-commerce would be major source of transaction in Nigeria coupled with the fact that it amended the CPC Act which also did not have such provision in it. This is particularly crucial for e-consumers who rely totally on the information given on the website of e-traders.¹⁴²

The OECD mandates that e-traders must provide sufficient and accurate information about the goods and services they sell. This principle also requires e-traders to display their registered name, address, email, phone number, and other contact information clearly. Unfortunately, the FCCP Act lacks specific provisions for information disclosure to e-consumers. Despite this, Nigerian e-traders like Konga.com and Jumia.com.ng seem to comply with these principles voluntarily, even though there are no explicit legal requirements compelling them to do so. This voluntary compliance is commendable as it reflects a self-regulation approach, which the OECD guidelines strongly recommend for consumer protection. However, the FCCP Act does not endorse self-regulation, instead empowering the FCCPC or Tribunal to periodically create regulations to enforce the Act's provisions. Despite having this power, the commission or tribunal has not yet established any specific regulations for e-commerce information disclosure, focusing instead on general trade practices. It is hoped that future revisions of these regulations will include comprehensive consumer protection measures for e-commerce, thereby broadening their scope.¹⁴³

In Nigeria, before the FCCP Act was enacted, consumer protection from unfair terms was largely handled by the judiciary through common law principles, which provided indirect safeguards against unfair terms due to the lack of specific unfair contract legislation. However, this method did not consider the local conditions and consumer interests. The FCCP Act now includes provisions that oversee unfair contracts, granting consumers rights

¹⁴² Amin and M. Nor, (2013): n

¹⁴³ I K Ilobinso, 'Paving the Path to an Enhanced Consumer Protection for the Nigerian Online Market: Theories and Concepts' (2017) Available at (African Journals Online) <<https://www.ajol.info>>

such as not being subject to conditions before purchasing, canceling advance reservations, rejecting goods before completing transactions, ensuring goods match samples and descriptions, rejecting defective or unsafe goods, and guaranteeing safe and quality goods and services. Essentially, the Act mandates that businesses must not supply, agree to supply, or offer to supply goods or services at prices or under terms that are clearly unfair, unreasonable, or unjust.¹⁴⁴

A contractual term that require a consumer to waive any rights, assume any obligation or waive any liability of the business on terms that are unfair, unreasonable or unjust or impose any term as a condition of entering into a transaction.¹⁴⁵ A term is unfair unreasonable or unjust if it is excessively one-sided in favour of any person other than the consumer or other person to whom goods or services are to be supplied.¹⁴⁶ It would be regarded as unfair if it is as adverse to the consumer as to be inequitable.¹⁴⁷

The Act clearly forbids specific agreements or terms that: aim to mislead, deceive, or engage consumers in fraudulent activities; negate or bypass any provision of this Act; permit businesses to engage in activities prohibited by this Act; limit or exempt businesses from responsibility for losses caused by their gross negligence; or place the risk or liability of such losses on the consumer. Non-compliance with this section will render the agreement void to the extent it violates this section's provisions. Nevertheless, it is debated whether the FCCP Act includes these regulations for e-commerce or specifically protects e-consumers from unfair trade practices. It remains uncertain if these provisions apply to online commercial transactions.¹⁴⁸ In Nigeria, the problem of privacy and data protection continues to pose a threat to e-commerce. This is because Nigerians are always security conscious and are very

¹⁴⁴ Section 127(1)(a) FCCP Act

¹⁴⁵ Section 127(1)(c) FCCP Act

¹⁴⁶ Section 127(2)(a) FCCP Act

¹⁴⁷ Section 127(2)(b) FCCP Act

¹⁴⁸ Section 129 FCCP Act

careful when disclosing their personal information. Due to a lack of internet privacy, technology, and legal institutions to assure data protection, the majority of Nigerians do not reveal their personal information, particularly when it concerns their finances.¹⁴⁹

Privacy is recognized globally as a fundamental human right and is protected by various legal frameworks at international, regional, and national levels. Article 12 of the United Nations Declaration of Human Rights states that individuals should be free from arbitrary intrusions into their private lives, families, homes, or communications and should not face attacks on their honor or reputation. It guarantees everyone's right to legal protection against such violations. The United Nations Guidelines on Consumer Protection stipulate that businesses must protect consumers' privacy by implementing proper controls, security measures, transparency, and consent mechanisms for personal data collection and usage. In Nigeria, Section 37 of the 1999 Constitution ensures the privacy of citizens' homes, correspondence, telephone conversations, and telegraphic communications. The Nigerian Data Protection Regulation (NDPR), developed by the National Information Technology Development Agency (NITDA), aims to safeguard individuals' data privacy and establish a robust legal framework for data protection in line with global standards. However, the Federal Competition and Consumer Protection (FCCP) Act, which supersedes the former Consumer Protection Council Act, lacks provisions for online consumer privacy and data protection. As a result, the Act does not include personal data privacy among the thirteen stated consumer rights. This omission means that personal data protection rights are not recognized in Nigeria's consumer protection laws. The draft Personal Data Protection Bill currently under consideration by the National Assembly seeks to create a comprehensive regulatory framework for personal data protection and processing, ensuring the rights and freedoms of

¹⁴⁹ D Enadeghe, 'Comparative Analysis of the Applicable Legal Protection for Purchasers on the Internet, in Europe & USA- Lessons for Nigeria, (Central European University, Budapest, 2013).

data subjects as outlined in the Nigerian Constitution. Therefore, the FCCP Act is inadequate in addressing the basic needs of modern consumers, particularly e-consumers. To remedy these deficiencies, the FCCP Act needs to be amended and expanded to serve the needs of both traditional and digital consumers. The Act is long overdue for revision to address the evolving dynamics of e-commerce in Nigeria. In summary, the FCCP Act is insufficient to meet the basic needs of ordinary consumers and is even less equipped to cater to the needs of e-consumers.¹⁵⁰

3.2 Institutional Framework for the Protection of Consumer Rights in E-Commerce Transactions in Nigeria

Consumer protection is a legal framework that includes consumer laws and institutions that uphold consumer rights. It is crucial for consumers to have robust protection from exploitation by businesses in both offline and online transactions. Without these protective measures, consumers would be exposed to unfair business practices. An effective enforcement mechanism is essential to protect consumer rights, including those of e-consumers. The role of consumer protection in e-commerce involves both public and private entities, either through specific legal provisions or their inherent responsibilities. The Nigerian government has established an institutional framework to ensure effective protection and enforcement of e-commerce consumer rights:

3.2.1 The Federal Competition and Consumer Protection Commission of Nigeria

The Federal Competition and Consumer Protection Commission was established by the FCCP decree as an apex institution for consumer protection in Nigeria. Its establishment is in

¹⁵⁰ F Monye, Umoh, B and Chukwunta. C Research Report on the State of Consumer Protection in Nigeria: A Review of Consumer Protection in the Telecommunications Sectors in Nigeria. (Nigeria, 2014).

line with the South African *Consumers Protection Act (CPA) 2002* for consumer protection in South Africa and also to repeal the *Consumer Protection Council Act 1992*; as an independent body that is empowered to administer and enforce the consumer protection. The FCCPC is composed of a Board made up of a Chairman, the Chief Executive of FCCPC (Vice-Chairman of the Boards), two Executive Commissioners and four non-executive Commissioners.¹⁵¹ These Board members are to be appointed by the President subject to confirmation by Senate. Likewise, the CCPT is composed of a Chairman who shall be a lawyer with 10 years, post-qualification, and experienced in competition law, consumer protection or commercial and industrial law; six other members with 10 years, professional experience in either of

The FCCPC is established with the mandate to eliminate anti-competitive agreements, misleading, unfair, deceptive, or unconscionable marketing, trading, and business practices; and giving and receiving advice from other regulatory authorities or agencies within the relevant industry or sector on consumer protection and competition matters¹⁵² and providing consumers with access to judicial bodies for the protection of their legitimate interests making it an institutional avenue for aggrieved consumers to seek redress concerning unfair trade practice in Nigeria it is in the spirit of this mandate backed up by Sections 17 and 18 of FCCP Act which mandates the FCCPC to receive the consumers' complaints and enforce legislation concerning consumers protection.¹⁵³ The implication of this provision is that in situations when consumers' rights are being harmed, the Commission has the advisory¹⁵⁴ and investigative power¹⁵⁵ to resolve the issues, enact regulations to address the dangers that consumers confront as well as eliminate anticompetitive agreements, misleading, unfair,

¹⁵¹ . Federal Competition and Consumer Protection Commission, 'Complaint Handling procedure' Available at: <<https://www.fccpc.gov.ng/consumers/complaints-handling-procedures/>> (accessed 21 September 2023)

¹⁵² FCCPA s. 9 and s.17 sub paras (b), (c), (f), (i), (p), (u), and (w)

¹⁵³ Section 17(b) FCCP Act

¹⁵⁴ Section 17(c), (f), (i) FCCP Act

¹⁵⁵ Section 17(e) FCCP Act

deceptive or unconscionable marketing, trading and business practices.¹⁵⁶ and go a long way to resolve disputes or complaints, issue directives and apply sanctions where necessary.¹⁵⁷ in order to protect and promote consumer interests;¹⁵⁸ and were necessary advise the Federal Government on matters relating to consumer protection, including making recommendations to the Federal Government for the review of policies, legislation and subsidiary legislation as considered appropriate.¹⁵⁹

Additionally, Section 39(1) of the FCCP Act establishes the Competition and Consumer Protection Tribunal which is entrusted with adjudicating on the Act's prohibited conducts and exercising the jurisdiction, powers, and authority conferred on it by this or any other statute.¹⁶⁰ The philosophy behind the powers given to the tribunal is to ensure speedy redress at the grass root in matters concerning violation of consumer rights and shall keep records of its proceedings and have jurisdiction throughout the state of the federation¹⁶¹ in which Section 47 provides for the jurisdiction. The Tribunal also has power to hear appeals or review decisions of the Commission taken in the course of implementing any of the provisions of the Act¹⁶² and any decision from the exercise of the powers of any sector of specific regulatory authority in a regulated industry in respect of consumer protection matters;¹⁶³ The Tribunal also has power to decide and impose penalties¹⁶⁴ which can only be reviewed judicially by the court of Appeal.¹⁶⁵ Therefore, any ruling by the Tribunal is binding on the parties before the Tribunal and shall be registered with the Federal High Court for the

¹⁵⁶ Section 17(g) FCCP Act

¹⁵⁷ Section 17(h) FCCP Act

¹⁵⁸ Section 17(l) FCCP Act

¹⁵⁹ Section 17(f) FCCP Act

¹⁶⁰ Section 39(2) FCCP Act

¹⁶¹ Section 39(3) FCCP Act

¹⁶² Section 47(1) (a) FCCP Act

¹⁶³ Section 47(1)(b) FCCP Act

¹⁶⁴ Section 51 FCCP Act

¹⁶⁵ Section 55 FCCP Act

purpose of enforcement.¹⁶⁶ In any case, it could be safe to say that the FCCP Act provided a well-structured institutional framework for the protection of consumer rights in Nigeria.

3.2.2 The FCCPC and the Rights of E-Consumers in Nigeria

E-commerce has become a crucial component of the global economy, providing various advantages to society, businesses, individuals, industries, and governments. Its instant nature reduces the need for paperwork, saving both time and environmental resources. E-commerce enables trade by allowing parties to conduct transactions without being physically present, thereby overcoming geographical barriers. It also addresses market access issues, enabling consumers in remote areas to purchase goods online.¹⁶⁷ These platforms expand the marketplace for buyers and sellers, reducing the necessity for extensive staff to manage business operations, which cuts costs and enhances efficiency. This efficiency results in lower transaction costs, which can be transferred to consumers through reduced prices for goods and services.¹⁶⁸ A key benefit of e-commerce is its support for a unified global trading system, made possible by electronic access to goods and services worldwide. The internet and e-commerce drive technological advancements, lower transaction costs, and generate more significant benefits than the efficiency gains from trade liberalization.¹⁶⁹

The expansive reach of the internet allows businesses to market their products and services on a global scale, effectively minimizing both transaction time and costs. This worldwide accessibility enables companies to tap into new markets and contend with established players. E-commerce offers the benefits of speed, convenience, and broad accessibility, allowing customers to explore a diverse array of products and services from suppliers around the globe.

¹⁶⁶ Section 54 FCCP Act

¹⁶⁷ S Singleton and S Halberstam, 'Business, the Internet and the Law', 1999, (Trolley, London 1999), p.4.

¹⁶⁸ N. Ewelukwa. 'Is Africa Ready for Electronic Commerce: A Critical Appraisal of the Legal Framework for E- Commerce in Africa' <<http://www.acicol.com/temp/Dr N.pdf>> (accessed 2 August, 2023).

¹⁶⁹ A Panagariya, E-Commerce, WTO and Developing Countries, the United Nations Conference on Trade and Development, Policy Issues in International Trade and Commodities Study Series 2, p.24. Available at United Nations Digital Library System <<https://digitallibrary.un.org>> (accessed 22 August, 2023).

Additionally, it cuts down on delivery costs and times. Through social media, e-commerce provides a cost-efficient method for businesses to connect with their target markets, facilitating consumer engagement in dialogues akin to face-to-face customer service. This platform also enables businesses to tailor their marketing messages, delivering relevant product or service information to consumers.

However, while e-commerce offers numerous advantages, it also presents several drawbacks and potential challenges. These issues largely stem from the fast-paced technological advancements, as well as the legal, procedural, and traditional business practices involved. Challenges include the means of verifying e-commerce transactions, data protection concerns, cyber-crime risks, and jurisdictional issues in case of disputes. One notable drawback is the inability to physically inspect or touch products before purchase, often leading to disappointment when the delivered items do not match the online descriptions. Additionally, there are often hidden costs associated with online shopping, such as high delivery fees, lack of warranties, and unsatisfactory delivery terms. Network failures due to heavy internet traffic also pose significant challenges. Moreover, e-commerce might not be suitable for all types of businesses, particularly those dealing in luxury items like expensive art, diamonds, and antiques, which typically require in-person inspection before purchase.¹⁷⁰ The anonymity provided by the internet exposes consumers to various risks, such as unfair trade practices, data privacy violations, non-delivery or delayed delivery of products, and misrepresentation. Additionally, consumers may fall victim to crimes like identity theft, credit/debit card fraud, cyber-stalking, and phishing. Most concerning is the lack of assurance regarding the security and privacy of transactions.¹⁷¹

¹⁷⁰ V Bobek and T Horvat, eds., *Business and Management Annual Volume 2023* (IntechOpen, 2023), <doi:10.5772/intechopen.113983>.

¹⁷¹ P Ishwara Bhat, 'Comparative Method of Legal Research: Nature, Process, and Potentiality', in *Idea and Methods of Legal Research* (Delhi, 2020; online edition, Oxford Academic, 23 Jan. 2020), <<https://doi.org/10.1093/oso/9780199493098.003.0009>>, (accessed 18 September. 2023.)

Financial and personal information shared online is vulnerable to unauthorized access or distribution without user consent. Additionally, the internet allows virtually anyone, regardless of intent, to start a business, leading to consumer distrust and skepticism about the legitimacy of e-commerce transactions. Many consumers remain doubtful about the security and success of online trades. This situation highlights the critical need for robust legal and institutional frameworks to protect e-consumers. Without such protections, consumers risk being exploited and subjected to unfair trade practices, similar to those found in traditional commercial transactions.

Consumer rights, akin to civil rights, empower consumers to make informed decisions and lodge complaints against corporations. Central to consumer protection is the enforcement and safeguarding of these rights, holding violators legally accountable. This framework ensures consumers can make educated choices and seek redress when necessary.¹⁷² The advent of the internet and e-commerce has introduced various legal and economic challenges, particularly concerning consumer vulnerability. Consumers may face risks like misrepresentation or fraud due to limited access to sellers beyond the platform. Effective legislation is essential to safeguard consumers throughout transactions. E-commerce has also introduced new consumer rights, including digital data protection, privacy, and accurate information disclosure. The right to information is critical in both online and offline transactions, ensuring consumers are protected against false advertising and other deceptive practices. Therefore, robust consumer protection laws are necessary across all transaction methods.¹⁷³

The eight universally recognized consumer rights include safety, information, choice, being heard, seeking redress, consumer education, a healthy environment, and representation. These

¹⁷² T Ibidapo-Obe, 'Online Consumer Protection in E-Commerce Transactions in Nigeria: An Analysis' Available at <<https://ssrn.com/abstract=2683927>> (accessed 26 September 2023).

¹⁷³ P Quirk and J A Rothchild, 'Consumer Protection and the Internet' in Geraint Howells, Iain Ramsay, Thomas Wilhelmsson, (eds), *Handbook of Research on International Consumer Law* (1st, Edward Elgar Publishing, Cheltenham 2010) p. 333.

rights protect consumers from unsafe products, ensure they receive accurate information, provide options, allow for complaints and responses, facilitate dispute resolution, educate them on rights and products, promote a healthy environment, and ensure representation in policy-making. Enhancing consumer confidence in e-commerce necessitates rights like complete business information disclosure, protection from unfair terms, secure payments, personal data protection, and access to dispute resolution. These rights are upheld in global legislation, with information disclosure being a key protective measure.

3.2.2.1 The Right to Safety

The right to safety encompasses the necessity of shielding consumers from the sale of low-quality and hazardous products. It also involves safeguarding consumers from the marketing of goods that pose risks to life or property.¹⁷⁴ Certain products inherently pose dangers or risks, and it is essential to shield consumers from these hazardous items. Additionally, both consumers and their families should be safeguarded against unnecessary risks of physical harm, injury, or death that may arise from using these products.¹⁷⁵ In e-commerce, for example, e-traders must ensure the safety of their websites against viruses that might infect and damage consumers' PC.¹⁷⁶

Section 131(1) of the FCCP Act places an obligation on producers that they should make available to the consumer goods that are reasonably suitable for the purpose for which they

¹⁷⁴ K A Dhanya, 'Consumer Protection in the E-Commerce Era' Available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3489753> (accessed 18 June 2023)

¹⁷⁵ Consumer Protection Act, 1999 (Act No. 599) Government Gazette, 1999-09-09, Vol. 43, No. 18, 93 p. Available at <https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=54121&p_lang=en> (accessed 25 July 2021)

¹⁷⁶ Aubrey L Diamond, 'The Molony Committee Final Report of the Committee on Consumer Protection' (1963), *The Modern Law Review*, 66.

are generally intended.¹⁷⁷ It also stipulates that the goods should be of good quality, good working order and free of defects;¹⁷⁸ It further compels the producers to supply goods that comply with the set standards according to regulation.¹⁷⁹ Additionally, Section 2 of the FCCP Act empowers the FCCPC to monitor the activities of producers to ensure that goods sent to markets are safe and reasonably suitable for the purpose for which they are to be purchased in Nigeria.

