



REVIEW ARTICLE

IN SEARCH FOR A CONSUMER PROTECTION ANTIDOTE IN NIGERIA:
A CASE FOR THE AMENDMENT OF THE CPC ACT, 1992

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ABSTRACT

Consumer's rights are inalienable rights that must be protected by the consumers, business organizations and the government. Public policies emanate from the government of a state and are geared towards regulating business relationships among the citizenry or distributing social amenities to individuals and communities. The CPC was established by the CPC Act, 1992 and charged with the responsibility to promote, protect, and safeguard the rights and interest of consumers with respect to the consumption of goods and services. Consumer protection in Nigeria had remained at the lowest ebb in spite of the prevalence of administrative and regulatory framework. This work observes that although the CPC Act recognized the right of consumers, it does not specifically provide how these rights should be enforced, as they were merely implied and subsumed into the function of the CPC. Consumer awareness of these protective laws is low, which is evidenced in the near absence of litigation against sellers even in cases of obvious infringement. Ordinarily, the CPC should be proactive in safeguarding the rights and welfare of consumers in Nigeria. This work is an expository examination of the CPC Act in Nigeria and appraises the role of CPC in the protection of Consumers in Nigeria. The paper also discusses the major problems encountered by consumers in production process, the causes of disparity in power relation between the producers and consumers, the role of regulatory and administrative bodies in solving these problems, the effectiveness, redress and enforcement mechanisms and the control of monopoly. The ultimate goal is to determine the reasonableness or otherwise of tinkering with the CPC Act, 1992 for better Consumer Protection in Nigeria.

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INTRODUCTION

It is a trite proposition that production is not complete until the goods gets to the consumer. This statement underscores the importance of consumers in the production process and explains why it is commonly said that the 'Consumer is King'. This would entail that the Consumer's interest would be foremost in the consideration of factors in the production process, but this is rather far from the actual situation tenable. Manufacturers and service providers in their inordinate quest for profitability engage in sharp practices that affect the consumer through defective products and services. 'Consumer' by definition includes all users of products.... They are the largest economic group affecting and affected by almost every public and private economic decision. Yet they are the only

important group whose views are often not heard.¹ Consumers' rights are affected by near absence of or ineffective consumer movement and advocacies in Nigeria. The New Encyclopedia Britannia² defines consumerism as a movement or policies aimed at regulating the products, services, methods, and standards of manufactures, sellers and advertisers in the interest of the buyers. In Nigeria, like other parts of the world, consumerism is still at its infancy.³ In spite of the prevalence of unwholesome practices of producers, the resultant effect is that most consumers do not know their rights even among those who do, there is general unwillingness to take action against these unwholesome practices of the producers.⁴

¹ J. F. Kennedy, "Presidential Address to U.S Senate on Consumer's right, 1962.

² The New Encyclopedia Britannia, Vol.3.14 ed.: Encyclopedia Britannia Inc. 1981.

³ Onah, J. O. 'Consumerism in Nigeria' in Abjonifo (edn) Marketing in Nigeria Principle, Concepts and Decisions, 2ndEdn., Aba Afritorien Publishers, 2007., 95.

⁴ Ketefe, K. Enforcing Consumer Rights in Nigeria In National Mirror. <http://Nationalmirroronline.net/sawjustice/law.justice/new/18540.html> accessed

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A number of reasons have been advanced explaining the low level of consumerism in Nigeria. Prominent among these reasons as noted by scholars include low level of literacy, ignorance and absence of consumer awareness and education of market place transaction. Judicial stress resulting from the judiciary's, rigid adherence to strict legal rules, even when dealing with consumer discontent/loss suffered in trade transaction.⁵ The existence of the imbalance of knowledge and power relationship between the producers of goods and services and customers led to the ugly marketing environment and situations that consumers were exposed to over the years. They are subjected to severe exploitation. They were continuously supplied substandard, fake and at times expired products. At times, producers and dealers create artificial scarcity in order to make superfluous profits through overpricing. In advertising, consumers are deliberately deceived by some desperate producers and dealers. In the service industry, consumers are made to pay exorbitant estimated PHCN bills without services being rendered. In transportation, consumers pay high transportation fares only to be provided with dilapidated vehicles that break down on the road leaving a lot of them stranded. In telecommunications, consumers were overcharged, made to pay for unconnected calls, face a lot of drop calls and network congestions, and subjected to low network coverage despite the claims of service providers that there is network coverage everywhere. The story in the service industry is not different as every household in Nigeria has their unique story from estimated billing by the electricity companies, to estate managers taking facility charge without providing such facilities. Transporters advertises travel fair which include air-conditioner but turn it off once they leave the park. The GSM providers inundate customers with unsolicited calls and advertisements. Banks will send their promotion activities via text messages and charge the cost to customers' accounts at the end of the month. The experience is simply endless. These happenings have not gone unnoticed by the Consumer Protection Council (CPC). It is rather a case of putting the cart before the horse. On the part of consumers themselves, they accept and pay for goods without adequate assurance of quality and quantity. The government agency and officials responsible for consumer protection seem not to monitor adequately the activities of producers and dealers. All these resulted in the massive exploitation suffered by consumers. It is against this backdrop that this work seeks to examine the role of the Consumer Protection Council in protecting the consumers against these activities of producers of goods and services.

