COMPARATIVE ANALYSIS OF THE LEGAL REGIM ON TELECOMMUNICATION CONSUMER PROTECTION IN NIGERIA AND MALAYSIA

By

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Abstract

Every human society, from the most primitive to the most advanced, depends on some form of telecommunications network. It will be virtually impossible for any group of people to define their collective identities or make decisions about their common and binding interests, without communications. Communication is a vital aspect of human existence and effective telecommunications services enhance living standards and improve productivity and efficiency in other sectors.

Telecommunication is the exchange of information over significant distances by electronic means. Telecommunication sector being information and communication Technology (ICT) based requires regulatory regulations to function effectively to satisfy consumers need.

The weakness of consumer in the scheme of things being at the receiving end and the imbalance the consumer faces in the market sector and bargaining power from the producers and suppliers of goods and services is the basis of establishing transnational and national rules and regulations and bodies that have developed regulatory consumer protection precepts that could provide an effective framework for the protection of consumers.

This paper aims to examine the legal regulatory framework in the Nigerian and Malaysian Telecommunications sectors. It particularly scrutinizes Nigerian Consumer Protection Council Act, Nigerian Communication Act, Malaysian Consumer

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Protection Act, Malaysian Communication and Multimedia Act, and Communication and Multimedia Act of Malaysia.

In examining these laws, the paper seeks to identify the lacuna and limitation therein and proceeds to provide recommendations towards the efficient administration and implementation of telecommunication laws in Nigeria and Malaysia for the overall benefit of the consumers.

Keywords: Consumer Protection, Telecommunication, Law, Nigeria, Malaysia

1.1.1 Introduction

Communication networks make society a reality. It makes it possible for people to cooperate, to produce and exchange commodities, to share ideas and information and to assist one another in times of need. Indeed, every facet of the basic rights is dependent on telecommunication. Such basic rights of the individual as the right to life, the right to personal liberty and dignity, the right to free expression and information and the right to free movement, all of which enhance the quality of life of the individual, are facilitated by telecommunications.

No modern economy can be sustained today without an integral telecommunications infrastructure that is widely acknowledged. Strong telecommunications network is important for the economic growth of nations and constitutes a base infrastructure that supports the world economy. Communication is a vital aspect of human existence and effective telecommunications services enhance living standards and improve productivity and efficiency in other sectors.

1.1.2 Meaning of Consumer

In the Nigerian content the term consumer means:

"An individual who purchases, uses, maintains or disposes of products or services"[1]

The above definition considers consumer to a large extend and scope because even an end user of a product(who is not a purchaser) is considered as a consumer and for whatever purposes the goods or services is obtained for.

[1] Section 32 of Consumer Protection Council Act Cap C25 Laws of Federation of Nigeria 2004

In the Malaysian context, the word consumer refers to:

"A person who acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purposes, use or consumption, and does not acquire or use the goods or services primarily for the purpose of resupplying them in trade, consuming them in the course of a manufacturing process, or in the case of goods, repairing or treating, in trade, other goods or fixtures on land."[2]

It can be seen from the above definition that a person who bought goods or obtain services for commercial purposes is excluded from the scope of the said Act. Meaning such transaction is not governed by the Consumer Protection Act 1999.

Comparing the two legislations, it is manifest that the latter is more elaborate than the former. That is to say the Malaysia legislation provides a precise and direct meaning of a consumer as oppose to Nigerian Legislation which provides an open definition of a consumer.

In Nigerian context, it can be implied that a person who bought goods or obtained services for the purpose of trade is regarded as a consumer, for examples Companies, NGO's and the like. In my opinion, it should have been restricted to individuals that either bought the goods or obtained the services for their personal use only so that they can enjoy the fullest protection by this law being the weaker once society.

According to John F. Kennedy, "Consumer by definition includes us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision.....But they are the only important group in the economy who are often not heard"[3]

1.1.3 Why Consumer Protection

The main objectives of producers of goods or services is to maximize profit at all course irrespective of consumers satisfaction and because of the daily live needs the consumers must go for the goods and services as basic needs of live.