However, the FCCP Act empowers the FCCPC to compel producers in the country to comply with safety and health set by industry sector regulators by meeting quality and safety standards.¹⁸⁰ The FCCPC has the power to recall or ban the sale, distribution, advertisement of products that fall short of safety and health regulations and standards in the country.¹⁸¹ The FCCP can go to the extent of applying their constitutional authority to recall of any product for repair, replacement or refund to consumers which constitutes an imminent public health and safety hazards.¹⁸² In fact, any producer who sells or offers for sale any unsafe or substandard goods is guilty of an offence under the FCCP Act. Also, such producers shall upon conviction be ordered to recall the goods on any term required by the commission.¹⁸³

3.2.2.2 The Right to be Informed

To be informed means to be enlightened or empowered. Information is important to human existence and security.¹⁸⁴ Therefore, the rights to information is one important factor at the heart of consumer protection regime. It simply means a consumer should be given the facts

¹⁷⁷ Section 131(1a) of the FCCP Act.

¹⁷⁸ Section 131(1b) of the FCCP Act.

¹⁷⁹ Section 131(1c) of the FCCP Act.

¹⁸⁰ Section 133(1b)

¹⁸¹ Section 133(1a) of the FCCP Act.

¹⁸² Section 133(1e) of the FCCP Act.

¹⁸³ Section 133(2) of the FCCP Act.

¹⁸⁴ S Oguce, *Consumer Protection through Information Disclosure Philosophy*, ed. Adedeji Adekunle and Shankyula Tersoo Samuel (Lagos, Nigeria: Nigerian Institute of Advanced Legal Studies, 2013), 264.

needed to enable him/her to make an informed choice¹⁸⁵ or must be protected against fraudulent, deceitful, or grossly misleading information, advertising, or other unfair trade practices.¹⁸⁶ The right to be informed does not stop at mere giving information to the consumer but must be clear and complete. Precise details must be provided about terms and conditions of the transaction including disclosures of prices and condition of goods offered for sale. Therefore, consumers must be given every information about proposed transaction including pre-sale and post-sale activities.

It is argued that online transaction is a complicated aspect of modern commercial transactions that even the most educated consumers find it difficult to utilize. Notorious to e-commerce transactions is that consumers transact with an electronic representation of the seller as shown on the electronic platform. This means that contracting parties do not meet physically, rather they deal with each other from a distance through the internet. Consequently, the fact that one cannot evaluate the quality of a product online is one of the greatest barriers to overcome for the proper conduct of electronic transactions. This is because consumers do not get the chance to evaluate the quality of the product thoroughly enough since one cannot touch, feel or smell it.¹⁸⁷ In effect, consumers are left to arrive at a purchasing decision in an e-commerce transaction based on the information about the goods and services as tendered by the seller.¹⁸⁸ Hence, to ensure effective protection of consumers, the OECD came up with guiding principles regarding information disclosure in an online market¹⁸⁹ which was set out

¹⁸⁵ F I Okon, S I Salaam, and U C Titus, 'Consumerism and Consumer Protection: Implication for National Development,' *Journal of Educational Policy and Entrepreneurial Research (JEPER)* 3, no. 7 (2016): 169

¹⁸⁶ J. F. Kennedy, "Special Message to the Congress on Protecting the Consumer Interest," ed. John Woolley and

Gerhard Peters, The American Presidency Project, last modified 1962, available at <http://www.presidency.ucsb.edu/ws/?pid=9108.0kon> (accessed 25 September, 2023),

¹⁸⁷ B Anckar, 'Drivers and Inhibitors to E-commerce Adoption: Exploring the Rationality of Consumer Behaviour in the Economic Market Place.' available at: https://www.researchgate.net/publication/221408357_Drivers_and_inhibitors_to_ECommerce_adoption_Exploring_the_rationality_of_consumer_behavior_in_the_electronic_marketplace (accessed 11 August 2023)

¹⁸⁸ I K Ilobinso supra n

¹⁸⁹ Guidelines for Consumer Protection in the Context of Electronic Commerce /1999, Organisation for Economic Co-Operation and Development (Paris: OECD, 2000), 15.

to ensure that e-traders provide sufficient and correct information to the consumers; noting that the major issues of consumers are the lack of information and awareness about products and suppliers.¹⁹⁰ Therefore, it is essential that online consumers have access to detailed information of the seller, the goods and transaction which promotes accountability and deters businesses from engaging in unfair and unsafe practices.¹⁹¹

It is against this background that the FCCPC has been empowered to mandate online sellers to disclose information which includes information disclosure requirement provisions for the benefit of consumers. Section 118 (a) and (b) of the FCCP Act provides that: The seller shall provide a written record of each transaction to any consumer to whom goods or services are sold or supplied and include in that record at least the undertaking's full name or registered business name; the address of the premises at which, or from which the goods or services were sold or supplied. However, the requirements for disclosing information about the seller of the goods to be sold or provided. The FCCP Act also mandates the seller to give a thorough description of the goods to be purchased and the transaction of that purchase¹⁹² as well as provides that the seller shall provide a written record of each transaction and such record shall contain the name or description of the goods, the unit price of the goods, the quantity of the goods.¹⁹³ Furthermore, goods and services shall not be displayed for sale without adequately displaying to the consumer the price of those goods and services.¹⁹⁴

The Act through the FCCPC also ensured that sellers label and give adequate descriptions of the goods to be sold.¹⁹⁵ It is crucial to recognize that the regulations requiring advance information about the description of goods were initially created for consumers in traditional

¹⁹⁰ N Amin and R M Nor, 'Online Shopping in Malaysia: Legal Protection for E-Consumers,' *European Journal of Business and Management* 5, no. 24 (2013): 85.

¹⁹¹ I. O. Odion, 'Reflections on Consumer Protection and Competition Policy in Nigeria,' in *Law and Principles of Consumer Protection*, (Lagos, Nigeria; Nigerian Institute of Advanced Legal Studies, 2013), 250×255

¹⁹² Section 118 (d) – (i) FCCP Act

¹⁹³ Section 117 FCCP Act

¹⁹⁴ Section 115 FCCP Act

¹⁹⁵ Section 116 FCCP Act

marketplaces. Therefore, lawmakers are urged to amend the FCCP Act to obligate sellers to provide clear descriptions of goods to consumers in online transactions before any contracts are agreed upon. Adequate dissemination of information occurs when all parties in a transaction fully understand the details provided. Information must be easily accessible and written in simple, clear language for consumers. Consequently, Section 114 of the FCCP Act specifies how information should be presented to consumers. It mandates that any notice, document, or visual representation required by the Act or other laws must be delivered in the prescribed format. If no format is specified, the information must be provided in clear and comprehensible language. Consumers often avoid reading the information supplied by sellers because it is typically lengthy, complex, and uninviting, which leads to discouragement. Nonetheless, this provision requires that information be given in a clear and effective manner so that consumers can read and comprehend the terms and all other information before they become legally binding on the parties. It also prevents unscrupulous and fraudulent vendors from hiding unfair clauses in the small print of the contract's terms and conditions.

3.2.2.3 The Right to Choose and Disclosure of Prices

The right to choose and disclosure of prices entails the right to be assured of a variety of products and services in a competitive market at fair prices.¹⁹⁶ The ability to choose empowers consumers to select from a range of goods or services in online marketplaces, enhancing service quality and standards. This competitive market framework is advantageous for consumers, prompting traders, sellers, and suppliers to devise strategies that attract consumer preference and sustain their market position. However, in the absence of price alternatives, consumer choices become limited. To curb monopolies and prevent substandard products from flooding the market, a supportive legal framework is essential. Monopoly

¹⁹⁶ J. F. Kennedy, 'Special Message to the Congress on Protecting the Consumer Interest,' ed. John Woolley and Gerhard Peters, The American Presidency Project, last modified 1962, (accessed 25 September, 2023), <<http://www.presidency.ucsb.edu/ws/?pid=9108.0kon>>; Salaam, and Titus, 'Consumerism and Consumer Protection: Implication for National Development.'

regulations are intended to stop producers from controlling the market, while competition regulations foster rivalry among producers and suppliers. Essentially, safeguarding consumers' right to make informed choices necessitates laws that promote healthy competition and deter monopolistic practices.¹⁹⁷ Competition laws strive to enhance the quality of goods and services, guarantee fair pricing, and oversee the interactions among all market participants, including businesses. Nevertheless, some scholars contend that these laws can have a dual nature, shielding consumers and businesses from the control and exploitation by large producers and suppliers. They offer protection to smaller or weaker enterprises from the risk of being dominated and exploited by more powerful producers and suppliers.

3.2.2.4 Rights to Privacy and Data Protection

The openness and easy accessibility of the internet has caused data and privacy protection to become a subject of concern for internet users.¹⁹⁸ E-commerce transactions necessitate that consumers share personal details such as their name, address, age, gender, phone number, and debit card information. Ensuring data privacy is problematic because this information can be easily accessed by others. In Nigeria, the absence of robust internet privacy measures, advanced technology, and supportive legal frameworks has resulted in many Nigerians being hesitant to disclose their personal information, particularly financial details, which poses a significant risk to e-commerce¹⁹⁹. This situation arises due to the enormous volume of personal data stored on computers for all internet users. This data can be instantly transmitted

¹⁹⁷ I O Odion, 'Competition Law as a Platform for Consumer Protection: A Nigerian Perspective,' *New Media and Mass Communication* 33 (2015): 23.

¹⁹⁸ E Okoro, and P Kigho, 'The Problems and Prospects of E-Transaction (the Nigerian Perspective)' (2013) 3 *Journal of Research in International Business and Management* 10 <<https://www.interestjournals.org/articles/the-problems-and-prospects-of-etranaction-the-nigerianperspective.pdf>> (accessed August 21, 2023).

¹⁹⁹ D Enadeghe, (n48)

globally and accessed with just a keystroke. As a result, the right to privacy and data protection faces significant technological challenges.

Privacy is a crucial human right, recognized by both the United Nations Declaration of Human Rights and the United Nations Guidelines on Consumer Protection. These documents ensure that individuals are safeguarded against unwarranted intrusions into their private lives, families, homes, or communications, and that their dignity and reputation are upheld. In Nigeria, Section 37 of the 1999 Constitution upholds the privacy of citizens, covering their homes, correspondence, telephone calls, and telegraphic communications. This provision implies that the protection of personal data can be integrated into the Nigerian constitution. If a consumer feels their data has been improperly collected or used during an e-commerce transaction, they can seek redress under Section 37 of the 1999 Constitution.

The Nigerian Data Protection Regulation (NDPR), created by the National Information Technology Development Agency (NITDA) on January 25, 2019, protects individuals' rights to data privacy, supports secure personal data transactions, prevents data misuse, and helps Nigerian businesses stay competitive globally. According to Rule 4.1, paragraph (1), data controllers must appoint a Data Protection Officer to ensure compliance with the Regulation, data privacy tools, and directives. However, the FCCP Act, which replaced the previous Consumer Protection Council Act, lacks provisions for online consumer privacy and data protection. It does not specifically address consumers' rights to personal data privacy, highlighting the need for personal data protection within Nigeria's consumer protection framework. However, the passing of the Nigerian Data Protection Regulation (NDPR) 2019 introduced by the National Information Technology Department Agency was instituted to protect personal data²⁰⁰ and prevent its manipulation²⁰¹ The NDPR requires data controllers to

²⁰⁰ The Nigerian Data Protection Regulation 2019, Paragraph 1.1 (a).

²⁰¹ The Nigerian Data Protection Regulation 2019, Paragraph 1.1 (c).

obtain the consent²⁰² of data subjects before processing their data. Data controllers must ensure that they use effective security²⁰³ measures to protect the data belonging to data subjects. Also, the NDPR provides for penalties in the event of a breach of its provisions.²⁰⁴ The NDPR also establishes the Administrative Redress Panel²⁰⁵ responsible for investigating complaints and determining the appropriate redress to protect data subjects' rights and freedoms as guaranteed by the Nigerian constitution.

3.2.2.5 The Right to be Heard

The right to be heard is the assurance granted by consumer legislation that consumer's complaints will receive full and sympathetic consideration before consumer protection institutions such as the FCCPC. Also, the right to be heard means the treatment of consumer complaints in simple and expeditious administrative procedures.²⁰⁶ The right to be heard is essential for consumers engaging in electronic transactions, enabling them to file complaints, seek remedies, and contribute to policy-making. It is imperative for the government to establish robust legislative, judicial, and regulatory frameworks to address consumer issues. Given the involvement of multiple parties in electronic transactions, resolving disputes is a critical component of e-commerce. In Nigeria, the FCCP Act offers statutory and institutional mechanisms for consumer protection. Under Section 152, consumers can pursue civil action for compensation or restitution in a competent court. The commission or tribunal can work with consumer protection organizations to represent consumers in court and facilitate alternative dispute resolution (ADR) through mediation or conciliation. The Act also establishes an internal complaint management system to address issues between parties, with the Commission receiving and investigating complaints to ensure timely resolution. Section

²⁰² The Nigerian Data Protection Regulation 2019, Paragraph 2.2

²⁰³ The Nigerian Data Protection Regulation 2019, Paragraph 2.6.

²⁰⁴ The Nigerian Data Protection Regulation 2019, Paragraph 2.10

²⁰⁵ The Nigerian Data Protection Regulation 2019, Paragraph 4.2

²⁰⁶ O Ben-Shahar, C Schneider, 'More than you wanted to know: the failure of mandated disclosure', (Princeton University Press: New Jersey, 2014)

146(1)(c) permits consumers to lodge complaints directly with the Commission to enforce rights, transactions, or resolve disputes with suppliers.²⁰⁷ The Act further states that a consumer may file a complaint with the Commission in the manner and form prescribed by the Commission, alleging that an undertaking has violated the Act's provisions.²⁰⁸

However, applying these conflict resolution methods to electronic transactions has its own set of challenges in Nigeria. First, Government-led online dispute resolution efforts exist in some jurisdictions²⁰⁹ but this is not the situation in Nigeria as the FCCP Act does not provide for online consumer transactions generally. Furthermore, cross-border transactions, for example, are those in which goods are ordered and delivered to customers who are not in the same geographic region as the vendor. How then can the online consumer successfully seek redress using these methods in a circumstance when a significant portion of the trade contract has been breached.

3.2.3 The FCCP Act, the FCCPC and the Enforcement of E-consumer Rights in Nigeria

To effectively enforce and protect the consumer rights in Nigeria, the FCCP faces a lot of challenges. The challenges range from the limited powers, problems associated with lack of consumer awareness and reluctance of the consumers to lodge complaints to the FCCPC. However, these problems are discussed in preceding paragraphs.

3.2.3.1 Limitation of Powers

The FCCPA, a legal framework for consumer protection, lacks specific provisions for e-commerce. The four basic consumer rights are only embedded within the FCCP Act, which does not address the unique challenges faced by online consumers, unlike in other

²⁰⁷ Federal Competition and Consumer Protection Commission, 'Complaint Handling procedure' Available at: <https://www.fccpc.gov.ng/consumers/complaints-handling-procedures/> (accessed 11 September 2023)

²⁰⁸ Section 148(1) FCCP Act

²⁰⁹ D. Clapperton, S. Coronos, "Unfair Terms in Click wrap and Other Electronic Contracts" (2007) 35 Australian Business Law Review 152.

jurisdictions like South Africa, where the Electronic Communications and Transactions Act, Protection of Personal Information Act, and Consumer Protection Act provide adequate protection for both offline and online consumers. In Nigeria, the FCCP Act does not adequately emphasize electronic transactions, making e-consumers helpless. To address this, the Nigerian government should repeal and reenact the CPC Act to establish the FCCP Act, specifically regulating online transactions in e-commerce.

3.2.3.2 Consumer Awareness

Consumer rights in Nigeria frequently go unrecognized because many people do not understand the purpose of the laws, the FCCPC, or the tribunals created to protect these rights. This lack of awareness undermines the FCCPC's ability to uphold consumer protections, especially in the e-commerce sector. Although people are informed about basic rights like refunds and replacements, they often lack understanding of the complexities of e-commerce. This issue is widespread globally, affecting both educated and uneducated individuals. In developed nations like the United States and the UK, this ignorance allows businesses to take advantage of consumers. Research indicates that greater consumer awareness can substantially decrease violations of consumer rights in both developed and developing countries.²¹⁰ Hence the need to create awareness among consumers.²¹¹ In Nigeria, the FCCPC has the mandate to organize and undertake campaigns and other forms of activities that will lead to increased consumer awareness. This recommendation is in line with the recommendations of the OECD Guidelines for Consumer Protection in the Context of e-commerce 1999.²¹² To this effect, the government, businesses, media and consumer

²¹⁰ I D Ikoni, 'A Middle Course between Consumer Protection and Environmental Protection.' in Adedeji Adekunle and Shankyula Tersoo Samuel, (eds) *Law and Principles of Consumer Protection*, 1-74. (Lagos, Nigeria: Nigerian Institute of Advanced Legal Studies, 2013}.

²¹¹ M G Piwuna, 'Examination of Consumer Protection under the Nigerian Communication Commission Act, 2003.' *Journal of Education & Social Policy* 3, no. 4 (2016): 101-111

²¹² OECD, 'E-commerce Recommendation' Available at: <<https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>>. (accessed 14 August 2023)

representatives should make combined effort to educate consumers about their rights in ecommerce transaction. The burden of enlightenment cannot be borne by a single entity but can be achieved through collective collaboration.