Historical background of the consumer protection council

There has been global recognition of the fact that there is an existing imbalance of knowledge and power relationship between the producers of goods and services and customers or consumers, in the opinion of Kamarudee Suleimen, Danjuma;⁶Eze, Eluwa and Nwobodo.⁷ This imbalance as pointed out by many scholars in the field of marketing and business circles in general tilt towards the advantage of producers, who are strengthened by the age old maxim "*caveat emptor*" (let the buyer beware) and the ever-changing and growing free market philosophy which tend to put the producer and supplier at

liberty to do whatever they want to do. The Nigerian consumers, as a result of this knowledge imbalance had over the years suffered so much in the hands of producers and suppliers of goods and services with whom they were engaged in trade relationships in terms of supplying sub-standard goods and services, fake and expired products. Fake products in the opinion of Nkamnebe, Idoko and Kalu⁸ are those goods and services that fail to meet up to the promise specification, conformance and performance quality. They posit that consumer protection became an important area of interest because of the knowledge imbalance coupled with the sophistication of consumers which made it difficult for consumers to ascertain and distinguish the genuine products from fake and substandard ones. Consumer protection is viewed by Ladanans "the provision of appropriate and effective mechanism to protect the pecuniary, health, environment, safety, and security interests of all legal persons against misleading, fraudulent and harmful business practices including manufacturing, trading, packaging, advertising, distribution and selling of goods and services to the ultimate consumers".

The issue of Consumer protection became relevant since the reliance on the rule of "*caveat emptor*" (let the buyer beware) is no longer an adequate protective measure because the principle is based on the premise or assumptions that the buyer knows what he wants, has the requisite knowledge to choose wisely and has adequate contact with the sellers. The complaints by consumers over a period of time gave rise to mass movement of people (consumers) referred to as "consumerism" that forced marketing practitioners in most advanced countries of the world such as Europe and America to respond favourably and adopt better ways of delivering goods and services without abusing the fundamental human rights of consumers. These mass movements comprised of those formed directly by consumer groups or representative groups as well as the government. However, there was practically no real organized consumer movement as such to fight for the protection of the rights of the consumers apart from a handful of groups scattered around the country. This consequently placed the bulk of Consumer protection on the shoulder of the government. As a result, the government took over, a development common in developing countries where consumerism is still low. Since the government took over, Consumer protection has been a matter of government policy through legislation and efficiency enforcement than as a matter of engaged public movement or support. Sequel to the above, the successive federal governments in Nigeria set up agencies such as the National Agency for Food and Drug Administration and Control (NAFDAC), the Standard Organisation of Nigeria (SON), the National Drug Law Enforcement Agency (NDLEA) and lately, the Consumer Protection Council of Nigeria (CPC) and charged them with the responsibility to protect and safeguard the rights of the consumers against the unwholesome practices of producers and suppliers of goods and services in the country. The focus of this work however is on the Consumer Protection Council (CPC), a creation of the CPC Act, 1992.

Who is a Consumer

The consumer is also a 'citizen' and so, his protection should be regarded as one of his fundamental rights. Ought on and

24th June 2016.

⁵Abonifa B. A, Ojono, O. E. and Nnolin, D. A. Marketing in Nigeria. 1998.

⁶Bello, K. B., Suleiman, J.B.A. Danjuma (2012) Perspective on Consumerism and Consumer Protection Act in Nigeria. European journal of Business and Management.

⁷Eze K.O. Eluwa and Nwobodo B. The Nigerian Consumer (2010) @50.

⁸Nkamnebe A.D, Iioko E, K Consumer Protection in Market Transactions in Nigeria, (2009) Journal of Innovative Marketing.

Lowry believe that the nature of a transaction characterizes a party as a consumer, and they opine that in a consumer transaction, three elements must feature. First, the consumer must be an individual or other protected person who does not contract in a business capacity. Second the supplier must contract in a business capacity and finally the goods or services supplied must be intended for private, not business use.⁹ For the purpose of this work, the definition offered by section 32 of the CPC Act which defines 'consumer' as an individual who purchases, uses, maintains or disposes of products or services is apt. This definition appears to accommodate anyone in the chain of consumption, whether or not he is the direct purchaser or procurer of the product or service.

Consumer Protection Council (The "CPC")

The Consumer Protection Council (the "CPC") was established by the Consumer Protection Council Act (the "CPC") in 1992, in line with the United Nations Guidelines for Consumer Protection in 1985,¹⁰ to protect the consumers against hazardous products, shoddy services¹¹ which is the hallmark of any consumer protection system¹² and to provide among an array of protection,¹³ speedy redress to consumer complaints through negotiation, mediation and reconciliation.¹⁴ The Consumer Protection Council (CPC) is a body corporate which can sue and be sued in its corporate name.¹⁵ Nevertheless, the functions and powers of the Councils are elaborately set out in section 2 and 3 of the Act and include to:

- (a) Provide speedy redress to consumers' complaints through negotiation, mediation and reconciliation;
- (b) Seek ways and means of removing or eliminating from the markets hazardous products and causing offenders to replace such products with safer and more appropriate alternatives;
- (c) Public from time to time, lists of products, whose consumption and sale have been banned, withdrawn, severally restricted or not approved by the federal government or foreign government;
- (d) Cause an offending company, firm, trade association or individuals to protect, compensate, provide relief and safeguards to the injured consumers or communities from adverse effects of technologies that are inherently harmful, in usurious, violent or highly hazardous;
- (e) Organize and undertake campaigns and other form of activities as will lead to increased public awareness;
- (f) Encourage trade, industry and profession associations to develop and enforce in their various fields, quality standards, designated to safeguard the interest of consumers;
- (g) Issue guidelines to manufacturers, importers, dealers and wholesalers in relation to their obligation under the Act;
- (h) Encourage the formation of voluntary consumer groups or associations for consumer well-being;
- (i) Ensure the consumer's interest receive due consideration at appropriate forum and to provide redress to obnoxious

practices of the unscrupulous exploitation of consumers by companies, firms, trade associations or individuals;

- (j) Encourage the adoption of appropriate measures to ensure that products are safe for either intended or normal use and;
 - (k) Perform such other function as may be imposed on it pursuant to the Act;
- In the exercise of its function, the council has power to:
- (a) Apply to the court to prevent the circulation of any product which constitutes an imminent public hazard;
 - (b) Compel manufacturers to certify that all safety standards are met by their products;
 - (c) Cause as it deem necessary, quality tests to be conducted on consumer products;
 - (d) Demand production of label, showing date and place of manufacturer of commodity as well as certification of compliance;
 - (e) Compel a manufacturer, dealer and service company, where appropriate to give public notice of any health hazards inherent in their products;
 - (f) Ban the sale distribution and advertisement of products which do not comply with safety or health regulation;

Moreover, contrary to the intention of its birth, the agony and plight of consumers in Nigeria remains unchecked because of unwholesome practices of unscrupulous manufacturers and service providers.