[2] Section 3 of Consumer Protection Act 1999 of Malaysia

[3] John F.Kennedy:93-Special Message to the Congress on protecting the consumer interest. March15,1962.http://www.presidency.ucsb.edu/ws/?pid=9108, accessed on 12/04/2019

Even though the consumers purchasing powers made them to be described as the kings in the market sector, but yet are at the receiving end of the unfair and unethical behavior of the producers of goods and services.[4]

According to Messrs Eze, and Nwobodo,[5] there is a global recognition of the fact that there exist real and perceived imbalance of power relations between the producers and consumers of goods and services which always goes to the advantage of producers who are strengthened by the tradition legal maxim "caveat emptor" (buyer beware) and the ever growing free market philosophy, which seems to put the producers at liberty to do whatever they want".

Again on the issue of consumer protection, Felicia N. Money[6] opined that: "One elementary, though important question that may be asked is whether it is necessary to give or advocate a special protection for consumers. Cannot it be postulated for instance, that the consumer should take care of his own affairs? In other words, is it necessary for the law and policy to shift from the sphere of caveat emptor to caveat venditor? One can say with reasonable certainty that the above questions have been overtaken by events. On the part of the government, this assertion is buttressed by the various measures (laws, agencies etc.) often put in place to take care of consumer issues. This shows a conviction about the need for consumer protection".

According to Kamarudeen Babatunde Bello etal[7] , "consumer protection is the concept to protect consumers from unscrupulous producers and service producers. It denotes the attempt by government to provide regulatory framework to protect and enforce the rights of people who pay for goods and services. Therefore the law of consumer protection has two fold purpose... it protects the interest, rights and safety of end users of products and services , on the other hand to the extent that it derives from and relates to contractual transactions, consumer protection can be said to be a means by which private law relationships are regulated. It is in the interest of the public that the nature and deficiencies of products and services be made known to consumers."

Furthermore, consumers need to be protected because of the rapid advancement of information technology and aggressive marketing technique adopted by producers which are more attractive than the products itself has made

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[4] Amanim Iwok Bassey Kooffreh: An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria; Journal of Law, Policy and Globalization, Vol. 29,2014

[5] Ibid P.2

[6] Amanim Iwok Bassey Kooffreh: An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria; Journal of Law, Policy and Globalization, Vol. 29, 2014

[7] Perspective on Consumerism and Consumer Protection Act in Nigeria; European Journal of Business Management Vol. 4 No. 10. 2012.

it even more difficult for an average consumer to understand the in depth truth about the goods and services.

Thus consumer choice is influenced by mass advertising art of persuasion and marketing. The consumer may not be aware whether a product meets minimum standards of safety, quality, and efficacy. Sometimes he does not know how much he pays for the services; whether one prepared food has more nutritional value than another or whether the performance of a product will in fact meet his needs etc.[8]

In addition to the above quotations, consumers are at the bottom end and are the weakest on the chain of distribution, lack of knowledge to make the best choice to their test, confusion caused by the advertisement made by the producers of goods and services. These called for the need of the government to intervene by enacting laws and establishing agencies in that respect so that they will check and balance in the market sector. This is part of the functions of the government and it gives maximum protection to the consumers at large.

1.2 The Legal Framework for Consumer Protection in Nigeria and Malaysia

a. The Nigerian Perspectives of Consumer Protection

The legal framework for consumer protection in Nigeria exists in various legislations that created or establishes commissions, agencies for the regulation of consumer protection in different sectors of the economy. These legislations include the National Drug Law Enforcement Agency Act,[9] which establishes the National Drug Law Enforcement Agency and some of the functions conferred on the agency by the said law include enforcing laws against the culmination, processing, sale, trafficking and use of hard drugs. The law also empowers the agency to investigate persons suspected to have dealings in drugs and other related matter. National Agency for Food and Drug Administration and Control Act[10] which establishes the National Agency for Food and Drug Administration and Control to regulate and control the manufacture, importation, exportation, distribution, advertisement, sale and use of food, drugs, cosmetics, chemicals, detergents, medical devices and package water. Standard Organization of Nigeria Act[11] which established the Standard Organization of Nigeria and Standard Council for the standardization of method and products in the country, it also

[8] John F. Kennedy: 93 - Special Message to the Congress on Protecting the Consumer Interest. March 15, 1962. http://www.presidency.ucsb.edu/ws/?pid=9108 accessed 12/04/2019.