3.2.3.3 Consumer Apathy towards Seeking Redress

The FCCP Act in Nigeria encounters difficulties primarily due to consumer indifference towards seeking justice. A significant number of Nigerian consumers hesitate to report infringements of their rights to the FCCPC/Tribunal, which is designated by the Act to uphold consumer rights. They are concerned that pursuing their rights will be time-consuming and costly, and they fear the corrupt nature of Nigerian institutions may favor the wealthy over the average citizen. Business owners who infringe on consumer rights often use monetary inducements or threats to dissuade consumers from seeking redress. This reluctance may stem from factors such as poverty, as Nigeria is one of the world's poorest countries, with a large segment of the population earning less than \$1 per day. Consequently, consumers may prioritize survival over legal action.²¹³ The scarcity of resources in Nigeria due to poverty hampers the defense of rights and the pursuit of justice. Consumers frequently value the price or worth of goods over their rights, opting to waive their rights if the value is minor. Seeking remedies is a tedious and time-intensive endeavor, as numerous Nigerians do not have the means to afford these expenses.²¹⁴

The FCCPC/Tribunal, although not explicitly authorized to manage e-commerce grievances, still accept and address them using their existing powers. However, due to the lack of specific mandate for e-commerce complaints, they may not entirely resolve e-consumer rights issues. This situation often forces e-consumers to pursue justice through legal action or consumer

²¹³ G S Okeke, 'Globalization, Consumerism and the Challenge of Sustainable Development in Africa,' *African Research Review* 9, no. 4 (2015): 34

²¹⁴ D J Usman, et al., 'Towards Improving Consumer Access to Justice in Nigeria: Assessing the Role of Small Claims Court and the Legal Aid Scheme,' *Bayero Journal of Private and Commercial law (BJPCL)* 2, no. 2 (2016): 31.

advocacy. A study noted that the FCCP Act mainly offers a framework for consumer protection but lacks robust enforcement mechanisms, emphasizing the necessity for better staff competence and complaint management.²¹⁵ The FCCPC does not have a specific timeframe for addressing complaints, which makes consumers reluctant to report issues due to the unpredictable response period. Although there are suggestions for Nigeria to enhance consumer agency training for e-commerce complaints and upgrade infrastructure, no definitive schedule for complaint resolution has been established. E-commerce complaints require special attention, as demonstrated by the practices in countries like South Africa and the UK.

3.2.4 Effectiveness of FCCPC in Protecting the Rights of Consumers in E-Commerce Transactions in Nigeria

An effective consumer protection regime is one that addresses consumer concerns from every angle be it legal, institutional or infrastructural.²¹⁶ The FCCPC can play a pivotal role in safeguarding e-consumers' rights in Nigeria's online transactions by establishing necessary infrastructure. This infrastructure is vital for the expansion and progress of e-commerce in any nation. By ensuring a stable electricity supply, the FCCPC can effectively protect consumer rights. E-commerce is heavily dependent on electricity, a key factor in global economic development. However, since its inception, Nigeria has faced power supply challenges, failing to meet consumer energy demands. To enable the FCCPC and similar organizations to function efficiently, the government must provide consistent and reliable

²¹⁵ T I Akomolede, and P O Oladele. 'Consumer Protection in a Deregulated Economy: The Nigerian Experience.' *Research Journal of International Studies*, no. 3 (2006): 13-23.

²¹⁶ Alghamdi, et al., (2012): 142

electricity access nationwide. This would empower online shoppers to fully engage in domestic e-commerce activities.²¹⁷

Closely connected to the issue of electricity is that of inefficient and epileptic nature of internet services by internet service providers (ISPs). Consumers the world over need efficient Internet access to participate in online commercial activities effectively. In Nigeria, consumers rely on Internet Service Providers (ISPs) for Internet services. Despite the high cost of connectivity, the Internet services offered by the Nigerian ISPs are inefficient and epileptic. Quite a significant number of Nigerians have Internet-enabled devices such as mobile phones but find it difficult to access the Internet because of connectivity problem.²¹⁸

This is because, the Internet connectivity is limited to major cities and urban areas²¹⁹ as compared to the country's rural areas who are blocked off from having access to Internet connectivity. This bad internet services annoy online shoppers in urban regions. Customer payments are not worth the quality of the ISPs' services.²²⁰ In Nigeria, consumers struggle to access affordable, high-quality internet services crucial for e-commerce. High costs and unreliable internet impede online shopping. The absence of a robust network infrastructure prevents the business community from fully utilizing e-commerce. Collaboration between the Federal Communications Commission (FCCPC) and the National Communications Commission (NCC) is necessary to provide consumers with top-notch, affordable internet connections. Besides having affordable and accessible internet services, a dependable delivery system is vital for consumers to maximize e-commerce opportunities. Nigeria needs a strong road network and efficient postal services to ensure effective product and service delivery. Therefore, a strong delivery infrastructure requires proper numbering of both

²¹⁷ Akhigbe, et al., (2015): 730.

²¹⁸ O Tayo, et al 'Impact of the Digital Divide on Computer Use and Internet Access on the Poor in Nigeria,' *Journal of Education and Learning* 5, no. 1 (2016): 2

²¹⁹ Osang, (2012): 292, 294, 295, and 297; M E Agwu, 'Empirical Analysis of Retail Customers' Adoption of internet Banking Services in Nigeria,' *Journal of Internet Banking and Commerce* 22, no. 1 (2017): 1J.

²²⁰ Ndubisi, et al., (2016): 530.

residential and commercial structures which makes it easier for postal and courier services' agents to quickly and precisely locate the consumers.²²¹

Delays in delivery of goods and services and wrong delivery locations can undermine e-consumers' trust and confidence, resulting in frustration. Nonetheless, online shoppers still anticipate their orders to arrive in perfect condition and on time. They expect the items to be accurate and free of defects, even when delivered punctually and safely. E-consumers may become upset if their orders are not delivered promptly.²²² The e-consumer requires a reliable delivery system in order to be able to return the ordered items in a timely way if there is any flaw. Most online merchants' return policies do include a deadline by which customers must return items for a repair, replacement, or refund.²²³ The inefficiencies in a country's delivery system create significant hurdles for e-commerce and online shoppers, particularly when frustrated customers cannot return products within the given timeframe. This undermines consumers' rights to timely delivery, returns, repairs, replacements, and refunds. Consequently, Nigeria's delivery infrastructure needs thorough reform to uphold these consumer rights, as overseen by the FCCPC. Efficient and swift delivery boosts consumer trust and confidence. The Nigerian government, through bodies like the FCCPC, plays a crucial role in advocating for, protecting, and enforcing delivery rights, ensuring the safety and welfare of its citizens.

3.2.5 The FCCPC and the Judicial Process in Enforcing the Rights of E-Consumers in Nigeria

Another institution established in Nigeria to protect and uphold the rights of aggrieved consumers, in addition to the FCCPC, is the judiciary (court). Unlike the FCCPC, the

²²¹ A Oluchi, 'Analyzing the Adequacy of Electronic Transactions Bill 2015 in facilitating E-Commerce in Nigeria,' Social Science Research Network (SSRNJ (2015): 2.

²²² R M Nor and N Amin, 'E-Consumer Protection in Delivery of Goods: A Malaysian Perspective,' *Journal of Education and Social Sciences* 3 (Feb.) (2016): 38.

²²³ Akintola K G and others, 'Appraising Nigeria Readiness for E-Commerce towards: Achieving Vision 20:20,' *International Journal [Research and Reviews in Applied Sciences* [2011] (9) (2). 331.

judiciary was explicitly created by the constitution. The Nigerian Constitution grants the judiciary the power to interpret laws and administer justice in the country. Thus, the judiciary, through its courts and judges, has the authority to hear and adjudicate cases, rendering binding decisions and interpreting the law in instances of disputes over actions taken or omitted²²⁴. This situation arises because Section 6(6) (b) of the Constitution outlines the broad judicial powers of Nigerian courts. These powers encompass hearing and resolving all disputes between individuals, or between the government or an authority and any person in Nigeria, as well as all related actions and proceedings. Additionally, it includes resolving any disputes concerning the civil rights and obligations of individuals.²²⁵

Consumer rights as granted by the country's current consumer protection legislation are included in this citizen's civic right and responsibility. For instance, the Constitution protects a consumer's rights to privacy and fair hearing.²²⁶ The right to a fair hearing for customers is intrinsically tied to their right to be heard, which is a core principle of all consumer protection systems. Moreover, Section 36(I) of the Constitution affirms that every individual is entitled to a fair hearing within a reasonable time by an independent and impartial court or tribunal established by law. This applies to any issue or decision involving any government or authority. Furthermore, Section 46 of the Constitution allows individuals to file a lawsuit whenever their rights are infringed upon, including violations of consumer rights within the existing legal framework of the country.²²⁷

In Nigeria, consumers frequently rely on the judicial system to safeguard and assert their rights due to frequent mistreatment by unscrupulous merchants. When entities such as the

²²⁴ J Sokefun and N C Njoku, 'The Court System in Nigeria: Jurisdiction and Appeals,' *International Journal of Business and Applied Social Science* 2, no. 3 (2016): 2-3.

²²⁵ C I N Emelie, 'Legal Education and Access to Justice in Nigeria,' *Research Journal of Humanities, Legal Studies & International Development* 2, no. I (2017): 139.

²²⁶ Sections 36 and 37 of the 1999 Constitution respectively.

²²⁷ E E Ekanem, 'Institutional Framework for Consumers Protection in Nigeria.' *International Journal of Advanced Legal Studies and Governance* 2, no. I (2011): 33-48.

FCCPC are unable to resolve disputes, the courts become the ultimate recourse for consumers. Nonetheless, pursuing legal action in Nigerian courts presents significant hurdles for both traditional and online shoppers. Scholars contend that the country's legal framework fails to adequately protect online consumers, posing a challenge for those seeking justice. In essence, the judiciary stands as the ultimate recourse for consumers in their quest for justice and redress in Nigeria.²²⁸ Consumers in Nigeria highly value access to the legal system for their protection. However, many encounter obstacles in seeking justice due to the high costs of litigation, including court and attorney fees. Section 46 of the CFRN permits consumers to file lawsuits and seek compensation for violated rights, while section 36(6)(c) ensures their right to legal representation in court. Despite these provisions, only a small fraction of Nigerians can afford legal counsel due to widespread poverty. Additionally, the justice system in Nigeria relies on traditional, manual processes, making it challenging for consumers to pursue justice. This situation discourages many from seeking redress through the FCCC or civil courts, further exacerbated by the high poverty rate in the country.²²⁹

Information and communication technology (ICT) is a recent development in Nigeria, but it has led to a lack of judicial literacy among the populace. Senior court officials, often older men, are often unaware or uninterested in ICT due to its complexity. To effectively adjudicate electronic matters, judges must have a basic understanding of ICT in order to maintain an efficient justice system. The increasing demand for consumer protection complicates ICT-related issues for courts. It is essential for judges, court clerks, and lawyers to be well-versed in ICT to handle e-commerce cases effectively. The overwhelming number of cases clogging the Nigerian court system is largely due to the reluctance and attitudes of

²²⁸ Muhammad Nuruddeen, Yuhanif Yusof and Abdullah, Nor Anita, 'An Examination of the Judicial Mechanism of Protecting the Rights of E-Consumers in Nigeria' Available at: <<http://repo.uum.edu.my/25902/>> (accessed 14 August 2023)

²²⁹ S A Adelowo and T Halimat, Akaje, T 'E- Path to Effective Justice Delivery: The Nigerian Courts in Perspective' Available at: <http://eprints.covenantuniversity.edu.ng/5276/#.YSGYaYhKjIU> (accessed 15 August 2023)

judges and lawyers. To ensure fair treatment, Nigeria must develop a simpler and faster method for addressing consumer disputes. Nigeria's legal framework for addressing consumer disputes is hindered by excessive technicalities and delays, emphasizing procedural rules over substance and equity. This leads to prolonged judicial processes and added complexities, rendering it ineffective for delivering justice to clients, especially those engaging in online transactions. Scholars contend that Nigerian consumers need a practical and simplified system to effectively resolve their issues.²³⁰

3.3. The Legal and Regulatory Framework of Consumer Protection under E-Commerce in South Africa: Lessons for Nigeria

The Republic of South Africa is commendable for the effort made by the executive branch to establish comprehensive laws for the control of electronic transactions and the protection of consumers both within and outside of its borders. The Electronic Communications and Transactions Act (ECTA), passed by the South African parliament on July 31, 2002, but became effective on August 30, 2002, is the first of three noteworthy pieces of legislation that have this effect.²³¹ The purpose of Section 2 of this law is to promote electronic communications and transactions for the public good.²³² This legislation addresses internet and computer-related issues that have influenced the daily life of South Africans since the 1990s. It encompasses all electronic transactions and data messages. Chapter 7 of the law focuses on safeguarding consumers in electronic transactions.²³³

²³⁰ J O Odigie, 'The impact of consumers' protection laws and the regulatory schemes in Nigeria.' Available at: <<https://www.semanticscholar.org/paper/THE-IMPACT-OF-CONSUMERS%27-PROTECTIONLAWS-AND-THE-INOdigieOdion/8db133863b8fab8f0560edd9fad965a49c14db3>> (accessed 14 August 2023)

²³¹ No. 25 of 2002: Electronic Communications and Transactions Act, 2002, Government Gazette Republic of South Africa Vol. 446.

²³² S Suleaiman and T Mashaba 'E-commerce under the Electronic Communications Act and Consumer Protection Act' (Dentons, South Africa, 2022). Available at <<https://www.dentons.com/en/insights/articles/2022/august/26/e-commerce-transactions-under-the-electronic-communications>> (accessed 23 January, 2024)

²³³ Section 42(1) ECT Act

The Consumer Protection Act (CPA) is another piece of legislation that was passed in South Africa in 2008 with the intention of advancing the social and economic welfare of consumers by creating a legal framework for the establishment and maintenance of a consumer market that is equitable, accessible, efficient, sustainable, and accountable for the benefit of consumers as a whole; the act was aimed at minimizing and addressing any barriers consumers may face in obtaining any supply of goods or services;²³⁴ encouraging ethical business conduct and safeguarding consumers from unethical, unfair, unreasonable, unjust, or other improper trade practices, as well as deceptive, misleading, unfair, or fraudulent behavior;²³⁵ establishing a reliable, accessible, and effective mechanism for resolving consumer-related issues via mutual agreement and establishing a reliable, consistent, harmonized, effective, and efficient system of redress for consumers.²³⁶ The Act provides for consumer rights and the protection of consumer rights and consumer's voice in chapter 2 and 3 respectively.

In addition, the South African government passed The Protection of Personal Information Act 2013 (POPIA) to make it easier to secure the data of its inhabitants by establishing minimal standards for data collection, processing, storage, and sharing.²³⁷ The Act guarantees the rights of data subjects,²³⁸ including the rights to have their data processed lawfully,²³⁹ to be informed when their data is collected for processing,²⁴⁰ to object to the processing of their data,²⁴¹ to complain to a regulator²⁴² or to take legal action²⁴³ if their rights under the Act have been violated.

²³⁴ Section 3(b) CPA

²³⁵ Section 3 (c) and (d) CPA

²³⁶ Section 3 (g) and (h) CPA

²³⁷ Protection of Personal Information Act 2013, Section 2.

²³⁸ *Ibid*, Section 5.

²³⁹ *Ibid*, Section 5(a).

²⁴⁰ *Ibid*, Section 5 (d).

²⁴¹ *Ibid*, Section 5 (e).

²⁴² *Ibid*, Section 5 (h).

²⁴³ *Ibid*, Section 5 (i).

The Act establishes the Information Registrar²⁴⁴ as the body responsible for implementing the act. It is in charge of informing the public about data protection and making sure that the Act's rules are followed.²⁴⁵ In addition, the Act requires the Information Registrar to create an enforcement committee²⁴⁶ tasked with resolving disputes brought about by violations of the Act's rules. A judge and an attorney must be included on the committee. According to the Act, the information registrar may receive complaints from data subjects over violations of their privacy rights.²⁴⁷ The Enforcement Committee will be tasked with determining the problems and making suggestions in cases when the Information Regulator takes up a complaint. The Information Registrar is permitted under the Act to refer complaints to other agencies where the Information Regulator feels the complaint falls under the purview of another agency's area of competence.²⁴⁸ Companies must designate an information officer who will promote Act compliance within the company.²⁴⁹ A data subject also has the right to file a lawsuit in court²⁵⁰ and request the following relief: compensatory damages,²⁵¹ aggravated damages,²⁵² and court costs.²⁵³

3.3.1 Information Disclosure

The Electronic Communications and Transactions Act governs the issue of information disclosure in e-commerce. The Act provides that a supplier offering goods or services for sale, hire or for exchange by way of an electronic transaction must make available to consumers information about the seller, goods and services and the transactions itself on the website.²⁵⁴

The information in Section 43(1) (a) – (r) of the ECT Act are extensively stated. The Act

²⁴⁴ Ibid, Section 39.

²⁴⁵ Ibid, Section 40 (1)(a).

²⁴⁶ Ibid, Section 50.

²⁴⁷ Ibid, Section 74.

²⁴⁸ Ibid, Section 78.

²⁴⁹ Ibid, Section 92.

²⁵⁰ Ibid, Section 99

²⁵¹ Ibid, Section 99(a).

²⁵² Ibid, Section 99 (b).

²⁵³ Ibid, Section 99 (c).