Compositions of the Council

The Consumer Protection Council (CPC), like similar agencies is a parastatal of the Federal Government of Nigeria, supervised by the Federal Ministry of Industry, Trade and Investment. Though it was established by Act No. 66 of 1992, it commenced operations only in 1999, when its institutional framework was put in place. The council was established by the Consumer Protection Council Act No. 66 of 1992.¹⁶ However Decree No. 66 was amended to Act 25 of 2004 by the Nigerian Legislature in 2004 and it became an Act of Parliament. The Council was established solely because of the ugly marketing environment and situations consumers have been exposed to in terms of what they have suffered and how they have been exploited in the past by producers and suppliers of goods and services.

By section 1(2),¹⁷ the Council shall consist of:

- (a) A Chairman to be appointed by the President, Commander-in-Chief of the Armed Forces on the commendation of the Minister;
- (b) A person to represent each of the states of the Federation on the recommendation of the Governor of each State, and
- (c) Four persons to represent the following related Federal Ministries that is-
 - i. Commerce and tourism;
 - ii. Industry and technology;
 - iii. Health; and
 - iv. Petroleum Resources

Some Notable Strides of CPC

Section 2(a) of the Consumer Protection Act requires the council to attend in haste to the complaints of consumer through negotiation, mediation and conciliation. A typical

⁹Ogthon D. Lowry, J. Textbook on Consumer Law. 2ndedn, New York.

¹⁰ United Nations Department of Economic and Social Affairs (UNDESA), UN Guidelines for Consumer Protection as Expanded in 1999, New York, 2003.

¹¹ CPC Section 2(b)

¹² See the United Nations General Assembly Guidelines for Consumer Protection. Resolution 39/245 of 9 April, 1985 (n2).

¹³ CPC Section 2(c-k).

¹⁴*Ibid.* s. 2(a).

¹⁵Monye, F. N. Law of Consumer protection. 1stedn, Spectrum Publishers, 2003, 55, alternatively, see s.1 of CPC

¹⁶ See Section 1(1) of The Consumer Protection Council Act, 1992.

¹⁷ *Supra.*

instance of the discharge of the council's role in that regard was in 2013 when the council acted based on consumer complaints in respect of the quality of consumable products produced and marketed by the Nigerian Bottling Company (NBC). The council in response set up a panel which invited both Coca-Cola Nigeria Ltd. and Nigerian Bottling Company to provide responses to the complaint and also provided them repeated opportunities to make representation, provide information and address sundry issues arising out of the complaint and their operations.¹⁸ Nevertheless, the Council equally banned the production and consumption of the local gin otherwise known as "Ogogoro" because of its harmful effect on the consumer.¹⁹ The council through its surveillance activities discovered that pine classic sub-standard cigarette has no production date, no expiring date and no manufacturing date.²⁰ Moreover, paragraph 2(e) further bestows on the CPC the responsibility of partnering with Trade Industry and Professional Association to enlighten manufactures on the need to promote and protect the consumer rights and to advance and implement diverse quality standards that will advance Consumer Protection. In fulfillment of this mandate CPC has partnered with the Manufacturer Association of Nigeria,²¹ through which it makes known to the manufactures of various products the acceptable standards for their products, in the event of a default in maintaining minimum standard, the association under which the manufactures of the product can also act as a check on the defaulters. The CPC equally issued label requirements to manufactures and notified Leaf Tobacco and Commodity (Nig.) Ltd. that one of its products name Peterfield Special Menhol Cigarette in the country has failed to comply with its labeling requirements.²² It is the duty of the council to ensure that consumers interest receive due consideration at appropriate forum and to provide redress to obnoxious practice or the unscrupulous exploitation of consumers by companies, firms, trade association, individuals. To discharge this function, the council runs a radio programme tagged "Consumer Speaks Radio Network" through which consumers are engaged to lodge complaints redress able by the Council.

Flaws and Inadequacies in the CPC Act

(a) Appointment, Tenure and Constitution of Persons/Officials in the CPC Act: S. 1 (2) (Composition of the Council and the State Committees) provides that: (a) a Chairman to be appointed by the President and Commander-in-Chief of the Armed Forces on the recommendation of the minister: a representative of each state of the federation and five other persons representing the related ministries which are, the Ministers of Ministry of Commerce, Industry, Science and Technology, Health and Petroleum Resources. The Council shall have a Director-General who shall be the Chief Executive. Consequently, the Council is composed of forty-three (43) persons in its membership.²³ The Chairman of the