²⁵⁴ Section 43(1) ECT Act

further provides that the supplier must provide a consumer with an opportunity to review the entire electronic transaction, correct any mistakes, and withdraw from the transaction before finally placing any order.²⁵⁵ Failure to comply with this provision enables the consumer to cancel the transaction within 14 days of receiving the goods or services under the transaction.²⁵⁶

The Consumer Protection Act provides that the producer of a notice, document or visual representation that is required to be produced, provided or displayed to a consumer must produce, provide or display that notice, document or visual representation in the form prescribed in terms or be in plain language, if no form has been prescribed for that notice, document or visual representation.²⁵⁷ The Act provides that a retailer must not display any goods for sale without displaying to the consumer a price in relation to those goods.²⁵⁸ A consumer is however not required to pay for a price for any goods higher than the displayed price or if more than one price is concurrently displayed higher than the price so displayed.²⁵⁹ The Act also provides that the supplier must give conspicuous notice of goods that have been reconditioned, rebuilt or remade.²⁶⁰

3.3.2 Unfair Contract Terms

The Consumer Protection Act provides that a supplier must not offer to supply or market any good or services at a price or on terms that are unfair, unreasonable, and unjust.²⁶¹ A supplier shall also not require a consumer to waive any rights, assume any obligation, or waive any liability of the supplier, on terms that are unfair, unreasonable, or unjust, or impose any such

²⁵⁵ Section 43(2) ECT Act

²⁵⁶ Section 43(3) ECT Act

²⁵⁷ Section 22(1) CPA

²⁵⁸ Section 23(3) CPA

²⁵⁹ Section 23(6) CPA

²⁶⁰ Section 25(1) CPA

²⁶¹ Section 48(1)(a) and (b) CPA

terms as a condition of entering a transaction.²⁶² The Act provides for instances where a contract term will be regarded as unfair. It states that: a transaction or agreement, a term or condition of a transaction or agreement, or a notice is unfair, unreasonable or unjust if: it is excessively one-sided in favour of any person other than the consumer; the terms of the transaction or agreement are so adverse to the consumer as to be inequitable; the consumer relied upon a false, misleading or deceptive representation or a statement of opinion provided by the supplier, to the detriment of the consumer; the transaction or agreement was subject to a term or condition, or a notice to a consumer and the term, condition or notice is unfair, unreasonable, unjust or unconscionable; or the fact, nature and effect of that term, condition or notice was not drawn to the attention of the consumer.²⁶³

3.3.3 Payment Mechanisms

Section 43(J) of the ECT Act provides that a supplier offering goods or services for sale, for hire or for exchange by way of an electronic transaction must make available to consumers the manner of payment on the web site. The Act further provides that the supplier must utilize a payment system that is sufficiently secure with reference to accepted technological standards at the time of the transaction and the type of transaction concerned.²⁶⁴ The Act imposes a liability on the supplier for any damage suffered by a consumer due to a failure to comply with this requirement.²⁶⁵

3.3.4 Privacy and Data Security

The recognition that consumers disclose personal information in e-commerce transactions has prompted the South African legislation to legislate on issues relating to privacy and data security. Chapter 8 of the Electronic Communications and Transactions Act applies to the

²⁶² Section 48(1)(c) CPA

²⁶³ Section 48(2) CPA

²⁶⁴ Section 43(5) ECT Act

²⁶⁵ Section 43(6) ECT Act

protection of personal information that has been obtained through electronic transactions. Section 50(3) provides that a data controller must subscribe to all the principles outlined in section 51 on the principles for electronically collecting personal information, and not merely to parts thereof. Section 51 requires that data controllers before taking any action towards the collection, collation, processing or disclosure of any personal information on any data subject must have the express written permission of that data subject unless he or she is permitted or required to do so by law.²⁶⁶ The Act further restrains any data controller from electronically requesting, collecting, collating, processing or storing personal information on a data subject which is not necessary for the lawful purpose for which the personal information is required.²⁶⁷

The data controller is obligated to inform the data subject in writing about the intended use of their personal information and must not repurpose it without explicit written consent. Additionally, the data controller is required to keep a record of the information and its intended use for a minimum of one year following its utilization. The data controller must not share the acquired information with third parties unless mandated by law or given written authorization by the data subject. In cases of disclosure, a record of the third party and the purpose of the disclosure must be maintained. If the information becomes outdated, the data controller must ensure it is deleted or destroyed.²⁶⁸

3.3.5 Dispute Resolution and Redress

South African regime remarkably identifies Alternative Dispute Resolution in chapter 10 Part 6 of the ECT Act. It alongside provides for the litigation option in Section 90 of the ECT Act. The ECT Act provides that the Minister, in consultation with the Minister of Trade and Industry, must make regulations for an alternative mechanism for the resolution of

²⁶⁶ Section 51(1) ECTA

²⁶⁷ Section 51(2) ECTA

²⁶⁸ Section 51(5) ECTA

disputes.²⁶⁹ Such regulation must be made with due regard to existing international precedent.²⁷⁰ The regulations may prescribe processes for resolving certain sorts of disputes or procedure and rules that must be followed for resolving disagreements, the way a decision must be made, the costs involved, and the time frame in which it must be made as well as the enforcement of decisions reached through the dispute resolution process.²⁷¹ furthermore, Section 49 of the Act further recognizes an administrative mechanism in resolving disputes by providing that a consumer may lodge a complaint with the Consumer Affairs Committee in respect of any non-compliance with the provisions of the Chapter on consumer protection. With respect to remedies, the conventional remedies that exists under the South African jurisprudence are applicable asides criminal sanctions recognized under the ECT Act.

3.4 The Legal and Regulatory Framework of Consumer Protection under E-Commerce in the United Kingdom: Lessons for Nigeria

The Data Protection Act of 1998, the Distance Selling Act of 2000, the Electronic Commerce (EC Directive) Regulations of 2002, and the ICO Cookie Law make up the legal framework for e-commerce and the e-framework in the UK and implement the EC Directive of 1999. These laws establish the legal framework necessary for the success of online businesses while fostering trust in the use of electronic communications. The regulations governing business contacts with consumers are outlined in the Electronic Commerce (EC Directive) Regulations 2002, which came into effect in 2002. According to its definition, a communication that is intended to promote someone who is engaging in commercial, industrial, or craft activity or who is practicing a regulated profession in any way is considered commercial communication.²⁷² The Regulation mandates that anyone who conducts online business in the

²⁶⁹ 232 Section 69(1) ECT Act

²⁷⁰ 233 Section 69(2) ECT Act

²⁷¹ Section 69(3) ECT Act

²⁷² Regulation. 2(1), Electronic Commerce (EC Directive) regulations 2002

sale of goods or services must, among other things, post their website's "terms and conditions," provide precise information regarding a product's cost, tax, and shipping costs, acknowledge each order that is placed, and, as necessary, make reference to professional or trade programs. if unsolicited emails are sent, they must be recognized as such; if emails are sent to clients, they must clearly identify them as being of a commercial character; and always identify the sender of any electronic communication.²⁷³

Second, is the Data Protection Act, 1998; this Act is a collection of guidelines that control how enterprises, organizations, and/or the government handle the personal information of its clients. Data privacy guidelines must be followed while collecting personal information from clients or website visitors. The supplier of products or services must first register and comply by paying a fee to a regulatory authority in order to conduct business, regardless of whether they are gathering data for marketing reasons or retaining the addresses of people who have placed online orders.²⁷⁴ After registering, a business owner is required to continue abiding by the Act. If the Act is violated by a business owner, they might suffer legal repercussions.²⁷⁵ Businesses must keep records of customer information that is relevant to their operations; all personal information must be held securely and made available or removed upon request from the customer; the terms and conditions on the website must specify what will be done with personal information and must not be modified; state in the terms and conditions whether data may be used by third party organizations outside the EU; and provide instructions on how customers can exercise their rights.

For an organization to gather personal data on clients, workers, or potential clients, it must register under the Data Protection Act. Sensitive information on individuals who visit or use websites where such data is necessary, such as ethnic background, political viewpoints,

²⁷³ Regulation. 6, 7 and 8, Electronic Commerce (EC Directive) regulations 2002

²⁷⁴ S.10, 16, Data Protection Act, 1998

²⁷⁵ S.10, (2) Data Protection Act, 1998

religious beliefs, health, sexual health, or criminal history, is tightly protected by law.²⁷⁶ The FCCP Act in Nigeria requires data processors to implement reasonable measures to safeguard personal data from being disclosed to third parties. Nevertheless, certain circumstances allow for such disclosure, including crime prevention, tax assessment, protection of foreign relations, prevention of property damage, obtaining legal advice, or participation in legal proceedings. Despite the FCCPA recognizing 13 consumer rights, none explicitly cover 'personal data protection,' leading to the inadequate recognition of this right within Nigeria's basic consumer protection framework. It appears that the drafters of the current consumer protection law did not fully consider the 2015 United Nations Guidelines for Consumer Protection, which advocate for consumer protection in electronic commerce to be on par with other commerce forms and emphasize consumer privacy. Consequently, the FCCP Act lacks explicit provisions for data protection, with many agreements favoring businesses that collect and use personal data.

The Consumer Protection (Distance Selling) Regulations 2000 is another regulation that the UK parliament passed to go along with the Electronic Commerce (EC Directive) regulations 2002. These laws, which primarily apply to long-distance agreements between two people and notably Business to Consumer companies, aim to safeguard consumers' rights. This Act mandates businesses to give customers clear and concise information about their items prior to making a purchase; they must also disclose shipping and handling fees as well as any applicable sales taxes; all products must have a 14-day return policy, with the exception of perishables and digital downloads. Customers must be given the option to return items for a full refund, excluding return shipping expenses, according to the terms and circumstances.²⁷⁷

The Regulations do not apply to lease agreements, building construction, financial services contracts, contracts involving automated vending machines, telecommunications operators, or

²⁷⁶ S.16(c), (d), Data Protection Act, 1998

²⁷⁷ Section 7 (1)(a), The Consumer Protection (Distance Selling) Regulations 2000

auctions, with the exception of lease agreements.²⁷⁸ The Act does not entirely apply to contracts for the supply of accommodations, transportation, catering, or recreational activities, as well as contracts for the supply of food, beverages, or other items meant for daily use delivered to a person's home or place of employment by regular rounds man.²⁷⁹ Every online purchase must be accompanied by written correspondence, more especially, an email.

The ICO Cookie Law is a regulation that permits companies to gather customer data from devices such as smartphones and PCs. This law enables businesses to track customer behaviour to improve website design and drive more sales. It specifically addresses the use of tracking methods that are deceptive or unethical, rather than standard analytics tools like Google Analytics. Nigeria does not have an equivalent law, but technological advancements and increasing company practices have raised concerns about online data collection. Essential elements of the cookie law should be included in new data protection and privacy legislation.

²⁷⁸ Section 5 (1), The Consumer Protection (Distance Selling) Regulations 2000

²⁷⁹ Ibid, Section 6 (1), (Note that a roundsman is a trader's employee who goes round delivering and taking orders.)

Chapter Four

Legal and Institutional Frameworks for E-Commerce and Consumer Protection: An Appraisal of International Best Practices

4.1 Legal and Institutional Frameworks for E-Commerce and Consumer Protection

A significant issue that has plagued e-commerce since its inception is regulation. This problem is exacerbated by the digital nature of e-commerce, which effectively eliminates physical boundaries by crossing borders effortlessly. Historically, commercial transactions occurred in person, with both parties physically agreeing to terms and allowing the buyer to inspect the goods before purchase. Traditional contract laws were used to resolve disputes, identifying the responsible party. Courts provided remedies if an aggrieved party could prove a valid contract, which included an offer and acceptance agreement, consideration, intent to create a legal relationship, and the necessary capacity of the parties involved. Additionally, there are rules requiring contracts to be documented in writing, as supported by Sections 1 and 4 of the Statute of Frauds (SOF) 1677, which stipulate that for a contract to be valid, the minimum is the writing and signature for such contracts, otherwise, such contract will not be enforceable in a court of law.²⁸⁰ Section 1 of the SOF also specifically provides that no action can be brought where there is no written agreement or, in the alternative, some

²⁸⁰ Statute of Frauds of 1677 is applicable in Nigeria as a Statute of General Application. Section 79 of the Property and Conveyancing Law, 1958 (Western Nigeria).

memorandum or note thereof.²⁸¹ Therefore, the rights and obligations of parties under the SOF arise where parties can establish that the contract in question has been reduced to writing and duly signed by them.²⁸²

However, applying these rules to e-commerce transactions will rather complicate issues relating to e-commerce transaction and therefore it is argued that the rise of an electronic medium for commercial transactions throws this law into disarray²⁸³ The rise of e-commerce has introduced entirely new dynamics that demand specific legal regulations. Additionally, the growth of online commerce has made many existing legal standards outdated and insufficient. As a result, there is a pressing need for a suitable legal framework to foster the development and widespread acceptance of e-commerce, especially given the increasing volume of online transactions worldwide. In response, various institutions and organizations have sought to address this challenge by establishing regulatory frameworks for both domestic and international e-commerce transactions. For over twenty years, the UN and other international bodies like the OECD have been working on implementing legal rules for e-commerce.²⁸⁴ Since then, these organizations have been enjoining countries to revise their existing legal rules and other texts to facilitate electronic transactions.²⁸⁵ Organizations such as UNCITRAL, the International Chamber of Commerce, UNIDROIT,²⁸⁶ CMI,²⁸⁷

²⁸¹ K Phillips, 'Does Australia's Unfair Contracts Act Limit or Enhance Contractual Freedom?' *Economic Affairs* 36, no. 3 (2016): 343. <<https://doi.org/10.111/ecaf.12191>>

²⁸² C J Kropka, 'Agreements of Purchase and Sale and Leases: The Statute of Frauds and Pan Performance,' *Blaneys on Building*, June 2014, l.

²⁸³ D R Johnson and D G Post, 'Law and Borders: The Rise of Law in Cyberspace,' *Stanford law Review* 48, no. 5 (1996): 1367-1368

²⁸⁴ S Jayabalan, n161

²⁸⁵ E Laryea, 'Why Ghana Should Implement Certain International Legal Instruments Relating to International Sale of Goods Transactions,' *African Journal of International and Comparative law* 19, no. I (2011): JI.

²⁸⁶ The Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental Organization with its seat in the Villa Aldobrandini in Rome.

²⁸⁷ The Chartered Management Institute (CMI) works with business and education to inspire people to become skilled, confident and successful managers and leaders

OHADA,²⁸⁸ and the EU have significantly influenced the development of global e-commerce legal standards. Their collaborative efforts have led to the creation of consistent legal frameworks that govern e-commerce activities, ensuring that businesses adhere to international laws. The EU's active participation has been crucial in advancing these global e-commerce standard.

4.1.1 The United Nations Commission on International Trade Law (UNCITRAL)

The spontaneous growth of e-commerce has brought about bright prospects for the future of global trade. However, there are concerns a number of issues would to some extent subdue the growth of e-commerce. This issues are as follows: first, the existing traditional legal frameworks governing commercial activities did not recognize the peculiarities of digital trade²⁸⁹ and secondly, the absence of harmonized laws on the subject of e-commerce posed a threat of irregularities and uncertainties.²⁹⁰ However, in 1966, UNCITRAL was created by the United Nations General Assembly (UNGA) as the main UN body with interest in the field of International trade law²⁹¹ with a need to formulate a harmonized set of laws that recognized digital forms of documents, signatures and writing, and other issues peculiar to e-commerce.

The UNCITRAL has a membership of over 100 countries across the globe including Nigeria which has been a member since 1968. The objective of the UNCITRAL is to promote the progressive harmonization and unification of international trade law and is headed by a

²⁸⁸ OHADA means the Organization for the Harmonization of Business Law in Africa. It is a system of corporate law and implementing institutions adopted as a Treaty by 17 West and Central African nations in October, 1993 signed in Port Louis (Mauritius), as revised on 17 October, 2008 in Quebec (Canada).

²⁸⁹ The United Nations Commission on International Trade Law (UNCITRAL) was established by the UNGA Resolution 2205 (XXI) of 17 December 1966, 'to promote the progressive harmonisation and unification of International! Trade Law' 4.

²⁹⁰ T Pistorius, 'Contract formation: A comparative perspective on the Model law on electronic commerce' (2002) 35 Comparative and International Law Journal of Southern Africa 131 <https://journals-co-za.uplib.idm.oclc.org/doi/10.10520/AJA00104051_178> (accessed 30 November, 2023).

²⁹¹ A Sanni and F O Adebayo, 'Analysis of Electronic Transactions Bill in Nigeria: Issues and Prospects,' Mediterranean Journal of Social Sciences 5, no. 2 (2014):

Director, who also serves as its Secretary. The UNCITRAL has a Secretariat located in Vienna, Austria,²⁹² from which broad range of administrative and legal services are rendered and usually seeks assistance of outside experts among which are academics, legal practitioners, bankers, international, regional and professional organizations when preparing its documents. It has also developed a system of collecting court cases that were decided in the light of its documents which is known as 'Case Law on UNCITRAL Texts' (CLOUT).²⁹³ The UNCITRAL's mission is to enhance global recognition, consistent interpretation, and implementation of legal documents related to e-commerce regulation. Nations are encouraged to adopt the model law as a framework for drafting their legislation, adapting specific provisions to align with their unique socio-economic contexts. A publication was released to assist in enacting the model law, offering background information and detailed explanations. UNCITRAL's harmonizing principles also promote the consistent interpretation and application of legal texts in judicial and tribunal settings. Compiled cases provide valuable insights for judges, tribunals, scholars, attorneys, and other stakeholders concerning trade and commerce matters.

However, the key International instruments of interest are the harmonizing rules of UNCITRAL on Electronic Commerce. This study concentrates on these instruments on account of the fact that these model laws are the key universal instruments which have been specially formulated to address e-commerce issues across the globe and form the backbone of most e-commerce legislations all over the world with the aims of unifying the rules to make room for the acceptability of paper-based documents. It is in line with its mandates that the UNCITRAL drafted the Model Law on E-commerce and electronic signature of 1996. The

²⁹² M. Nurudeen, and Y. Yusof, 'A Comparative analysis of the Legal Norms for E-commerce and Consumer Protection' (2021) 26 Malaysian Journal of Consumers and Family Economics 22.

²⁹³ The United Nations Commission on International Trade Law (UNCITRAL) was established by the UNGA Resolution 2205 (XXI) of 17 December 1966, "to promote the progressive harmonisation and unification of international trade law. 4.

Model Law established rules and norms that validate and recognize contracts formed through electronic means.²⁹⁴ However, the major recognition and regulation of e-commerce began with the adoption of the Model Law. The Model Law is designed to cater for outdated laws or the inadequacy of the national laws which were enacted without e-commerce in mind.²⁹⁵ The objective of the Model Law is to authorize electronic transactions and overcome the obstacles created by current legal standards like the necessity for writing, signatures, and documentation. According to the UNCITRAL Working Group on E-commerce (WGE), these barriers significantly jeopardize e-commerce, necessitating prompt legal reforms to eliminate them. The Model Laws emphasize principles of non-discrimination, technological neutrality, and functional equivalence to guarantee that consumers can use electronic documents as evidence in legal proceedings.

Some of the notable attitudes of most legal jurisdiction towards electronic transaction before the advent of model law includes; electronic documents that can be used as evidence constantly face admissibility obstacles before the courts due to the novelty of e-commerce and/or inadequacies of the existing legal rules of evidence since documents evidencing electronic transactions concluded over the Internet are mostly in electronic form. For instance, Section 2 of the Nigeria Evidence Act of 1945²⁹⁶ defined a document as: books, maps, plans, drawings, photographs, and also include any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter.

It is important to note that even the so-called advanced countries faced the same dilemma as Nigeria. But they were only able to find their way out through judicial activism; as seen in the

²⁹⁴ United Nations, 'Model Law on E-Commerce with Guide to Enactment 1996' (New York: United Nations, 1999), 30.

²⁹⁵ S Jayabalan, n161

²⁹⁶ Section 2 of the Nigeria Evidence Act of 1945

UK, before the enactment of clear rules on electronic evidence, courts utilized the best evidence rule to admit computer-based or computer-generated documents based on an age-old common law principle of evidence that permits the admission of evidence if that appears to be the best available evidence to prove certain facts. Similarly, in the US where the court admitted in evidence, a computer printout in a case of *King v State Ex Rel Murdock Acceptance Corp.*²⁹⁷ The court accepted it under the exception to the hearsay rules. In a bold display of judicial activism, the court declared that the expenditure which the entire commercial world recognizes as safe shall be sanctioned and not discredited by the courts of justice.²⁹⁸ Electronic records and documents are frequently disregarded during court cases, complicating matters for consumers trying to prove their claims. These files are categorized as secondary evidence since they are replicas of the originals. Moreover, digital documents are prone to tampering, changes, and modifications, which can be challenging to identify. This situation underscores the necessity for explicit legal guidelines on their admissibility to avoid the potential issues arising from electronic documents. Hence, it is essential to set forth clear legal regulations to guarantee the acceptance of electronic documents in judicial proceedings.²⁹⁹ The UNCITRAL through the instrumentality of the Model Law with country to country modifications came with a solution dealing with the admissibility and evidential weight of data messages.

The admissibility of electronic documents in legal proceedings is a significant issue. The UNCITRAL has proposed a resolution with its Model Law, specifically through Article 9, which addresses the admissibility and evidential weight of data messages. This article asserts that electronic messages cannot be dismissed as evidence solely because of their format or due to the potential for better evidence. Factors such as the reliability of the message's

²⁹⁷ (1996) 22 F2d 39.

²⁹⁸ *King v State Ex Rel Murdock Acceptance Corp.* (1996) 22 F2d 39.

²⁹⁹ M T Ladan, n76

creation, storage, transmission, integrity, and the identification of the sender are critical when assessing the evidential weight of a data message. Article 9 promotes the principle of non-discrimination against electronic evidence, instructing courts not to exclude such evidence merely because it is in digital form. If electronic evidence is the most reliable available, it should be given full legal consideration. Nevertheless, the judge retains the discretion to determine the evidential weight of the electronic evidence.³⁰⁰ Therefore, Article 9(2) provides the guiding principles on the issue. This is to the effect that in exercising the discretion, the judge should have regards to inter alia the reliability and integrity of any piece of electronic evidence so tendered.

In respect of non-discrimination, the Model Laws impart legal recognition to data messages, by ensuring that a document is not denied legal effect, validity or enforceability, solely on the grounds of its electronic form.³⁰¹ This, in effect, removed some of the obstacles which prevented the wide acceptability of electronic messages and documents. In terms of technological neutrality, the model law mandates the adoption of provisions that are neutral, with respect to the technology used, with the aim of accommodating any future development without further Legislative work by the adopting country. A key impediment to the acceptability of new technologies, such as electronic messages is that at the time majority of existing legislations were drafted, these technologies were not pre-empted, as they were not in existence, and when they came into existence they tend to be treated with uncertainty, until legislations are made as regards them.³⁰² However, against the background of this trend, the model laws attempt at overcoming similar hurdles by this feature of technological neutrality.

³⁰⁰ United Nations. 'E-Business Primer.' In Compliance with Information and Communication Technology-Related Multilateral Frameworks: Information Technology Enabling Legal Framework for the Greater Merong Subregion, 1-212. New York: United Nations Publication, 2004.

³⁰¹ Article 5, UNCITRAL Model Law on Electronic Commerce 1996 [MLEC].

³⁰² An Introduction to Interchange Agreements, (available at <<http://www.unece.org/tradewelcome/areas-of-work/un-centre-for-trade-facilitation-and-ebusinessuncefact/outputs/standards/unedifact/tradeedifactrules/part-2-uniform-rules-of-conduct-for-interchange-of-trade-data-by-teletransmission-uncid/part-2-uncid-chapter-4-annex.html>> (accessed 26 November, 2023).

Consequently, the UNCITRAL recommends the Model Law as a universal standard for the states wishing to enact or update their laws dealing with commercial transactions which are intended to serve as a guide for domestic legislatures to update their legislation in order to incorporate e-commerce into their national Laws on contracts³⁰³ in a nutshell, the Model Law aim at ensuring uniform and harmonized rules governing e-commerce across the globe.

4.1.2. Objectives and Scope of the Model Law

The Model Law offers internationally acceptable rules to remove the legal impediments affecting online transactions to create a secure and predictable environment for e-commerce.³⁰⁴ The model law is designed to help e-commerce users create contractual solutions to address legal challenges, harmonize national laws, and foster economic growth by facilitating global market access and enhancing efficiency in international trade. It includes provisions for consumer protection and the recognition and legalization of online transactions. The model law is structured into two parts: general e-commerce and specific areas. It offers a predictable and secure legal framework for businesses and consumers, based on three key principles: the functional equivalent principle, which mandates equal legal treatment for paper-based and electronic documents, and the general principle, which guarantees the equal treatment of both document types.³⁰⁵ Another provision states that there must be no discrimination against different kinds of technology; this is called the technology neutrality principle and lastly, parties have the freedom to choose whom they contract with

³⁰³ L A Allende and M A Miglino, 'Internet Law - International Electronic Contracting: The UN Contribution', *Internet Business Law Services (IBLS) Internet Law - News Portal*, Mar. 6, 2007, <http://www.ibls.com/internet_law_news_portal_view.aspx?s=latestnews&id=1610> (accessed 26 November, 2023).

³⁰⁴ Guide to the UNCITRAL Model Law on E-commerce at 32.

³⁰⁵ T Pistorius n321

and the terms and conditions within which they would be bound which was propounded out of the party autonomy principles.³⁰⁶

Article 2 of the model law outlines several e-commerce terms, including data messages, electronic data interchange, and information systems, but notably does not define e-commerce itself. Data messages are described as information created, received, sent, or stored through electronic means, such as emails, telegrams, electronic data exchanges, and telexes. This implies that the model law validates various methods for conducting online transactions, including emails, text messages, EDI, instant messages, telephone, and web trading. Article 4 addresses party autonomy, allowing parties in electronic transactions to modify certain provisions of the model law, such as contract formation, recognition of parties, and timing and location of data message dispatch. The model law upholds the principle of non-discrimination, asserting that electronic information cannot be deemed invalid solely because it is not in paper form. Additionally, it states that terms and conditions referenced in a data message must be regarded as if they were explicitly included, even if not directly stated.³⁰⁷

The Model Law also takes note of the issues of signatures and the concept of originality. It prescribes that electronic signatures must be considered valid signatures where it meets the following requirements.³⁰⁸ First, the method of signature used must identify the party and secondly, such method must also indicate the party's approval of the electronic information content. On the issue of originality, the model law prescribes that a data message is considered an original document where there is an assurance of the integrity³⁰⁹ and authenticity of the information. This assurance can be provided by showing that the data is

³⁰⁶ C Connolly, and P Ravindra, 'First UN Convention on E-commerce finalised' (2006) 22 *Computer Law & Security Report* at 32 <<https://www.sciencedirect.com/uplib.idm.oclc.org/science/article/pii/S026736490500186X>> (accessed 26 November, 2023).

³⁰⁷ UNCITRAL Model Law on E-commerce 1996, Article 5b.

³⁰⁸ Ibid, Article 7.

³⁰⁹ Ibid, Article 8.

void of omissions and alterations.³¹⁰ In addition, the model law equally addresses the issue of admissibility³¹¹ and the evidential weight of data messages. It prescribes that data messages should not be denied admissibility because it is not a paper-based document. Also, evidential weight must be given to data messages (this depends on whether they were created, transmitted, communicated or stored reliably).³¹² The formation and validity of contracts under online transactions have been a topic of debate. To create some form of certainty, it provides that offers and acceptance communicated through the means of data messages are regarded as valid contracts.³¹³ However, the model law did not definite what constitutes a good contract, neither did it define what amounts to an offer and acceptance; this is to prevent a conflict with the definitions given to the concept of offers and acceptance by various jurisdictions.³¹⁴

The Model Law recognizes that the peculiarities of e-commerce transactions might make it difficult to determine the time and place when the information was sent and received.³¹⁵ Thus it provides that the time and place of dispatch is determined by the principal place of business for both parties and not the location of computer systems.³¹⁶ The principle of neutrality can be seen throughout the provisions of the model law. It placed no form of technology above the other, neither did it exclude any form of technology.³¹⁷ It impliedly created room for the inclusion of future technologies by not giving a conclusive definition to data messages, as seen in Article 2. Nonetheless, some notable provisions of the Model Law that offer some level of protection to e-commerce consumers are identified as follows.

³¹⁰ Guide to the Enactment of the UNCITRAL Model law on E-commerce (1996) 42.

³¹¹ UNCITRAL Model Law on E-commerce 1996, Article 9.

³¹² Guide to the Enactment of the UNCITRAL Model Law on E-commerce (1996) 43

³¹³ UNCITRAL Model Law on E-commerce 1996, Article 11.

³¹⁴ Guide to the UNCITRAL Model Law on E-commerce (1996) 48.

³¹⁵ Ibid (1996) 55.

³¹⁶ UNICTRAL Model Law on E-commerce, Article 12.

³¹⁷ M Nurudeen, and Y Yusof, n323.

The Model Law recognizes electronic communication as a legitimate method for conducting business transactions, ensuring consumer protection in online environments. It validates all forms of communication, such as data messages, that are created, transmitted, received, or stored electronically or through optical or similar means, including EDI, email, telegram, telex, or fax. This provides legal assurance for online transactions and safeguards consumer interests.³¹⁸ The Model Law serves as a legal structure for validating e-commerce transactions, ensuring that data messages are recognized as legally effective, valid, and enforceable. According to Article 2, information cannot be denied legal effect, validity, or enforceability simply because it is not directly included in a data message but is only referenced within it. This provision was incorporated into the 1996 Model Law to emphasize the principle of non-discrimination and guide countries on handling issues related to data messages. The 1998 amendment extended full legal recognition to certain contractual terms and conditions, treating them as if they were explicitly stated. Additionally, the Model Law stipulates that written agreements initiated by a data message must be documented and accessible for reference in cases of discrimination.³¹⁹

The Model Law mandates that electronic signatures on data messages must include a person's signature, ensuring that the method for identifying the person and indicating their approval is reliable and suitable for the information's purpose. Article 8 stipulates the need for documents to retain their originality, requiring information to be presented or preserved in its original form. This condition can be satisfied by a data message if there is dependable assurance of the information's integrity from the time it was created. The reliability standard is evaluated based on the information's intended purpose and relevant circumstances. Article 11 of the Model Law outlines that in contract formation, an offer and acceptance can be conveyed through data messages, and the contract's validity or enforceability cannot be

³¹⁸ Guide to UNCITRAL Model Law on E-commerce 32-34

³¹⁹ *ibid*

challenged solely because a data message was used. These provisions collectively aim to introduce the principle of technological neutrality in commerce. The criteria for assessing integrity include the information remaining complete and unchanged, aside from endorsements and changes during communication, storage, and display.³²⁰ The Model Law empowers parties to select any form of electronic media for their commercial dealings, reinforcing the principle of contractual freedom. It seeks to advance non-discrimination in e-commerce, acknowledging that the legal necessities for paper documents can obstruct seamless communication. By embedding the principle of non-discrimination, the Model Law addresses concerns regarding the differential treatment of paper and electronic communications. This enables parties to decide on their preferred transaction methods and the technology they employ.³²¹

Hence, the principle facilitates e-commerce by ensuring equality of treatment between paper-based documents and those stored or expressed in an electronic form with the sole aim of taking care of the notions of writing, signature, and originality which in a long run be used to deny electronic communications legal effect. This is because writing or a signature can be transferred to the electronic context.³²² Therefore, contract entered electronically is as valid as any contract that is formed traditionally.³²³ In line with this, the Model Law does not only uphold the contracting parties' freedom to choose the mode of concluding their contract but also the technology to be used in doing so.³²⁴ Parties are at liberty to communicate offer and accept same freely using offline or online platforms. Equally, parties are at liberty to decide

³²⁰ *ibid* 23-24

³²¹ United Nations, 'Model Law on E-Commerce with Guide to Enactment 1996' (New York: United Nations, 1999), 20.

³²² UNGA, Report of the Working Group on Electronic Commerce on Its Thirty-Eight Session (New York, 2001), 16-17.

³²³ S E Blythe, 'Digital Signature Law Offline United Nations, European Union, United Kingdom and United States; Promotion of Growth in E-Commerce with Enhanced Security,' *Richmond Journal of Law & Technology* (*Rich. JL & Tech.*) *XT*, no. 2 (2005): 12.

³²⁴ C Reed and J Angel, *Computer Law: The Law of Regulation of information Technology*, 6th ed. (Oxford: Oxford University Press, 2007), 301.

the most appropriate technologies for e-commerce in terms of expense, deployment, security and reliability.³²⁵ This option in the model law therefore reinforces the principle of parties' autonomy since the obligations of the contracting parties arise only out of their free will, with the view that in an ideally desirable system of law, all obligations will arise only out of the will of the individuals, contracting .freely (which) rest not only on the will theory of contract but also in the political doctrine that all restraint is evil and the government is best which governs least as contained in the heart of the contract law.³²⁶ The theory of contract law allows for all parties to determine their fates. Their relationship should be less regulated by statutes or courts. Except to protect the weak (consumers) from exploitation." In upholding this old principle of law, the Model Law allows parties to communicate offer and accept same via SMS, IMC, EDI, e-mail, telephone and web-based commerce. Notwithstanding, the principle of non-discrimination as explained above has limitations.³²⁷ This is seen in the UETA which requires real estate transactions, will and trust among other contractual documents to be in written form. Otherwise, they cannot be enforced in a court of law. A similar provision is also found under the Ghanaian Electronic Transactions Act (GETA) 2008,³²⁸ which excludes negotiable instruments and bills of lading from being electronic records or document which does not truly reflect the aim of the Model Law. Thus, maintaining such provisions will hamper international trade and defeat the essence of ecommerce. However, for e-commerce to reach its full potentials, these barriers in all its form must be expunged.

The Model Law is however without its own short coming. First, even though the Model Law has a great impact on ecommerce status in many countries, the model laws only serve as

³²⁵ J D Gregory, 'Technology Neutrality and the Canadian Uniform Acts,' in 4th International Conference on Law Via the Internet (Canada: Universite de Montreal, 2002), 3.

³²⁶ O Yerokun, 'The Law of Contract' (Yaba, Nigeria: Nigerian Revenue Projects Publications, 1999), 7.

³²⁷ D Enadeghe, (n 48)

³²⁸ Electronic Transactions Act 2008 (Ghana: Act 772, 2008);

guides for countries in enacting their local laws on e-commerce; they have no force of law.³²⁹ Thus, the non-binding nature of these UNCITRAL model laws makes it easy for states to pick and choose specific provisions to enact in local rules.³³⁰ The Model Law only guide countries on how to address legal problems posing a threat to the development of e-commerce in their domains. This then reduces uniformity and harmonization in e-commerce laws globally. Given the fact that many states have adopted it in their respective jurisdictions, the provisions of the Model Law have been applied and interpreted differently in courts of various jurisdictions which has emanated from states practice, judicial decisions and resolutions of the UNGA among other things.³³¹ Therefore, it is submitted that if the Model Law has attained the status of customary international law as it is used to binds all countries in the world regardless of whether a given country has its blueprint.

Secondly, the Model Law is not a comprehensive e-commerce legal document.³³² The Model Law does not adequately address numerous legal issues related to e-commerce, especially those impacting e-consumers. Modern e-commerce primarily operates via the World Wide Web (web-based commerce), whereas the Model Law focuses on data message communications, such as EDI, telephone, and email, without specifically addressing web-based transactions. This omission might be because web-based e-commerce was not common when the Model Law was established. Today, consumers rarely purchase goods via email, fax, or telex. While the Model Law authenticates electronic contracts and signatures, offering some consumer protection, it fails to cover many issues e-consumers face, such as unfair trade practices, privacy concerns, fraud, and the liabilities of different parties.³³³ Thirdly, the model laws equally do not provide for the institutional frameworks governing e-commerce

³²⁹ C Connolly and P Ravindra (n 321)

³³⁰ UNCTAD Information Economy Report 301.

³³¹ Andre da Rocha Ferreira, 'Formation and Evidence of Customary International Law.' *UFRGS Model United Nations Journal I (2013): 188.*

³³² S. Jayabalan, (n161)

³³³ A M Nadal and J F Gomila 'Comments to the UNCITRAL Model Law on Electronic Signatures' (2002) 5th International Conference on Information Security 241

nor mention mechanisms for dispute settlement and remedies available to aggrieved parties. This suggests the fact that the Model Law itself needs to be reviewed to reflect the current e-commerce developments in order to reinforce the principle of nondiscrimination as propounded by the Model Law. In spite of its shortcoming, the Model Law remains relevant and vital legal instrument relating to e-commerce.

Fortunately, evidence has shown that some countries have bridged this gap by way of enacting comprehensive legislative frameworks for e-commerce transactions. This includes the Indian Information Technology Act (JJTA), 2000 is one of the most comprehensive legislation for e-commerce. The UTA makes other elaborate provisions covering areas such as electronic governance, attributions, e-signature, regulation of certifying authorities and cyber offences.³³⁴ Similarly, the EU as a region has a coherent legal and institutional frameworks for e-commerce.³³⁵ This includes the *Directive on E-commerce (DoE) 2000 and Directive on Privacy and Electronic Communications (DPEC) 2002* and the *Unfair Commercial Practices Directive (UCPD) 2005*.³³⁶ These legal documents regulates different aspects of e-commerce more than what is contained in the Model Law as well as protects consumers against insertion of unfair trade terms particularly if such term gives preference to the seller's rights and obligations at the detriment of the consumer. In a nutshell, the UCPD check-mates unfair trade practices in commercial transactions³³⁷ coupled with the fact that

³³⁴ N Karnath, 'Law Relating to Computers, Internet and E-commerce', 5th ed. (India: Universal Law Publishing Co. Pvt. Ltd., 2012), xxxi-xxxv and 665-699.

³³⁵ Z A Ayub, 'Malaysian Electronic Commerce Act 2006 and EU Directives: Consumer Protection Perspectives,' *REKA YASA-Journal of Ethics, legal and Governance* 3 (2007): 68

³³⁶ Directive on Privacy and Electronic Communications 2002, Official Journal of the European Communities (European Union: L 201/37, 2002).

³³⁷ Z A Ayub, (n366) 68

their approach is tilted more towards B2C which guarantees the right of a consumer to receive from e-traders (without delay) receipt in respect of their purchases.³³⁸

4.1.3 The OECD 1999 Guidelines for Consumer Protection in the Context of E-commerce

On December 9, 1999, the OECD Council approved a set of guidelines aimed at improving consumer protection in the context of electronic commerce.³³⁹ The revised Consumer Protection in E-commerce Guideline by the OECD Council, dated March 24, 2016, establishes key principles for safeguarding consumers in online transactions. It aims to address concerns about the distinct characteristics of internet-based transactions, ensuring that consumers in online environments receive comparable protection to those in traditional markets. The Guideline serves as a resource for governments, businesses, and consumer advocates to enhance and apply online consumer protection measures effectively. It also allows member states the flexibility to adopt more rigorous standards if they choose to further protect consumers in the digital marketplace.