Council is to be appointed by the President based on the recommendation of the minister, while that of the State Representative is on the recommendation of the Governor of the respective states. The representatives of the ministries enumerated above are to be appointed by the President also presumably on the recommendation of the ministers of such Ministries. This is the most likely supposition as the Act is silent on this. In the same vein, the President shall appoint the Director-General of the Council. Such a person to be appointed for the post shall have such "*relevant academic qualification and practical experience*"²⁴ as are appropriate for the function of his office, while the Council has the duty of appointing the support staff. Regarding tenure, each member of the council shall hold office for a term of three (3) years and such a member can only be re-appointed once or more. To start with, the council is made up of 43 persons which is rather a large crowd. Coordination will be an uphill task because bringing the crowd to reasonable agreement and decision will be difficult.²⁵ The composition of the Council can unabashedly be described as a weird and unusual. The number is too large and may be counter-productive.²⁶ This large number notwithstanding, there is no representative of the consumer association. Unlike the SON (Standard Organization of Nigeria), (the composition of which includes a representative of the Consumer Association.²⁷ The ultimate effect is that in the deliberation of the council there is nobody who knows and feels their pulse to represent their position. Second, the Act neither provided for qualifications for appointed to these positions nor provides the criteria to be followed in the selection for such appointment. The closest the Act came to in providing for qualification in these appointments is where it stated that the Director-General shall possess such relevant academic qualification and practical experience as are appropriate for the function of Director-General under the Act.²⁸ The provision can be described as being vague and ambiguous. How then does one decipher the intent of the legislature? It may mean that such a person should be adjudged to have the requisite experience for such a sensitive post.²⁹ Furthermore, another shortcoming in the Act has to do with the removal of any member by the President on the recommendation of the Council. The President may at any time remove any member of the Council from office if, he is of the opinion that it is not in the national Interest, or in the interest of the Council for such member to continue in office.³⁰ Hence, the Act may be used to settle political scores with those in the bad book of the presidency. This piece of provision is very subjective. The fact that the removal and or recommendation lies in the presidency gives a leeway for self-opinionated decision to remove a member without any reasonable ground. It can lead to a gang up where a member or few members oppose certain decisions of the Council. Therefore, the operation of a body as sensitive as the CPC is directly in the pocket of the government via legislative provisions which do not enhance efficiency and effectiveness.

¹⁸Kanyip B. B. (n18).

¹⁹<http://9jalgwa.com.ng/new/theogoro-ban-consumer-protection-in-nigeria> accessed 15 June, 2017.

²⁰ CPC uncovers circulation of substandard cigarette. Consumer Protection Council Blog, 8, June, 2003 <http://www.cpc.gov.ng>. Accessed 24th June, 2017.

²¹ The Manufacturers Association of Nigeria was created to serve as a link between the manufacturers the government and the general public.

²² CPC gives seven days ultimatum to tobacco company over substandard cigarette <<http://www.cpc.gov.ng>.

²³S.1(2) CPC Act. See Equally Nkiru J. Obummeme – Okefor (Ph.D): indispensable Tool for Economic Development in Nigeria. Department of jurisprudence in international Law, Anambra State University, Igbaram,

Anambra State – World Educator Forum, Vol. 4 No. 1 2014, ISSN:2350-2400, 6

²⁴ Emphasis ours.

²⁵Monye, F. N(N7)

²⁶*Ibid*, 112.

²⁷S.(1)(b) viii schedule SON Act. At least 14 members not 43 including consumer representatives (Standard Organization of Nigeria Act, Cap 59, LFN)

²⁸ S.22(CPC)

²⁹Nkiru (n-8).

³⁰ Sir Gordon Borie The Development of Consumer Protection Law and Policy (The Hamlyn Lectures 36k series) steven and sons London, 1984, 74-78.

Advertisement and Compensation

The Consumer Protection Council Act³¹ provides that any person who issues or aids any wrong advertisement about a consumer item, is jointly or severally, liable on conviction to a fine of N50,000.00 or to imprisonment of five years or both fine and imprisonment. In cases of this nature, the consumer is procedurally not a party to the proceedings. The matter is between the state and the service provider. Also the onus of proof is beyond reasonable doubt which is very difficult to establish. In most cases; the consumer is not the beneficiary of the fine imposed by the statutes, so he has no interest in it. Though the policy on criminalization of consumer law allows compensation to be paid to the consumer,³² the courts hardly adopt this. The court would prefer to make such compensation orders in civil suits as the criminal justice system in Nigeria is not structured to compensate the complainant but to punish the offender.³³ The point that is being stressed here is that except where a producer is being charged under the CPC Act, the power of the court to make compensation order is non-existent. Sub-section (2) of S.12 makes the payment of compensation order non-existent. Sub-section (2) of S.13 makes the payment of compensation conditioned upon the determination of the means of the respondent and not on the injury or loss suffered by the complainant.³⁴ This provision allows the respondent to claim that it has no means to pay compensation and the court will be constrained heavily against making the order. The situation is grievous particularly, the inferior courts, having statutory limitation on the amount of compensation it can be ordered under its criminal jurisdiction. In the same vein, Nigerian Criminal Jurisprudence is mostly concerned with capital offences and matters of state interest rather than consumer matters, State counsels are not interested in consumer. This is the reason for the apathy in the prosecution of consumer complaints and infringement by service providers and producers Section 12 provides that any person who in contravention of any enactment whatsoever for the protection of the consumer:

- (a) Sells or offers for sale any unsafe or hazardous goods;
- (b) Provides any service or proffers any information or advertisement, therefore causing injury or loss to a customer is guilty of an offence under the act and liable on conviction to a N50,000.00 or fine or to five years imprisonment or to such fine and imprisonment.

The offence created by section 12, is rather curious. The meaning of the phrase "*in contravention of any enactment whatsoever*"³⁵ is not clear. Does it extend to other laws on Consumer Protection such as the SON Act, the NAFDAC Act and the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act or is it confirmed to the Consumer Protection Council? A literal interpretation leads to the former. But acceptance of this view is bound to create serious absurdities. A review of the provision of the CPC Act reveals that some of the provisions of the CPA are rather unrealistic.

³¹ S.12 of CPC Act.

³² A. A. Adeyemi, Towards Victim Remedy in Criminal Justice Administration in Nigeria: Text of the Paper Delivered at the National Conference on Criminal Justice: Restitution, Compensation and Victims Remedies held in Abuja, 1989.

³³ But unlike what obtains generally in Torts Claims. See Atiyah, P.S. Accidents, Compensations and the Law (Weidenfeld and Nicolson: London) 3rdedn, 1980, 473/475.

³⁴ See Kanyip, B.B. Consumer Redress MPJFIL Vol. 2, No.2, 1998, 79/80.

³⁵ See Brett JSC in Ezeani vs. Njidi (1964) 1 All NLR 402 at 408.