4.1.3.1 Information Disclosure

The revised Consumer Protection in E-commerce Guideline by the OECD Council, dated March 24, 2016, establishes key principles for safeguarding consumers in online transactions. It aims to address concerns about the distinct characteristics of internet-based transactions, ensuring that consumers in online environments receive comparable protection to those in traditional markets. The Guideline serves as a resource for governments, businesses, and consumer advocates to enhance and apply online consumer protection measures effectively. It

³³⁸ Unfair Commercial Practices Directive 2005, *Official Journal the European Union (European Union: L 149, 2005)*, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:EN>> (accessed 29 November, 2023)

³³⁹ OECD, 'E-commerce Recommendation' Available at: <<https://www.oecd.org/sti/consumer/ECommerceRecommendation-2016.pdf>>. (accessed 14 August 2023)

also allows member states the flexibility to adopt more rigorous standards if they choose to further protect consumers in the digital marketplace.³⁴⁰ The information to be submitted must include the business's official name and trading name, an email address, phone number, or other electronic contact methods; appropriate domain name registration details for websites involved in commercial transactions with consumers; and any pertinent government registration or license information³⁴¹. The Recommendation also mentions that businesses affiliated with a trade association or similar organization should provide sufficient details for consumers to easily contact that organization.³⁴²

The Recommendation on disclosure of information about products and services requires businesses to give customers with information about the goods or services in order for them to make informed decisions about a transaction.³⁴³ Certain information, such as functionality and interoperability features; contractual requirements, limitations, or conditions that may affect a consumer's ability to acquire, access, or use the good or service; safety and health-care information, and any age restrictions, should be provided by the business³⁴⁴. In addition, the recommendation requires businesses that engage in e-commerce should provide information about the terms, conditions, and costs associated with a transaction to enable consumers to make an informed decision, and this information should be easily accessible at any stage of the transaction. The company should also publish a clear and comprehensive summary of the transaction's relevant terms and conditions.³⁴⁵ Such information should include the initial price; terms, conditions, and methods of payment; terms of delivery or

³⁴⁰ OECD Recommendation para. 28

³⁴¹ OECD Recommendation para. 29

³⁴² OECD Recommendation para. 30

³⁴³ OECD Recommendation para. 31

³⁴⁴ OECD Recommendation para. 32

³⁴⁵ OECD Recommendation para. 34

performance; details and conditions related to withdrawal, termination, or cancellation; privacy policy; dispute resolution and redress options.³⁴⁶

Finally, before the consumer confirms the purchase, he or she must have the opportunity to review summary information about the goods or services, as well as any delivery and pricing information.³⁴⁷ This will enable consumers identify and correct errors or to modify or stop the transaction. The business is forbidden from processing the transaction unless the consumer has given an express consent to it.³⁴⁸ However, the Nigerian e-commerce legislation does not include this criterion. The customer is not given the opportunity to review the information provided before making a choice on the transaction. Payment Mechanisms: Payment of products and services by electronic means is a key component of electronic transactions. Consumers, on the other hand, may be exposed to certain payment-related hazards from which they should be protected. To prevent this, businesses must provide consumers with simple payment options and adopt security measures that are proportional to payment-related risks, such as those resulting from illegal access or use of personal data, fraud, and identity theft.³⁴⁹ Governments and stakeholders have a responsibility to set basic levels of consumer protection for e-commerce payments, including governmental or industry-led constraints on customer liability for unauthorized or fraudulent charges, as well as chargeback procedures.³⁵⁰ Other payment arrangements, such as escrow services, should also be developed to increase consumer confidence in e-commerce.

4.1.3.2 Dispute Resolution and Redress

In the context of electronic transactions, the presence of any form of dispute is unavoidable. For the advancement of e-commerce, dispute resolution systems must be in place. Consumers

³⁴⁶ OECD Recommendation para. 35

³⁴⁷ OECD Recommendation para. 37

³⁴⁸ OECD Recommendation para. 38

³⁴⁹ OECD Recommendation para. 40

³⁵⁰ OECD Recommendation para. 41

should have meaningful access to fair, easy-to-use, transparent, and effective processes for resolving domestic and cross-border e-commerce disputes in a timely way.³⁵¹ Consumers should be able to obtain redress without incurring unnecessary cost or burden when harm has been suffered as a result of the goods and services which may be defective, do not meet advertised quality criteria or where there have been delivery problems.³⁵² The dispute resolution mechanisms should not only involve court procedure but should include out of court mechanisms such as internal complaint handling and³⁵³ alternative dispute resolution (ADR). However, the use of such out of court mechanisms should not prevent consumers from pursuing other forms of dispute resolution and redress.

4.1.3.3 Privacy and Data Security

As previously said, customer privacy and data protection is a primary concern while engaging in an online transaction. Consumer data and personal information, on the other hand, must be safeguarded against fraud. Businesses should protect consumer privacy by ensuring that their policies relating to the collection and use of consumer data are legitimate, transparent, and fair, as well as providing sufficient security precautions. Businesses should manage digital security risk and take security measures to reduce or mitigate negative consequences of consumer e-commerce involvement.³⁵⁴

4.1.4 The African Union Convention on Cyber Security and Personal Data Protection

Over the last 20 years, there has been a rapid growth of internet penetration on the continent.³⁵⁵ Thus, this study needs to examine the relevant frameworks covering e-commerce at the continental level. As a result, the African Union (AU) saw the need to

³⁵¹ OECD Recommendation para. 43

³⁵² OECD Recommendation para. 46

³⁵³ OECD Recommendation para. 44

³⁵⁴ OECD Recommendation para. 49

³⁵⁵ U Orji, 'The African Union Convention on Cyber Security: A Regional Response towards Cyber Stability' (2018) (*Masaryk University Journal of Law and Technology*) 117

establish a continental treaty on cyber security and data protection. The Convention on Cyber Security and Personal Data Protection Convention was established in June 2014. The Convention covers the subject of e-commerce, cyber security and personal data protection. Unfortunately, this Convention has not come into force as it requires 15 countries to ratify its provisions. Only eight countries (Angola, Ghana, Guinea, Mozambique, Mauritius, South Africa, Senegal and Rwanda) have ratified this convention. Under the convention, member states are obligated to ensure that e-commerce activities can be freely exercised in their territories except gambling, legal services and activities of notaries.³⁵⁶ Also, member states must ensure that businesses engaged in e-commerce within their territories must give consumers easy and direct access to the following information the corporate name of the business, the principal address, emails, phone numbers, relevant government licenses, and member organization.³⁵⁷ In addition, businesses must state clearly the prices of commodities includes taxes and delivery fees.³⁵⁸ The convention recognizes the use of electronic contracts as a valid means of contracting between parties.³⁵⁹ However, the terms and conditions laid out by businesses must be in tandem with the domestic laws of member states.³⁶⁰ Also, under the act, it provides that for an electronic contract to be validly concluded, the “offeree” must have had the opportunity to verify the order, particularly the price, on the other hand, before confirming the order, businesses must then confirm receipt of the order without unjustifiable delay.³⁶¹ The acceptance of the offer and the acknowledgement of the receipt are deemed to be received when the party it was addressed to has received them.³⁶² Thus this provision means that businesses are the ones who make an offer, and the consumer accepts by placing

³⁵⁶ African Union Convention on Cyber Security and Personal Data Protection, Article 2(1).

³⁵⁷ Ibid, Article (2).

³⁵⁸ Ibid, Article 2(2) (a) (b) (c).

³⁵⁹ Ibid, Article 5(1).

³⁶⁰ Ibid, Article 5(2).

³⁶¹ Ibid, Article 5(3).

³⁶² Ibid, Article 5(4).

an order. In order to ensure security in payments, the convention stipulates that businesses must use payment methods approved by the member state.³⁶³

Each state must establish legislation to protect consumers' data and punish any violation of such privacy.³⁶⁴ In addition, the convention mandates each state to establish an authority in charge of protecting personal data. This authority must be independent and ensure that the personal data is processed in line with the provisions of the convention.³⁶⁵ The authority must also ensure that the use of information communication technologies must not impede the freedom and privacy of citizens.³⁶⁶ Citizens equally have rights under the convention when it comes to processing their data; they have the right to know who is processing their data purpose for which it is being processed and what period the data would be stored in their database.³⁶⁷ Citizens also have the right to object to the processing of their personal information.³⁶⁸ The convention requires each state to develop laws and regulations on cyber security.³⁶⁹ These laws must contain the following provisions: laws on cybercrimes,³⁷⁰ the establishment of a regulatory authority³⁷¹ or empowering pre-existing authorities to regulate cyber security in the state,³⁷² rights of citizens and the protection of sensitive sectors in the state.³⁷³ This convention enhances cyber security awareness amongst member states. It facilitates the harmonization of cyber security and data protection laws in Africa. In addition, it also enforces an array of progressive obligations on member states to establish national cyber security and data protection regimes.³⁷⁴

³⁶³ Ibid, Article 7 (1).

³⁶⁴ Ibid, Article 8(1).

³⁶⁵ Ibid, Article 11(a) (b).

³⁶⁶ Ibid, Article 12 (1).

³⁶⁷ Ibid, Article 16.

³⁶⁸ Ibid, Article 18.

³⁶⁹ Ibid, Article 25.

³⁷⁰ Ibid, Article 25(1).

³⁷¹ Ibid, Article 25 (2).

³⁷² Ibid, Article 25(3).

³⁷³ Ibid, Article 25 (4).

³⁷⁴ U Orji, (n422) 117.

There are, however, challenges of implementing this treaty. First, the convention does not fully establish a model legal framework that member states can adopt. It merely provides a guide for African countries to establish legislation for electronic transactions, cyber security and personal data protection.³⁷⁵ The ratification of a cybersecurity convention in African nations is progressing slowly because of insufficient awareness and institutional capacity. Although international model laws are available, African countries might implement varying versions, potentially undermining the convention's objectives. Additionally, the government's hesitance to promote awareness and develop expertise in cybersecurity further slows the process. African countries are part of regional blocs, with varying levels of technological advancement among them. The validity of online contracts also poses a challenge, as seen in Nigeria, where the common law approach dictates that the consumer makes the offer and the vendor accepts it.

4.1.5 The ECOWAS Agreements on the Regulation of Internet Activities

The West African region has introduced three supplementary Acts to oversee ICT activities. These include the Supplementary Act A/SA.2/01/10 concerning Electronic Transactions, the Supplementary Act A/SA.1/01/10 regarding Personal Data Protection, and the Directive C/DIR/1/08/11 from August 2011. Nigeria, as a member of the Economic Community of West African States (ECOWAS), adheres to the ECOWAS agreements that regulate internet activities, including e-commerce.³⁷⁶ The Act applies to all electronic transactions that make use of data messages. Just like the AU Convention on cyber security, this Act does not apply to gambling, legal representation and activities of notaries public.³⁷⁷ The Act also mandates businesses to ensure that consumers have direct and easy access to information such as the name and physical address of the business, emails, member organisation, relevant

³⁷⁵ U Orji, 'Examining Missing Cyber Security Governance Mechanisms in the African Union Convention on Cyber Security and Personal Data Protection' *15 Computer Law Review International* (2014) 132.

³⁷⁶ Supplementary Act A/SA.2/01/10 on Electronic Transactions, Article 2.

³⁷⁷ *Ibid*, Article 4.

government licenses,³⁷⁸ and an indication of accurate prices for the commodity.³⁷⁹ In addition, the Act prohibits businesses from sending unsolicited electronic advertisements to consumers.³⁸⁰

The Act also recognizes that negotiations of contracts can take place electronically³⁸¹ and permits parties to electronically transmit all information necessary for the execution of the contract where they agree to do so.³⁸² In the determination of a valid contract, the act takes the same approach as the AU Convention, it refers to consumers as recipient of the offer, and when the consumer has reviewed the order, especially the price, the confirmation of his order amounts to an acceptance.³⁸³ This means that the business makes the offer through its display of goods, while the consumer accepts the offer by confirming the order. Also, The Act compels them to provide consumers with the terms and conditions of the electronic contract in a way that can be recorded and reproduced.³⁸⁴ Such terms must contain the following: the language proposed for executing the contract,³⁸⁵ the various steps required to conclude the contract electronically,³⁸⁶ how the consumer can identify errors made when entering data, and how such errors can be corrected before the conclusion of the contract.³⁸⁷ In addition, businesses are obligated to acknowledge receipt of a consumer's order without unnecessary delay.³⁸⁸ Once these factors are met, this means that a valid contract has come into existence.

Under this Act, both electronic and physical documents are granted the same legal status. The Act permits electronic documents to be accepted for invoicing the same way hard copies are

³⁷⁸ Ibid, Article 3.

³⁷⁹ Ibid, Article 5.

³⁸⁰ Ibid, Article 11.

³⁸¹ Ibid, Article 15.

³⁸² Ibid, Article 16.

³⁸³ Ibid, Article 19.

³⁸⁴ Ibid, Article 18.

³⁸⁵ Ibid, Article 18 (3).

³⁸⁶ Ibid, Article 18 (1).

³⁸⁷ Ibid, Article 18 (2).

³⁸⁸ Ibid, Article 19.

accepted.³⁸⁹ Electronic documents are also admissible as evidence in court.³⁹⁰ The Act equally permits the use of electronic signatures for online transactions.³⁹¹ However, for an electronic signature to be recognized, the signature must have been created by a secure device under the exclusive control of the party making the signature.³⁹² Despite its comprehensive nature, the Act fails to cover areas such as data message dispatch, unfair trade practices, electronic transaction regulation, dispute resolution mechanisms, and consumer remedies. Although individual member states might address these omissions, harmonization is essential to prevent inconsistencies. Several nations, including Ghana, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Liberia, and Senegal, have enacted similar laws. Additionally, the Act's criteria for establishing a valid contract are contentious, especially in countries like Nigeria that adhere to common law principles.

In furtherance of the Supplementary Act on Electronic Transactions, the ECOWAS Heads of State and Government adopted the Supplementary Act A/ SA.1/01/10 on Personal Data Protection in 2010 to serve as a regional legal framework on data protection regulation within the ECOWAS.³⁹³ The Act aims to impose an obligation on member states to enact laws to protect the use, collection, processing and storage of personal data.³⁹⁴ The Act equally requires member states to establish data protection authorities³⁹⁵ within their jurisdictions who are independent³⁹⁶ and enjoy immunity in the exercise of their functions.³⁹⁷ The Act outlines the duties of these data protection authorities; they include informing data subjects

³⁸⁹ Ibid, Article 29.

³⁹⁰ Ibid, Article 33.

³⁹¹ Ibid, Article 34.

³⁹² Ibid, Article 35.

³⁹³ U Orji 'A Comparative Review of the ECOWAS Data Protection Act' (2016) 4 *Computer Law Review International* (2016) at 109.

³⁹⁴ Supplementary Act A/ SA.1/01/10 on Personal Data Protection, Article 2.

³⁹⁵ Ibid, Article 14.

³⁹⁶ Ibid, Article 14(2).

³⁹⁷ Ibid, Article 17(2).

and data controllers about their rights and responsibilities,³⁹⁸ receiving complaints and petitions on the breach of data privacy,³⁹⁹ imposing fines and sanctions,⁴⁰⁰ informing judicial authorities of offences where necessary⁴⁰¹ and authorize cross border transfer of personal data.⁴⁰² The Act outlines the principles that should govern data processing such as the principle of consent and legitimacy, the principle of legality and fairness, The principle of purpose, relevance and preservation, the principle of accuracy, the principle of transparency, the principle of confidentiality and security as well as the principle of choice of a data Processor.⁴⁰³

In addition, the Act prohibits the use of personal data for prospecting a data subject without his consent.⁴⁰⁴ The Act also provides for the rights of data subjects; these rights include the right to know the identity of the data controller, the right to know the purpose for which the data is being processed,⁴⁰⁵ the right to know the period of storage of the processed data, the right to object to his data being processed and the right to have his data rectified, updated or destroyed as appropriate.⁴⁰⁶ Apart from the rights of the data subjects, the Act confers specific duties on the Data controller; this includes the duty to ensure that the processed data remains confidential, the duty to ensure that the data is secure and is inaccessible to third parties, the duty to ensure that the data is only preserved by the period prescribed by regulations and the duty to ensure that the processed data is durable.⁴⁰⁷ The shortcoming of The ECOWAS Supplementary Act on Electronic Transactions is that it does not provide

³⁹⁸ Ibid, Article 19 (a).

³⁹⁹ Ibid, Article 19 (f).

⁴⁰⁰ Ibid, Article 19 (i)

⁴⁰¹ Ibid, Article 19 (g).

⁴⁰² Ibid, Article 19 (i).

⁴⁰³ Ibid, Article 29.

⁴⁰⁴ Ibid, Article 34.

⁴⁰⁵ Ibid, Article 38(2)

⁴⁰⁶ Ibid, Article 41.

⁴⁰⁷ Ibid, Article 45.

judicial remedies available to data subjects against data controllers or even the supervisory authority in the event of a breach of privacy.

In pursuit of harmonization of laws within the ECOWAS region and the need to curb internet-related crimes,⁴⁰⁸ the Heads of State and Government enacted the Directive C/DIR.1/08/11 on Fighting Cybercrime within ECOWAS. The directive prescribes legal provisions for the regulation of cybercrimes within the region. The directive divides cybercrime offences into two categories: Offences specifically related to information and communication technologies and traditional offences relating to Information and Communication technologies. However, this study is interested in the former since it relates to issues of e-commerce transactions. The directive criminalizes several acts such as fraudulently accessing computer systems,⁴⁰⁹ interfering with the operation of a computer system,⁴¹⁰ fraudulently manipulating personal data,⁴¹¹ fraudulently intercepting computer data,⁴¹² computer data forgery,⁴¹³ threat through computer systems.⁴¹⁴ (Simply put, the directive criminalizes offences such as hacking, payment scams, identity theft, web cloning and phishing). Apart from the substantive laws, the directive provides for procedural laws; the directive permits the relevant agencies to conduct searches or seize any computer system for investigation. Furthermore, it permits the use of electronic evidence as proof to establish an offence.⁴¹⁵ In addition, it places an obligation on member states to cooperate where necessary in the area of searches and investigations⁴¹⁶. The directive specifies provisions for cybercrime regulation but fails to include an enforcement framework. Such a framework

⁴⁰⁸ U. Oriji, 'An Inquiry into the Legal Status of the ECOWAS Cybercrime Directive and the Implication of its Obligations for Member States (2019) 35 Computer Law and Security Review 7.

⁴⁰⁹ Directive C/DIR.1/08/11 on Fighting Cybercrime within ECOWAS, Article 4

⁴¹⁰ Ibid, Article 6.

⁴¹¹ Ibid, Article 7.

⁴¹² Ibid, Article 8.

⁴¹³ Ibid, Article 10.

⁴¹⁴ Ibid, Article 21.

⁴¹⁵ Ibid, Article 32.

⁴¹⁶ Ibid, Article 33.

should establish or empower relevant bodies, clearly defining their roles and responsibilities. The implementation faces challenges due to a shortage of technical experts and regional agencies. Nonetheless, countries like Nigeria and Ghana have enacted cyber laws, either as standalone acts or integrated into existing legislation.