It is not clear how the Council can compel an offering company to replace hazardous products with safe ones.³⁶ The same applies to the provision that requires the Council to compel manufacturers to give public notice of any health hazard inherent in their product.³⁷ The meaning of public notice in this regard is uncertain. Does it refer to warnings on the product labels or in the media? Additionally, the Act does not ensure regular meeting of the council. By Section 2(1) of the schedule, the council shall meet not less than four times (4) each year and subject thereto whenever summoned by the chairman.

This management does not make room for regular monitoring of the activities of product dealers. Perhaps it is suggested that the full time staff of the CPC shall carry out the monitoring activities. Section 10 of the Act is too mild to be meaningful. Sub-section (1) provides that where it appears to the Council or the State Committee that a person carrying out a business had in the cause of that business persisted in a course of conduct, which is detrimental to the interest of consumer, the Council or the State Committee shall use its best endeavor to obtain from him satisfactory written assurance that he will refrain from continuation of the course of conduct. If such assurance is not given or is subsequently flouted, the Council or the State Committee shall notify the Attorney-General of the Federation who shall cause proceedings to be commenced against the offender. Why should the Committee engage in such a dialogue which is detrimental to its interest? In fact, the provision derogates from the definite power of prosecution conferred on the council by section 3(a).

The provision creates unnecessary bureaucracy and so should be expunged.³⁸ The import of Section 10(3) which gives the court the discretion to make an order against an offender to refrain from the detrimental course of conduct is not clear. Besides the said order, no other penalty is stipulated. As a general principle, the court enjoys the discretion to make any appropriate order in any case before it. So, this provision is equally superfluous. Essentially, the Act does not make adequate financial provision for the Council. Section 25(1) states that main sources of funds of the council are: (a) sums as may from time to time be provided by the government of the Federation; and (b) such other sums as may accrue to the council either in the execution of its function under the Act or in respect of any property vested in it. Section 26³⁹ entitles the council to accept gifts which are not incompatible with its function.

Section 16 provides that the Attorney-General of the federation may, at the request of the council apply to a court for an order commanding any person, partnership, company, trade association *etc.*, to comply with the provisions of the Act or any order of the council in pursuance thereof. This is a serious limitation since the implication is that the CPC cannot institute an action on its own accord. Thus, if an offender refuses to comply with a given order, the council must go through the administrative bottleneck of requesting the AG to institute action. This presumes that the council must secure a conviction through the AG before its order can become effective. This undermines the extensive function conferred on this body.⁴⁰

³⁶ CPC s.2(b).

³⁷ *Ibid.*

³⁸ CPC S.10(3).

³⁹ CPC S.26.

⁴⁰ *Ibid.*

The CPC Act is a good piece of legislation designed to ensure that nobody holds office for self-serving purposes. Any member reserves the right to resign his appointment through a personal letter by him to the President. The CPC Act “has mapped out, even if vaguely, the terrain of the Consumer Protection Law in Nigeria”. The Act has championed the establishment of a coherent legal regime for the protection of the consumer.⁴¹ Though the Act is useful, it has poor structural framework – inherent weakness in the enabling law such as non-definition of consumer’s rights and inadequate provisions for enforcement especially in Consumer Protection. The Act however does not extend to e-commerce Consumer Protection, since e-commerce is not even mentioned in or covered by the Act. In Nigeria, a look at our case law reveals paltry action on enforcement of our Consumer Protection Law. With the numerous provisions of the Law, it is surprising that this is still so. Case Law shows that judges are inclined to accept the “foolproof system” of production often used as a defense by alleged violators of consumer rights.

CPC Act in Comparison with Other Acts: Essentially, CPC Act is consumer oriented and laden with consumer problems. It is necessary though functions performed by the Act are in existence being performed by other agencies like SON, NAFDAC, etc. However, the CPC has an edge over other regulatory agencies because of its provisions relating to compensation. SON takes care of consumer complaints through negotiation, mediation and conciliation. The organization also ensures compliance⁴² with quality standards through the certification of products and routine factory inspection.⁴³ Both NAFDAC and SON ensure the elimination of hazardous products from the market through the issuance of public alerts and closure of offending factories. In view of the foregoing analysis. The author submits that the CPC Act is an unnecessary duplication. What are needed is effective enforcement, and monitoring and not a proliferation of agencies. But a counter-argument is that many of the existing agencies like SON and NAFDAC are professional in character and are saddled with a lot of scientific work, such as the prescription of standards and analysis of suspected fake and substandard products. Besides, the functions of these agencies are producer-focused.

CPC Act in Comparison with Acts of Other Jurisdictions (South Africa)

The South Africa Consumer Protection Act (SACPA)⁴⁴ has received numerous criticisms including the point that it over protects consumers to the potential detriment of business in South Africa.⁴⁵ The Act has been adjudged to have a significant impact upon the conduct of business in South Africa and on the terms and condition of a contract.⁴⁶ Of greater concern is the implication of having various for a for redress and the role of the national courts in light of the existence of these for a. There is no doubt that the majority of consumers in South Africa are vulnerable to the machination

of unscrupulous dealers as a result of ignorance or illiteracy.⁴⁷ There is therefore, a need to educate consumers about their right and to ensure that the rights are adequately protected.⁴⁸ Du Preen correctly points out that “vulnerable and/or illiterate consumers should not be protected but also empowered.”⁴⁹ The Consumer Protection Act of South Africa established the National Consumer Commission. The National Consumer Commission is an administrative agency.⁵⁰ It is primarily an investigative and enforcement body that has to discharge its duties in the most cost effective and efficient manner. The Commission receives complaints relating to alleged prohibited conduct or offences and investigates and evaluates them. The investigation involves interrogation and searches.⁵¹ The Commission makes findings based on information received from the Inspector responsible for the investigation.⁵² In terms of its enforcement function, the Commission negotiates and concludes undertakings and consent orders. After the conclusion of an investigation, the Commission may propose a consent order to the National Consumer Tribunal or court if it believes that a person has engaged in prohibited conduct. When the consent order is granted by the Tribunal or court, it may initiate an award of damage, to the complainant. It is significant to note that commission does not have prosecuting authority. The commission must refer disputes that arise in relation to anti-competitive behavior or market share to the Competition Commission. It is significant to observe that the Act limits the time period within which a dispute can be referred to the Tribunal and referrals must be done within the prescribed three years. The orders that may be made by the Tribunal include the confirmation of negotiated settlements made by the Commission. The Tribunal can also impose an administrative fine in respect of prohibition conduct. The amount may not exceed ten percent of the respondents annual turnover during the preceding financial year or R1000,000.

Also emulable in the South African Commission Act are the provisions of Section (9) of the Act which make provision for reasonable grounds for differentiated treatment in specific circumstances such as where a supplier can refuse to provide access to any particular goods or services to a minor, or require the consent of a parent in accordance with any public regulation. The Act differentiates the ordinary courts from consumer court. Provincial Consumer Courts are regulated by the provincial legislation of each province and every province in South Africa is supposed to establish a consumer court. Currently, consumer courts have been established and are operational in Ganteng, the Free State and Limpopo. The Western Cape is in the process of establishing a court. Van Heerden and Bernard correctly point that if a limited number of consumer courts are established, it means that.⁵³ This forum of redress [will be] unavailable or costly to access for many indigene consumers in other part of South African and even in the remote part of provinces where these courts actually exist. This implies that the establishment of consumer courts in all provinces will be a step towards better service delivery for consumer disputes. While consumer courts are spread in all provinces in South Africa, it is not so in Nigeria. As at 2016, 24 years after the inauguration of the CPC Act, only 15 States

⁴¹ Monye, FN(n7).

⁴² Consumer Protection Act of 2008. The Act was signed into law on 24th April 2009, but most of its provision hold effect in 1st April, 2011.

⁴³ Manyati 2011. DE Reubs. See<Kirby 2010 www.werksman.co.za> accessed 5th June 2017.

⁴⁴ Consumer Protection Act of 2008. The Act was signed into law on 24th April 2009, but most of its provision holds effect in 1st April, 2011.

⁴⁵ Aronstan Consumer Protection 223.

⁴⁶ Du Preez. 2009 Tsar 63.

⁴⁷ See s.85(2)(a) of CPA, 2008.

⁴⁸ Section 85(2)(c)

⁴⁹ *Ibid.*

⁵⁰ S.74(b).

⁵¹ S.69 (b).

⁵² *Ibid.*

⁵³ Ban HeedenBenard 2011. JICIT 138.

out of 36 had inaugurated their committees. There is a small claims court in South Africa which is absent in Nigeria. The small claim court is empowered to deal with an unresolved dispute that involve an amount of money that falls within its jurisdictional limit, which is currently R12,000. The procedure in the small claim court is less complex and cheap. Most consumers would prefer this court to others, as it is clearly accessible.

Is the Federal Competition & Consumer Protection Bill 2016 Pending in the National Assembly an Option?

The pending Federal Competition & Consumer Protection Bill, 2016 an Act which aims at repealing the Consumer Protection Act,⁵⁴ establishes the Federal Competition and Consumer Protection Tribunal for the development and promotion of Fair, efficient and competitive markets in the Nigerian economy, facilitate access by all citizens to safe products, secure the protection of rights for all consumers in Nigeria and for other related matters. The objectives of the proposed Act are to promote and maintain competitive markets in the Nigerian economy, promote economic efficiency, protect and promote the interest and welfare of consumers by providing consumers with competitive prices and product choices. The bill further seeks to prohibit restrictive business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria so as to contribute to the sustainable development of the Nigerian economy. The Act is applicable to all undertakings and all commercial activities within, or having effect within Nigeria. Some of its notable features includes:

Establishment of the Federal Competition and Consumer Protection Commission: The Act establishes the Federal Competition and Consumer Protection Commission (“the Commission”) for the purpose of carrying out the functions, duties and responsibilities as conferred upon it by virtue of the provisions of the Act. The Bill provides that the Commission shall be independent in the performance of its functions, duties, powers and responsibilities so conferred on it. In a bid to ensure fairness and sincerity in purpose, the Bill directs that any member of the Commission who has a personal interest in any contract or arrangement or matter to be considered by the Commission or of any of its committees shall forthwith disclose such interest to the Commission or committee and shall not vote on any question relating to the contract, arrangement or matter. This is in an initiative to forestall a case where a member of a committee has a conflict of interest and might be minded to manipulate the system to favour such interest. This provision seeks to ensure objectivity among the members of the Commission. Also, the Act provides for the establishment of a Competition and Consumer Protection Tribunal, whose duty is to adjudicate over every conduct prohibited under the Act. The tribunal shall hear appeals from or review any decision from the exercise of the powers of any sector specific regulatory authority in a regulated industry in respect of competition and consumer protection matters, issue such orders as may be required of it under the Act and make any ruling or such other orders as may be necessary or incidental to the performance of its functions under the Act.

Restrictive Agreements:

The 2016 Bill provides that “Any agreement among undertakings, or the decision of an association of undertakings that has the purpose of actual or likely effect of preventing, restricting or distorting competition in any market shall be unlawful and, subject to Section 61 of this Act, void and of no legal effect whatsoever”. This is a strong stand against any form of restrictive trade practice among associations, cartels or any commercial unit.

For the avoidance of doubt, the bill lists out the particular acts to be prohibited by the proposed Act. They include;

- 1) Directly or indirectly fixing a purchase or selling price of goods or services, subject to Section 108 of the Act.
- 2) Dividing markets by allocating customers, suppliers, territories or specific types of goods and services.
- 3) Limiting or controlling the production or distribution of any goods or services, markets, technical development or investments, subject to Section 109 of the Act.
- 4) Engaging in collusive tendering, subject to Section 110 of the Act.
- 5) Making the conclusion of an agreement subject to acceptance by the other parties of supplementary obligations which by their very nature or according to commercial usage have no connection with the subject of such agreement.