Chapter Five

Conclusion

5.1 Summary of Findings

The study focus on Protecting Consumer Rights in E-Commerce Transactions in Nigeria. The study formulated four research questions and four objectives respectively. The study utilized both doctrinal research methodology to achieve its targeted objectives. A qualitative review was done out to elicit the practical problems associated with the legal and institutional frameworks for the protection of e-commerce consumers in Nigeria. The study referred to international legal instruments and the practices in foreign countries to unveil the inadequacy of the legal and institutional frameworks for the protection of e-commerce consumers in Nigeria. Hence, the summary of what has been carried out in each of the preceding chapters is as follows:

The first chapter is the introductory part of the study. It contained the background of the study, statement problem, research questions and objectives, the significance of the study, research methodology, and the limitations of the study as well as the review of the relevant literature in this area of study.

The second chapter dealt with the conceptual discourse relating to e-commerce and consumer right protection with reference to the global and Nigerian context. This chapter was divided into different sections. Section one contained an introduction of the chapter. Sections two and three dealt with the concepts of e-commerce and consumer protection respectively. Here, the concepts of e-commerce were examined to relay a proper foundation for the study. The section exerted effort to examine the definition, classification, advantages and disadvantages of e-commerce. The second Section dwelled on the analysis of the concept of consumer protection. This section described the word consumer and consumer protection means respectively. it further gave insight on the right of consumer, the rationale for the protection of online consumer and challenges in enforcement.

The third chapter examined the international legal instruments relating to e-commerce and consumer's right protection. In this respect, the international legal instrument examined in this chapter includes the UNITRAL Model Law, 1996, OECD guidelines for consumer protection in the context of e-commerce 1999 and ECOWAS agreement on the regulation of internet activities. The provisions of this international framework play a pivotal role in influencing the legal rules governing e-commerce and consumer protection across the globe; it has also provided a blueprint document containing a set of principles that will guide countries on how to revise or enact legislation in the area of e-commerce and consumer protection.

The fourth chapter examined the legal and institutional framework relating to e-commerce and consumer protection in Nigeria. The legal framework for consumer' right protection in Nigeria includes; the Constitution of the Federal Republic of Nigeria 1999, the Cybercrimes Act 2015, Nigerian Electronic Transactions Bills 2015 and the Federal Competition and Consumer Protection Act, 2018. Furthermore, the chapter utilized qualitative research to assess the adequacy of the Nigerian legal framework for the protection of e-commerce in the country. This qualitative research findings, was used to strengthen the view of different arguments that Nigeria does not have an adequate legal framework for the protection of e-commerce in the country. The legal framework analyzed was used to re-enforce the fact that the protection of e-commerce in Nigeria is not adequate and as such, the Nigerian government needs to address the e-commerce challenges in the country. Furthermore, this chapter analyzed the institutional framework for the protection of e-commerce in Nigeria with emphases on the principal institutions saddled with the responsibility of protecting and enforcing the rights of consumers in Nigeria which revealed that the FCCPC and its tribunal is not effective in resolving e-consumer concerns. This chapter also analyzed Nigeria's legal framework with the legal and regulatory framework for consumer protection under e-commerce in South Africa and the United Kingdom whose legal and institutional framework for e-commerce and e-consumer protection are effective in protecting their rights. It revealed that South Africa and the United Kingdom have a robust consumer protection-driven framework for online consumers. This was to serve as a lesson for Nigeria to learn to improve its framework to increase consumer trust in e-commerce as well as enable this study make necessary recommendations and draw conclusion.

5.2 Conclusion

The study had examined the legal and institutional frameworks for the protection of ecommerce consumers in Nigeria. The study has established that the legal framework for the

protection of e-commerce consumers is inadequate. Having examined the Nigerian legal and institutional framework on the protection of consumers in e-commerce, it is quite evident that the FCCP Act which is the major legislation on the issue of consumer protection did not adequately provide for the protection of online consumers and as such is ineffective in Nigeria. This is because the Act did not make mention of the words e-commerce or online consumers. This goes to show that the Act was not enacted with the view of protecting online consumers. Though, some provisions can be applied to e-commerce transactions, but it was not sufficient to protect consumers in the digital world as the issues faced are different and are constantly evolving. Furthermore, the consumer protection institutions which comprise of the FCCPC/tribunals and the courts are beyond the reach of an ordinary consumer in the country. Hence, Nigeria should take a lead from other countries such as South Africa and the United Kingdom to mention a few who have already enacted laws and established institutions protecting e-consumers in their jurisdictions.

5.3 Recommendations

Consequent to the above conclusion, this study proffers a veritable solution targeted at revamping the Nigerian legal and institutional space as to the protection of consumers in the context of e-commerce. The recommendations on the protection of consumers in the context of e-commerce are mainly divided into two. The first part is in respect of legislative reform while the second part is in respect of institutional reform.

Legislative Reforms:

- i. On ways to address the legislative problems facing the Consumer Protection Council (CPC) in its efforts to protect and enforce consumer rights in e-commerce transactions this study recommends an amendment to the FCCP Act to enlarge the powers and

functions of the FCCPC to enable it to accept and treat complaints bordering on breach of consumer rights in e-commerce. This is because FCCP Act is a legislation that deals only with the regulation of traditional mode of commerce which may prove ineffective in protecting online consumers looking at the peculiarities of e-commerce. However, if the FCCP Act is amended to have specific legislation on e-commerce, it will go a long way to address electronic transactions exhaustively, particularly in relation to long distance or cross boarder e-commerce. Here, Nigeria can learn a lesson from South Africa where the Electronic Communications and Transactions Act and the Consumer Protection Act promulgated principally to regulate the affairs of electronic transactions and other related matters and to protect consumers in the sphere of e-commerce in the country have been empowered to accept and deal with any dispute bordering on e-commerce. Now, e-consumers in South Africa can submit their grievances either directly or use online platforms. Both the South African Electronic Communications and Transaction Act and The Consumer Protect Act system of settling e-commerce disputes is simple, cheap and informal. Parties can settle their difference amicably without involving a legal practitioner. Thus, saving the consumer's money and precious time.

- ii. This study also recommends that a reform be done to the FCCP Act to rectify the lapses in the FCCPC to protect consumer rights to information disclosure and the steps they need to take to enforce the right. Though the FCCP Act has some provisions on information disclosure by the vendor, these provisions do not suffice regarding the peculiarities of e-commerce. It does not necessitate the seller to provide a functional contact detail which can enable the e-consumer to communicate with the seller conveniently from a distance or enforce the provision of the e-traders to make prior information on the description of the goods to be sold. This is evident with the

use of the words ‘sold’ and ‘supplied’ which proposes that the sales record should be delivered to the consumer after the transaction has been entered into and not before the contract to afford the consumer ample time to evaluate and make informed decision concerning the goods. This cannot be said to apply to consumers in an electronic transaction who do not have the ability to physically examine the goods before purchase is made and will therefore need all pre-contractual information to make an informed decision.

- iii. Notorious to e-commerce transactions is the probability of consumer’s personal information being exposed to the public domain while transacting on the Internet. Against the backdrop that the FCCP Act does not have adequate provisions for the protection of the personal information of consumers engaging in electronic transactions, and considering the borderless nature of the Internet, this study further recommends that the Personal Data Protection Bill currently at the floor of the National Assembly be quickly enacted into law to further strengthen the legal mechanism regulating electronic transactions in Nigeria.
- iv. An indication of preparedness to provide a legal framework for e-commerce in any given country begins with the domestication of the Model Law on Ecommerce. The UNCITRAL recommends the Model Law as a common standard for states wishing to enact or update their laws dealing with commercial transactions. This recommendation has been implemented in many jurisdictions who have enacted laws based on or inspired by the Model Law. However, Nigeria has yet to adopt the Model Law domestically, despite facing significant legal challenges in e-commerce, particularly concerning data protection and unfair trade practices. The only legislative initiative so far made is the Electronic Transaction Bill, 2015. Notably, this Bill has been passed by both houses of the National Assembly (indeed, it was one of the 46

Bills infamously passed by the Senate in 10 minutes on 3 June 2015), but is yet to receive Presidential assent nine years after, and as a result is not, as yet, in force. This study therefore recommends the immediate passage of the Bill into Law.

Institutional Reforms:

- v. Against the backdrop that the FCCPC has been conferred certain powers and functions under the FCCP Act, but the Commission has failed to adequately utilize the powers and functions so conferred on it, this study recommends that the Commission pays attention to emerging trends in e-commerce and make broad-based policies to regulate electronic transactions alongside protect online consumers; taking into consideration that the Commission has been empowered by virtue of Section 17(b) of the FCCP Act to create broad-based policies and review economic activities in Nigeria to identify anti-consumer protection practices which may adversely affect the consumer. They are also empowered to make rules and regulations with regards to the protection of consumers. The purport of this provision is that the Commission is required to identify challenges faced by consumers and make rules and regulations appertaining to those challenges. It is quite evident that this provision has not properly utilized. There has been no regulation by the FCCPC on the emerging issues of e-commerce. On the other hand, the Commission is empowered by virtue of Section 17(f) of the FCCP Act to advise the federal government on any matter covered by the Act and make recommendations to the government for the review of policies or legislation for the eradication of anti-consumer behaviour.
- vi. With regard to the issue of enlightenment of the consumers by the FCCPC, about their rights and the steps they need to take to enforce the rights. this study recommends intensified efforts on the part of the Commission to create awareness among Nigerian consumers about how to protect themselves when engaging in e-commerce

transactions. The enlightenment should be carried out through TV and radio programmes. Also, the enlightenment could be through organizing workshops for e-consumers in the country. The e-traders and consumer organisation in the country should also join hands with government in this enlightenment campaign. Additionally, this study recommends that the commission should sponsor its staff to undergo, on a regular basis, IT related training at home and abroad. This will be done with a view to strengthening the capacity of the staff on how to deal with the emerging e-commerce and consumer protection issues. The study further recommends that the Federal Government should increase the budgetary allocation of the FCCPC to enable it to sponsor its staff for the purposes of the said training.

- vii. Concerning the FCCPC's failure to address e-consumers' complaints and disputes with dispatch, this study recommends that the Commission should ensure that all e-consumers' complaint are treated within a specific period by providing a specific time frame within which complaints must be disposed of. It should mandate all e-traders to create a redress mechanism with the aim of resolving e-consumer grievances within a specific period, failing which the e-consumer can lodge a direct complaint to the FCCPC for appropriate action. To achieve the FCCP Act's objective of consumer protection, the Competition and Consumer Protection Tribunal was established to arbitrate on disputes that arise between parties to a commercial transaction. However, due to the relatively bureaucratic nature of the dispute settlement process, this has not been accomplished. The CCPT's adjudicating procedure is an inefficient and time-consuming process that delays and denies customers' rights. This research recommends that the CCPT's adjudicating system should be changed to be less time-consuming so that their rights can be adequately protected.

- viii. On the judiciary, this study recommends regular training and workshop for members of the bar and the bench judges to improve on their knowledge on e-consumers' rights protection. To effectively adjudicate electronic matters, judges must have a basic understanding of ICT in order to maintain an efficient justice system. The increasing demand for consumer protection complicates ICT-related issues for courts. The training should focus on the legal aspects of ICT such e-commerce law, cybercrimes and electronic evidence. Other stakeholders such as the court staff and lawyers need to undergo such kind of training too. The study further recommends the creation of E-commerce Disputes Resolution Division (EDRD) in every High Court in Nigeria. This arrangement is to be reflected at the Court of Appeal and Supreme Courts. Thus, the Court of Appeal and the Supreme Court should have something like E-commerce Disputes' Appeal Division (EDAD). Following the practice in South Africa, this study recommends that in recruiting judges who will man the court's e-commerce division, the government should give priority to persons who have requisite ICT knowledge and legal practice/experience.
- ix. Regarding the issue of delayed justice dispensation due to over-clogging our courts, this study recommends an adequate dispute resolution process. It is recommended that all e-commerce transactions should have online dispute resolution procedures (ODR) inserted in the terms and conditions of each contract. This is particularly significant for low-value e-commerce transactions, where the option of litigation is prohibitively prohibitive.

5.4 Contribution to Knowledge

This study has made conceptual, and doctrinal contribution to knowledge. The conceptual contribution of the study can be seen in the meticulous review of literature which has been able to contextualize concepts such as e-commerce and consumer protection as it applies to

online or electronic transactions. The literature review itself can serve as a source material for existing modus-operands in protecting the right of consumers in e-commerce transactions.

In addition, the study has provided qualitative evidences to support the need for adequate legal and institutional framework for Protecting Consumer Rights in E-Commerce Transactions in Nigeria.

5.4 Suggested Areas for Further Research

This study suggests that further studies can focus on areas such as the legal framework for the protection of consumers of mobile money services in Nigeria. Further studies can also focus on how to address the challenges of cybercrimes vis-a-vis protecting the rights e-consumers in online transactions using mobile money services in Nigeria. The study further suggests that future researchers in Nigeria should embrace the use of socio-legal research methodology. Socio-legal research adds to the originality of a research and helps in providing practical solutions to the emerging legal problems.

Bibliography

Books

Ahmadu M L, 'Background Study on Cyber-Legislation in the South Pacific,' in *Principles of Cyber Legislation for Pacific Island Countries* (Auckland, New Zealand, 2007)

Akpojivi U, 'Rethinking Information Privacy in a Connected World,' in Nhamo A. Mhiripiri and T. Chari (eds.), *Media Law, Ethics, and Policy in the Digital Age*, (IGI Global, 2017).

Atiyah P S, Adams J N and MacQueen, H 'Atiyah's Sale of Goods' (Longman Pearson: London, 2010)

Badaiki A D, 'Effect of Privatisation and Commercialisation Policy on Consumer Protection in Nigeria,' in Adedeji Adekunle and Shankyula Tersoo Samuel (ed.) *Law and Principles of Consumer Protection*, (Lagos, Nigeria: *Nigerian Institute of Advanced Legal Studies*, 2013).

Ben-Shahar O and Carl Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press: New Jersey, 2014).

Chaubel R K, *'An Introduction to Cyber Crime and Cyber Law'* (Kolkata, India: Kamal Law House, 2021).

David A and Abiodun O O, *Policing Cyberspace in Nigeria* (Ibadan, Nigeria: Life Gate Publishing Co., 2009).

Edoreh P, 'Background Reading,' in B Agbonifuh, and others (eds) *Marketing in Nigeria. Principles, Concepts. and Decisions*, 2nd ed., (Aba, Nigeria: Afritowers Ltd., 2007)

Fang, M O 'The Conspectus of E-Commerce,' (Beijing, China: Tsinghua University Press, 1999}

Friedrich Hayek, *The Fatal Conceit*, (University of Chicago Press, Chicago IL, 1988).

Hofman, J. Johnston, D. Handa, S. and Morgan, C. 'Cyberlaw: A Guide for South Africans Doing Business Online'. (Cape Town, South Africa: Ampersand. Dunlop, 2005). 6

Ilobinso I K, 'Consumer Protection in the Context of Electronic Commerce: A Nigerian Perspective,' in *Faculty of Law Seminar Series*, 1-25, (Lagos, Nigeria: Faculty of Law, University of Lagos, 2015).

Ikoni I I D, 'A Middle Course between Consumer Protection and Environmental Protection,' in Adedeji A and Shankyula T S (eds.), *Law and Principles of Consumer Protection*, (Lagos, Nigeria: Nigerian Institute of Advanced Legal Studies, 2013)

Kropka, C. J. 'Agreements of Purchase and Sale and Leases: The Statute of Frauds and Pan Performance,' (Blaneys on Building, June 2014).

Monye F 'Law of Consumer Protection Volume One: Statutory Liability 2nd Ed.' (Ibadan, Nigeria: Kraft Books Limited, 2021)

Monye F 'Law of Consumer Protection Volume Two: Civil Liability 2nd Ed.' (Ibadan, Nigeria: Kraft Books Limited, 2021)

Nwanne, M F 'A Critical Examination of Consumer Protection Law and Practice in Nigeria'. (CODESRIA Books Publication System, 2023).

Oguche S, 'Consumer Protection through Information Disclosure Philosophy,' in Adedeji A and Shankyula T S (eds.) (Lagos, Nigeria: Nigerian Institute of Advanced Legal Studies, 2013).

Okpara, N 'Communication Management' in Frantisek Pollak, Jakub Soviar and Roman Vavrek (eds) *Ethics and the Prospects of E-commerce Platforms in Doing Business in Nigeria* (2021) 2.

Oladipo B, 'The Emerging Trend in E-Commerce The Nigerian Legal Perspective,' in Kevin Ndubuisi Nwosu (ed.) *Legal Practice Skills and Ethics in Nigeria*, (OCON Consulting, Lagos, Nigeria, 2004).

Patil, A R 'Consumer Protection in Electronic Commerce and Online Dispute Resolution through Mediation' in D. Wei, J P Nehf, and C L Marques (eds) *Innovation and the Transformation of Consumer Law*, (Singapore: Springer, 2020). Pp. 177 - 190.

Patrick Quirk & John A R, 'Consumer Protection and the Internet' in Geraint Howells and Iain Ramsay and Thomas Wilhelmsson (eds.), *Handbook of Research on International Consumer Law* (1st, Edward Elgar Publishing, Cheltenham 2010) 333.

Reed, Chris, and John Angel. 'Computer Law: The Law of Regulation of Information Technology', (Oxford: Oxford University Press. (6th ed.) 2007).

Santos, V Augusto, T Vieira, J Bacalhau, L Sousa, BM and Pontes, D 'E-Commerce: Issues, Opportunities, Challenges, and Trends' in *Promoting Organizational Performance Through 5G and Angle Marketing Advances in Marketing*, (IGI Global, 2023), 12 pp. 224–244.

Shankyula, T. S. 'Reflections on Consumer Protection and Competition Policy in Nigeria.' in Adekunle A and Shankyula T S (eds) *Law and Principles of Consumer Protection*, (Lagos, Nigeria: Nigerian Institute of Advanced Legal Studies, 2013 250-255).

Viviane Reding. 'Towards a More Coherent Enforcement of EU Consumer Rules,' in European Consumer Summit 2013 (Brussels: European Commission, 2013).

Yerokun, O. 'The Law of Contract' (Yaba, Nigeria: Nigerian Revenue Projects Publications, 1999).

United Nations. 'E-Business Primer,' In *Compliance with Information and Communication Technology-Related Multilateral Frameworks: Information Technology Enabling Legal Framework for the Greater Merong Sub-region*, 1-212. (New York: United Nations Publication, 2004).