The prohibited acts which contravene certain Sections of the bill have been itemized for avoidance of doubt by commercial undertakings which have formed the habit of often using ignorance of the law and the absence of an active antitrust legislation to breach competitive lines. In a related breath, Section 64 prohibits any term or agreement for the sale of any good or services, if the purport of such term or agreement is to establish or provide for the establishment of minimum prices to be charged on the resale of the goods or services in Nigeria. In other words, this Section proscribes minimum resale price maintenance in the market. It has been identified as a major trade restraint among experts in antitrust and a major setback in market competition. Interestingly, the Bill creates a new form of restrictive trade practice prohibition, where it prohibits the unlawful withholding of products from a dealer by a supplier. For the purpose of the Act, an undertaking will be treated as withholding goods or services from a dealer if the undertaking refuses to supply those goods or services to the order of the dealer, except at prices or on terms or conditions as to credit, discount or other matters which are significantly less favorable than those at or on which the undertaking normally supplies those goods or services to other dealers carrying on business in similar circumstances.

Abuse of Dominant Position

The 2016 Bill goes further to give an elaborate description of instances where a corporation may be designated as a dominant firm in the market. It provides that, for the purpose of the Act, a corporation will be considered to be in a dominant position if *it is able to act without taking account of the reaction of its customers, consumers and competitors*. This definition puts into consideration, the effects the acts of a large firm might have, not only on its competitors, but also on the consumers and the competitors. The author opines that there is nothing fundamentally wrong with a firm being dominant in the market. Its status might have been achieved by dedication to purpose, hard work, investment and goodwill, hence, a large

⁵⁴CAP C25, LFN, 2004

corporation should not be punished for excelling in the market environment. But a large firm, in making decisions and carrying out its business must be extremely considerate and cautious on the effect (usually adverse), such acts or decisions might have on the consumers, customers or the competitors in the same market and within the same geographical location. As a punitive and prohibitive step, the bill provides in Section 74 (3) that any undertaking that abuses its dominant position in the market commits an offence under the proposed Act and on conviction be liable to a fine of not less than *ten (10) per cent of its turnover in the preceding business year or such higher percentage as the court may determine under the circumstances of the particular case.*

Monopoly

Where it appears to the Commission that there are convincing grounds for believing that a monopoly situation may exist in relation to the production or distribution of goods and services of any description or in relation to the export of any goods and services of any description in Nigeria, it shall cause an investigation to be held over any agreement(s) in various sectors to determine the extent of the situation in relation to the market. The Bill identifies a situation of monopoly to exist in relation to;

1. The supply of goods of any description;
2. The supply of services of any description; or
3. The exports of goods of any description from Nigeria, to the extent that it has an effect on competition in a market in Nigeria.

Mergers

For the purpose of the proposed Act, a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking. This control may be achieved by way of the purchase or the lease of the shares, an interest or assets of the other undertaking in question, the amalgamation or the combination with the other undertaking in question, or the amalgamation or combination of the other undertaking in question. It could also be by way of a joint venture. Also, an undertaking has control over the business of another undertaking if it beneficially owns more than one half of the issued share capital or assets of the undertaking, is entitled to cast a majority of votes that may be cast at the general meeting of the undertaking or has the ability to control the voting of a majority of those votes, either directly or indirectly; is able to appoint or to veto the appointment of the directors of the undertaking. Subject to the notification of threshold to be determined from time to time as set out in Part XII, a proposed merger shall not be implemented unless it has first been notified to and approved by the commission. Section 95 of the proposed Act provides that when considering a merger or a proposed merger, the Commission shall determine whether or not the merger is likely to substantially prevent or lessen competition. This shall be done by assessing the strength of competition in the relevant market and the probability that the undertakings, after the merger, will behave competitively or co-operatively, taking into account, any factor that may be relevant to competition in that market, including, the ease of entry in the market(s), the level and trends of collusion, the level of countervailing power in the market, among other considerations. On the whole, the bill looks promising and all-

encompassing. It touches on both competition regulations as well as consumer protection, and the danger however remains in the management of the Commission. It will have to be manned by professionals who are knowledgeable in antitrust laws, economics, intellectual property and representatives of the various sectors of production. It is essential that all necessary bodies are carried along for a productive dispensation of competition policy in Nigeria. That competition law and policy has continued to enjoy a remarkable growth rate across the world in recent times. Its advantages cut across economic efficiency, consumer choice boosting and protection, removal of entry and exit barriers, protection of small and intermediate firms in the market, improvement of the Foreign Direct Investments (FDI) of countries, while boosting the chances of local firms to compete internationally. This work has therefore argued that, left unchecked, the untoward and unregulated trade practices will continually relegate Nigerian markets to the background and have extremely adverse effects towards the economic and trade development and growth in the country. If the proposed bill is to advance the cause of consumers, it is pertinent to state that: the first step to take is to harmonize all pending bills before the National Assembly, remove offensive sections contained in them and create independent enforcement institutions. The bills were products of legal transplants which did not necessarily take the peculiarities of Nigerian trade and market systems into consideration. Competition policy and law offers developing nations an added tool to manage their affairs. The challenge then is to design a competition policy that fits local realities and meets local needs. This is an aspect that often eludes the attention of many enthusiastic proponents of competition law and policy. Evidently a "one size fits all" approach is practically inappropriate in developing competition policy and law. It is essential to create a distinction between countries at low levels of development and hence meager institutional capacity on one hand, and semi-industrialized countries with greater institutional capacity on the other hand. Second, for competition law and policy to make any meaningful success in Nigeria, allied policies such as privatization, liberalization and commercialization have to be placed on the front burner. Their functional existence shall ease up the market system and usher in competition law and policy. Otherwise it would only make a mockery of the process. Third, any eventual competition law and policy must be wary of falling into the temptation of inundating itself with too many competition goals and objectives. Much has been said about the lack of infrastructural capacity and structural facilities in the country.

Thus, holistically transplanting the U.S. Antitrust in its entirety or the U.K. Competition Act will be detrimental and quite wasteful. The E.U. Competition law is recommended to the extent that it advocates for opening up of markets. In a country like Nigeria, operating cartels is not so much in vague and may not necessarily be an objective of the competition law. Emphasis may be laid on the extermination of monopoly, opening up the cement industry for example, focusing on merger activities, and abuse of dominance in significant public services such as power, agriculture, shelter, flood, water and other sectors. Fourth, Government's fettering of competition must be moderated by law. Due to vested interest in the markets, and owing to the outrageous level of greed and corruption in developing countries, governments seem to protect the producers, (from where their campaign funds emanate from), instead of the consumers. A major reason why

competition regimes have not seen the light of day in Nigeria is because the government lacks genuine incentives to create a competitive environment. Most political office holders, legislative members and other public office holders have vested interests in the thriving monopolies ranging from the power sector to the various production industries, water supply and importation activities. The Federal government needs to provide overall direction for the development competition in Nigeria. This may include employing capable personnel in the implementation process. Fifth, there is need to intensify on competition law and policy advocacy in the polity about the benefits inherent in the regime. The markets are perishing due to lack of knowledge of this importation subject. Even worse is the fact that the legislature, which is on the front seat to bring to life this budding bill, lacks any appreciable knowledge of competition law and policy. The author surmises that one of the reasons why the Federal Competition Bill was not sent for the second reading was because the National Assembly was of the opinion that the country already had a Consumer Protection Agency. It is therefore recommended that a crash course seminar be provided for the public to sensitize them on the imperatives and benefits of this global trend. The fact that competition policy should contribute towards economic development is more or less an agreed concept, it is largely the barriers to competition that exist that are sources of apprehension. There is need therefore, for competition culture to prevail in the whole economy to remove distortions. This should start at the helm of the administration and extend to the consumer. Political will turns out to be one of the key factors that determine the success of implementation of competition policy and laws. If competition law and policy is to yield all the envisaged benefits, political will and consensus for reform is a necessary condition.

Should the CPC act be set aside?

The CPC Act, and establishment of the CPC are commendable steps towards enhancing Consumer Protection. Consumers are often faced with fraudulent unfair business practices from those who sell goods and services. It is against this backdrop that consumer protection laws have been enacted and regulatory agencies established by government to protect the rights of the consumer. The enactment of the Consumer Protection Council Act and the establishment of the Consumer Protection Council provide the legal framework for protection of consumer rights in Nigeria. Consumer Protection as a doctrine seeks to hold suppliers of foods and services liable for injuries or loss sustained by consumers of defective goods and services. The CPC Act has recognized consumers' rights to safety, and the right to be informed and to be heard. The CPC has responsibilities and powers under the Act to ensure that consumer rights are protected. Though the enactment of the CPC Act and the establishment of CPC are commendable steps towards enhancing consumer protection, some deficiencies that are capable of limiting effective consumer protection have been observed in the Act. The court(s) that are to exercise jurisdiction over civil and criminal consumer protection matters cases in both civil and criminal have not been clearly delineated. The Act lacks provisions aimed at encouraging expeditious justice delivery in consumer cases to encourage consumers to seek redress.

Recommendations

The CPC Act needs to be amended to accommodate virtually all regulatory bodies as members of the Council. The Act is not verbose, but it demands a lot from the council which

membership is so limited to a very few regulatory agencies. The CPC must be adequately funded to enable it meet all the set goals. The courts should be active in complementing the roles of the CPC by being more liberal and realistic in the approach to consumer protection cases. The consumers must be protected from the Almighty producers within the ambit of substantial justice. There is need for the Council to provide regulation for e-commerce in Nigeria. Empirical research should be carried out in the different aspects of consumer protection before any amendment to the laws regulating consumer protection in order to make more realistic and well informed amendments. It is the responsibility of the CPC to ensure increased awareness among the consuming public in relation to safe and defective products. In order to achieve this, the CPC should erect bill boards publish leaflets enumerating the rights of consumers, consumers' responsibilities, and produce citizen's charter handbills among other measures. There is need to enlighten the populace the local dialects to enable all and sundry to benefit from these regulations. An Anti-Trust Law should be enacted to encourage competition in the market place and invariably guarantee the right of choice to consumers. The media should assume the role of whistle-blowers with a view to check-make wholesome business practices by unscrupulous entrepreneurs and business organizations. The Consumer Protection Council and the state Councils should be more proactive in the performance of their statutory functions. A more comprehensive legal regime in consumer protection should be put in place, specifying consumers rights and obligations rather than the present regime where there are subsumed into the functions of the Council.

The Act should intensify consumer education, by amending some specific sections of the Act and to add more persons to the Council to enable them give the aggrieved consumers unfettered access to courts to pursue their rights. Specialized courts or consumer protection tribunals should be established and the normal courts should break out from their shell of technical justice and ensure at all times that justice is not only done but seem to have been done. Consumers should be encouraged to constitute effective consumer associations to serve, protect and defend the interest of consumers in all available fora. The CPC needs to extend its operational tentacles to the Local Government Areas in order to get closer to the people. Even if it may not necessarily have local government committees, it can have desk officers in every local government area that can receive complaints and forward same to the state committee.

Conclusion

While it is apt to conclude that a holistic amendment of the CPC Act 1992, to be at par with world best practices is desirable if Consumer Protection should take pre-eminence, it is also important to take a further excursion to review the pending Federal Competition and Consumer Protection Bill 2016, to harmonize with certain tolerable provisions of the CPC Act. What therefore will constitute a Consumer Protection antidote is the Marriage of the CPC Act and the pending bill to come out with Consumer Protection legislation those conforms with world best practices.

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