Journal Articles

Abdulrauf, L. A. 'New Technologies and the Right to Privacy in Nigeria: Evaluating the Tension between Traditional and Modern Conceptions.' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 7 (2016): 113-124.

Abubakar A S and Adebayo F O, 'Analysis of Electronic Transactions Bill in Nigeria: Issues and Prospects,' *Mediterranean Journal of Social Sciences* (2014) (5) (2).

Adetoro N and Sodipe O, 'Undergraduates' Use of Internet Capable Handheld Devices at Babcock University, Nigeria.' *Library Hi Tech News* (2013) (30) (2).

Akintola K G and others, 'Appraising Nigeria Readiness for E-Commerce towards: Achieving Vision 20:20,' *International Journal [Research and Reviews in Applied Sciences* [2011] (9) (2).

Akomolede T A, 'Contemporary Legal Issues in Electronic Commerce in Nigeria,' *Potchefstroom Electronic Law Journal* (2008) (11) (3).

Akomolede T I, 'Delay in Dispensation of Justice in Nigeria: Alternative Dispute Resolution to the Rescue' in Y Akinseye – George, (ed.) *Quintessential Journal of Contemporary Law and Practice* (2004)

Anckar, B. 'Drivers and Inhibitors to E-commerce Adoption: Exploring the Rationality of Consumer Behaviour in the Economic Marketplace.' *ResearchGate* (2021): 22.

Amin N and Nor R M, 'Online Shopping in Malaysia: Legal Protection for E-Consumers,' *European Journal of Business and Management* (2013) (5) (24).

Aubrey L Diamond, 'The Molony Committee Final Report of the Committee on Consumer Protection' (1963) (26) *The Modern Law Review*, 66.

Ayub Z A, 'Malaysian Electronic Commerce Act 2006 and EU Directives: Consumer Protection Perspectives,' *REKA YASA-Journal of Ethics, legal and Governance* (2007) (3).

Bandara, R Fernando, M and S Akter, S 'Privacy Concerns in E-commerce: A Taxonomy and a Future Research Agenda, Electronic Markets: *The International Journal on Networked Business* 30 (2020): 629–647

Clapperton D and Coronos S, 'Unfair Terms in Click Wrap and Other Electronic Contracts' *Australian Business Law Review*. (2007) (35) 152.

Da Rocha F A, 'Formation and Evidence of Customary International Law,' *UFRGS Model United Nations Journal* (2013) (1).

Dada J A, 'Human Rights under the Nigerian Constitution: Issues and Problems,' *International Journal of Humanities and Social Science* (2012) (2) (12).

Ekanem E E, 'Institutional Framework for Consumers Protection in Nigeria,' *International Journal of Advanced Legal Studies and Governance* (2011) (2) (1).

Emelie C I N, 'Legal Education and Access to Justice in Nigeria,' *Research Journal of Humanities, Legal Studies & International Development* (2017) (2) (1).

Eseyin, A M and Chukuemeka, CW 'Articulating Consumer's Rights as Human Rights in Nigeria' in *Journal of Law, Policy and Globalization ISSN 2224 – 3240 (Paper) ISSN 224 – 3259 (Online) Vol. 72, 2018*

Haruna B A, 'An Analysis of the Fundamental Rights Enforcement Instruments in Nigeria: Past and Present,' *Bayero University Journal of Public Law (BUJPL)* (2010) (2) (1).

Jayabalan, S 'E-Commerce and Consumer Protection: The Importance of Legislative Measures,' *Journal of the National University of Malaysia* (2012) (16).

Johnson D R and Post D, 'Law and Borders• The Rise of Law in Cyberspace,' *Stanford Law Review* (1996) (48) (5). 1367-1368

Ladan M T, 'Recent Trend in Legal Response and Judicial Attitude towards Electronically Generated Evidence in Nigeria,' *The World Jurist Association, Law/Technology* [2014] (47) (1).

Lawrence Lessig, 'The Law of the Horse: What Cyber Law Might Teach.' *113 Harvard Law Review* 1999. 501.

Nor R M and Amin N, 'E-Consumer Protection in Delivery of Goods: A Malaysian Perspective' *Journal of Education and Social & Sciences* (2016) (3). 39.

Nuruddeen M and Yusof Y and Anita N A, 'Critical Analysis of the Legal and Infrastructural Frameworks for E-Commerce and Consumer Protection in Nigeria,' *The International Journal of Business & Management* [2017] (5).

Nuruddeen, M 'An Appraisal of the Legal Requirements of Electronic Commerce Transactions in Nigeria' *Bayero University Journal of Public Law (BUJPL)* 3, no. 1 (2011): 164–183.

Nurudeen M and Yusof Y, 'A Comparative Analysis of the Legal Norms for E-commerce and Consumer. Protection,' *Malaysian Journal of Consumers and Family Economics*. (2021) (26)

Odion I O, 'Competition Law as a Platform for Consumer Protection: A Nigerian Perspective,' *New Media and Mass Communication* (2015) (33).

Okon F I and Salaam S I and Titus U C, 'Consumerism and Consumer Protection: Implication for National Development,' *Journal of Educational Policy and Entrepreneurial Research (JEPER)* (2016) (3) (7).

Olaiya T A, 'Interrogating the Non-Justiciability or Constitutional Directive Principles and Public Policy Failure in Nigeria,' *Journal of Politics and law* [2015] (8) (3).

Oluchi A, 'Analyzing the Adequacy of Electronic Transactions Bill 2015 in Facilitating E-Commerce in Nigeria,' *Social Science Research Network (SSRN)* (2015) 1-7

Oppenheim, Charles, and Louise Ward. 'Evaluation of Web Sites for B2C E-Commerce.' *Aslib Proceedings: New Information Perspectives* 58, no. 3 (2006): 241.

Orji U, 'A Comparative Review of the ECOWAS Data Protection Act,' *Computer Law Review International* (2016) (4)

Orji U, 'Examining Missing Cyber Security Governance Mechanisms in the African Union Convention on Cyber Security and Personal Data Protection,' *Computer Law Review International*. (2014) (15)

Orji U, 'The African Union Convention on Cyber Security: A Regional Response towards Cyber Stability,' *Masaryk University Journal of Law and Technology* (2018) (12) 117.

Osang N and Agwu M E, 'Empirical Analysis of Retail Customers' Adoption of Internet Banking Services in Nigeria,' *Journal of Internet Banking and Commerce* (2017) (22) (1).

Oyewunmi A and Sanni A, 'Challenges for the Development of Unfair Contract Terms Law in Nigeria' *University of Western Australia Law Review (UW Austl. l. Rev)* (2013) (37) (1).

Panchal V and Shaikh, R 'Importance of E-Commerce', *International Journal for Research in Applied Science and Engineering Technology* 10, no. 3 (2022): 1423–1428

Pistorius, T. "Contract Formation: A comparative perspective on the Model law on electronic commerce." *Comparative and International Law Journal of Southern Africa* 35 (2002): 131.

Roshazlizawati, M. N., and Naemah, A. 'E-Consumer Protection in Delivery of Goods: A Malaysian Perspective.' *Journal of Education and Social Sciences* 3 (2016): 38.

Smith R and Shao J H, 'Privacy and E-Commerce: A Consumer-Centric Perspective,' *Electronic Commerce Re-search*, [2005] (7) (2). 89-116.

Sokefun J and Njoku N C, 'The Court System in Nigeria: Jurisdiction and Appeals,' *International Journal of Business and Applied Social Science* (2016) (2) (3).

Tayo O and others, 'Impact of the Digital Divide on Computer Use and Internet Access on the Poor in Nigeria,' *Journal of Education and Learning* (2016) (5) (1).

Usman D J et al, 'Towards Improving Consumer Access to Justice in Nigeria: Assessing the Role of Small Claims Court and the Legal Aid Scheme,' *Bayero Journal of Private and Commercial law (BJPCL)* (2016) (2) (2).

Zwass V, 'Electronic Commerce: Structures and Issues,' *International Journal of Electronic Commerce*, Vol 1, No 1 Fall, 1996 pp. 3 - 23

Internet Sources

Al-Zubaidie, M, & Shyaa G S, 'Applying Detection Leakage on Hybrid Cryptography to Secure Transaction Information in E-Commerce Apps' (*Future Internet* 2023 15, 262), (Published 1st August 2023), Available at <<https://www.mdpi.com/journal/futureinternet>>

Andrew Morris, 'The Wild West Meets Cyberspace, 48': The Freeman: Ideas On Liberty, (July, 1998), 427 - 431. World Encyclopedia of Slavery (Junius Rodriguez ed.) Available at the Bush School of Government & Public Service at Texas A&M University. <<https://bush.tamu.edu>> 2023).

Bobek, V & Horvat, T. eds. '*Business and Management Annual Volume 2023*'. (IntechOpen, 2023). <[doi:10.5772/intechopen.113983](https://doi.org/10.5772/intechopen.113983)>.

Chopra, S. 'The Significance of E-commerce in Modern Business.' ResearchGate, 2024. <https://www.researchgate.net/publication/380165926_The_Significance_of_E-commerce_in_Modern_Business.>

Connolly C, and Ravindra P, 'First UN Convention on E-commerce finalised' (2006) 22 *Computer Law & Security Report* at 32
<<https://www.sciencedirect.com/uplib/idm.oclc.org/science/article/pii/S026736490500186X>>

Erugoh, D 'Right To Privacy And Data Protection In Nigeria: What Companies Should Know' *Forvis Mazars*, (27 September, 2023), available at <<https://www.mondaq.com>>

International Trade Centre. "International E-commerce in Africa: The way forward." 2015.
<<https://www.intracen.org/news/International-e-commerce-in-Africa>>

Ibam, E O, Boyinbode O, & Afolabi M O, 'E-Commerce in Africa: The Case of Nigeria' *ResearchGate*, MAI Endorsed Transactions on Game-Based Learning 4(15): 153536, DOI:10.4108/eai.5-1-2018.153536 Available at <<https://www.research.gate.net/publication>> (2018)

Kaźmierczak P Trends in Digital Payments and Their Impact on the E-commerce Sector. *WebMakers Software House*, 2024. <<https://webmakers.expert/en/blog/trends-in-digital-payments-and-their-impact-on-the-e-commerce-sector>>

Ken Phillips, 'Does Australia's Unfair Contracts Act Limit or Enhance Contractual Freedom?' *Economic Affairs* (2016) (36) (3) <<https://doi.org/10.111/ecaf.12191>>

Ilobinso, I K 'Paving the Path to an Enhanced Consumer Protection for the Nigerian Online Market: Theories and Concepts' (2017) Available at (African Journals Online) <<https://www.ajol.info>>

Monye, F N 'Protecting Consumers of Products and Services in the Digital Age' *News Commentary to mark the World Consumer Rights Day 2017: 15 March 2017* <<http://www.consumerawarenessng.org/events/protectingconsumers-of-products-and-services-in-the-digital-age.html>>

Ojo, O V, 'An Assessment of Nigeria's Cybercrimes (Prevention, Prohibition Etc.) Act 2015.' *The Lawyers Chronicle*. Jos, Nigeria, 2015. <<https://www.lawyerschronicle.com/assessment-of-nigerias-cybercrimes-prevention-prohibition-etc-act-2015>>

Patil, A. R., Bandara, R., Fernando, M., and Akter, S. 'Privacy Concerns in E-commerce: A Taxonomy and a Future Research Agenda.' *Electronic Markets* 30 (2020): 629-647. <https://doi.org/10.5281/zenodo.6618779>.

ResearchGate. "The Significance of E-commerce in Modern Business." Accessed June 19, 2023. https://www.researchgate.net/publication/380165926_The_Significance_of_E-commerce_in_Modern_Business.

Saliu L A, Otapo A T, Sodiq K, 'Overview of the Challenges and Solutions of E-Commerce in Nigeria' (A Conference Paper presented at the School of Engineering National Conference, held at Federal Polytechnic, Ilaro, 25th – 28th November, 2019. (ResearchGate) Available at <https://www.researchgate.net/publication/358566160_OVERVIEW_OF_THE_CHALLENGES_AND_SOLUTIONS_OF_E-COMMERCE_IN_NIGERIA>

Saydam, S. G., & Civelek, M. E. 'Problems in Cross-Border E-Commerce and Development of Cross-Border E-Commerce Performance Scale.' *Zenodo* (CERN European Organization for Nuclear Research), 2022. <<https://doi.org/10.5281/zenodo.6618779>>

Shepherd, J '21 Essential E-Commerce Statistics You Need to Know in 2023' (available at <<https://thesocialshepherd.com/blog/ecommerce-statistics>>

Snezhana Sulova, 'A Conceptual Framework for the Technological Advancement of E-Commerce Application' 2023, 3(1), (220 -230) *Innovative Practices in E-Commerce and E-Management, Businesses 2*. Available at <<https://doi.org/10.3390/businesses3010015>> (accessed 23 September 2023)

Statista. 'E-commerce in Nigeria: Statistics and Facts.' November 13, 2020. <<https://www.statista.com/topics/6786/e-commerce-in-nigeria/>>

Suleaiman, S & T Mashaba, T 'E-commerce under the Electronic Communications Act and Consumer Protection Act' (Dentons, South Africa, 2022). Available at <<https://www.dentons.com/en/insights/articles/2022/august/26/e-commerce-transactions-under-the-electronic-communications->>

Udoma, U & Osagie, B 'Data Privacy Protection in Nigeria' <<https://www.uubo.org/media/1337/dataprivacy-protection-in-nigeria.pdf>>

Unfair Commercial Practices Directive 2005, Official Journal the of European Union (European Union: L 149, 2005), <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039>>

Vanella, S. 'E-commerce in Nigeria: Statistics and Facts.' Statistica, November 13, 2020. <https://www.statista.com/topics/6786/e-commerce-in-nigeria/>.

Conference Papers/Articles

Gregory J D, 'Technology Neutrality and the Canadian Uniform Acts,' in 4th International Conference on Law Via the Internet (Canada: Universite de Montreal, 2002).

Guo M R, 'A Comparative Study on E-Commerce Consumer Right to Learn the Truth: Policies of Major Legal System,' *International Conference on Business Management, Lahore*, [2011] (6) (28-29).

Muhammad N, Yosuf Y & Abdullah A N, 'Legislative and Infrastructural Issues in E-Commerce and Consumer Protection in Nigeria,' *In Proceeding of the International Conference on Government & Public Affairs (ICOGPA 2016)*, Kedah, Malaysia: School of Government, UUM, 2016).

Ozuru H N, Chikwe J E & Amue J G, 'Consumer Behaviour and Online Shopping Adoption in Nigeria.' *In 13th Annual International Conference on African Business and Development in a Changing Global Political Economy: Issues, Challenges and Opportunities, 2012*

Bio-data

A. Personal Data

Name: Abu, Osilama Ahmed

Sex: Male

Address: No. 62, Behind UBA, Off Jattu Road, Auchu, Edo State

Telephone Number: 08034935785, and 08053441477

Gmail: osilamabarrabu@gmail.com

Date of Birth: 24th November, 1966

Place of Birth: Auchi, Edo State

Nationality: Nigerian

Marital Status: Married

B. Educational Background

Educational Institutions Attended with Dates:

Primary Education

St. Patrick's Primary School, Benin City, 1970 – 1975

Secondary Education

Otaru Grammar School, Auchi, 1975 – 1980

Higher Education

Institute of Education, University of Benin, 1981 – 1984

University of Jos - 1987 – 1991

Nigerian Law School - 1991 – 1992

C. Academic Qualifications with Dates:

- Primary School Leaving Certificate - 1975
- West Africa School Certificate - 1980
- General Certificate of Education - 1983
- National Certificate in Education - 1984
- LL.B (Hons) Second Class Lower - 1991
- BL (Second Class Lower) - 1992

D. Working Experience:

Private Legal Practice	1992 – Present
Lecturer I Auchi Polytechnic, Auchi	1994 – 2008
Head of Legal Unit, Auchi Polytechnic, Auchi	2008 – Present
Legal Adviser, Senior Staff Disciplinary Committee Auchi Polytechnic, Auchi	2000 – Present
Legal Adviser, Students' Disciplinary Committee, Auchi Polytechnic, Auchi	2000 – Present

E. Publications

Books:

- General Principles of Law in Nigeria (2001) Safmos Publishers, Ibadan
- Business and Cooperative Law in Nigeria (2001) Safmos Publishers, Ibadan
- Legal Aspects of Marketing in Nigeria (2003) Safmos Publishers, Ibadan
- Law of Landlord and Tenant & Arbitration and Conciliation in Nigeria (2010) Safmos Publishers, Ibadan
- Compulsory Land Acquisition and Compensation Law in Nigeria (2016) Joeseg Associates, Benin City.
- Nigerian Labour Law (2024) klinsim Nigeria Ltd, Kaduna
- Constitutional Law in Nigeria (2024) klinsim Nigeria Ltd, Kaduna
- General Principles of Company Law in Nigeria (2024) klinsim Nigeria Ltd, Kaduna
- Mass Communication Law in Nigeria (2024) klinsim Nigeria Ltd, Kaduna

Journals:

- An Assessment of Registration of Business Name Under C.A.M.A. 1990 (2007)
- An Assessment of Consumer Protection Act of 1992 (2007)
- Effectiveness of Penal Sanctions in Curbing the Menace of Examination Malpractice in Nigeria (2008)
- Addressing Pitfalls in the War against Corruption in the Realization of the 7-Point Agenda to reform Nigeria. (2009)
- Legal Education in Nigeria: Issues and Insight (2010)
- The Rights of Women and Children in Nigeria: An Appraisal (2010)
- The Role of Linguistics in the Detection and Prevention of Cybercrimes in Nigeria (2012)
- A Critical Overview of the Imperatives of Political Opposition in Nigerian Polity (2017)
- The Status of Customary Arbitral Award in Judicial Proceedings in Nigeria (2022)
- An Overview of International Commercial Arbitration as a Method of Dispute Resolution (2022)
- Enforcement of International Environmental Law: Implications and Complications (2022)

H. References

Dr Simon Eigbe

Director, Directorate of Degree Programmes,
Auchi Polytechnic, Auchi.
08033627142
simoneigbe@yahoo.com

Dr Emokhai J. Uzualu Esq

HOD Clinical Legal Education and Training,
Faculty of Law, Edo State University Iyamho, Edo State.
08105350998
uzualu.james@edouniversity.edu.ng

Signature

Date

The University Compliance Certification

This is to certify that this thesis titled: ‘Protecting Consumer Rights in E-Commerce Transactions in Nigeria’ by Ahmed Osilama ABU, with Matriculation Number LCU/PG/002370, in the Faculty of Law, Lead City University, Ibadan, Nigeria, is in full compliance with the approved University format and style.

Signature

Date

Lead City University Ibadan DO NOT COPY