[9] Chapter N30 Laws of Federation of Nigeria 2004

[10] Chapter N1 Laws OF Federation of Nigeria 2004

[11] Chapter S9 Laws of Federation of Nigeria 2004

advice government on the national policy on standards, standards specifications, quality control metrology. The Electric Power Sector Reform Act [12]which established the Nigerian Electric Reform Commission and saddled with the responsibility of preventing the abuse of power within the sector and any other matter connected thereto. Other laws are Consumer Protection Council Act and Nigerian Communication Act which have direct bearing to this paper and the duo laws will be discuss below in details.

The Act is the principal legislation for the protection of consumers. It established the Consumer Protection Council which has among its functions providing speedy redress to consumers complaints through ADR mechanisms like negotiations, mediations and conciliations,[13] removing or eliminating from the market hazardous product and causing offenders to replace such products with safer and more appropriate alternatives,[14]publication from time to time, list of products whose consumption and sale have been banned, withdrawn, severally restricted or not approved within or outside Nigeria,[15] the council has power to compel a company or an individual to pay compensation to an injured consumer and make sure the company or an individual takes measures to prevent future occurrence.[16]

The council comprise of a chairman; representatives of the states of the federation; four persons to represent the federal ministries of Commerce and Tourisms; Industries and Technology; Health and Petroleum Resources.[17]

The council does not have office in all the states of the federation. But however operates through zonal offices with the assistance of a state committee.[18]

There are many abusive consumer issues that keep on happening especially in telecommunications sector in the villages and district of the states of the federation which require immediate solutions. Therefore, there is need to extend the services of the consumer protection council to the villages and districts so that the common masses (as consumers) will have easy access to the council.\

[12] 2005
[13] Section 2(a) of Consumer Protection Council Act Cap C25 Laws of Federation of Nigeria 2004
[14] Ibid Section 2(b)
[15] Ibid Section 2(c)
[16] Ibid Section2(d)
[17] Ibid Section 1(2) (c)
[18] Supra note 12.Part 11, Section 4(1)

b. The Malaysian Perspectives of Consumer Protection

The legal framework of consumer protection in Malaysia is implemented in various ways ranging from legislation, national policies, educational programs for public, school for children and university students, promotion of consumer clubs among others.[19]

Some of the legislations include; Hire purchase Act 1976 with the controller of Hire Purchase as the enforcement agency and the Act impose fines and imprisonment,[20]Price Control and Anti profiteering Act 2011(Act 723) which control price and inflation; communication and multimedia Act 1998 and consumer protection Act1999. The main objective of consumer protection Act 1999 is to provide greater protection for consumers and its provisions relates to the areas not covered by other subsisting laws.[21]

Control of Supplies Act1961. This Act provides for the control and rationing of supplies of controlled articles. The Act prohibits hoarding and refusal to sell controlled goods (Laws of Malaysia Act 122). Among the goods declared as controlled articles under this Act are sugar, milk, salt, cement and clinker, wheat flour, fertilizers, pesticides, cooking oil, petrol, diesel, and chicken.

Weights and Measures Act 1972.[22]This Act regulates the weights and measures, and instruments for weighing and measuring used in trade by ensuring they conform to the patterns and specifications specified by the Custodian of Weights and Measures and that the standards used are based on international system units. To verify compliance with accurate weighing, inspections are conducted and certificates are issued.

The main objective of this Act is to provide greater protection for consumers and its provisions cover areas that are not covered by the prevailing laws. It accorded some rights to the consumers[23] which cannot be taken from them, despite the conditions in any agreement they have signed. The Act also provides simple and inexpensive redress to consumers' grievances, and specific redress. The parliament vests the Ministry of Domestic Trade Co-operatives and Consumerism (MDTCC) with the powers to administer the provisions of the Act under the supervision of the Minister upon which the Minister delegate such powers to the Controller of Consumers Affairs.

[19] Dr. Mohamad Fazli Sabri, The Development of Consumer Protection Policies in Malaysia, International Journal of Business and Social Research (IJBSR) Volume-4, No-6 June 2014, P.99
[20] Ibid
[21] See note 18 P. 100
[22] Ibid P. 101
[23] Section 39,50 & 57 of C P A 1999

The functions of this act are carryout by the controller of consumer Affairs with the aid of certain number of Deputy and Assistant controller of consumer affairs who are appointed by the Minister.[24]

The Act also establishes the National Consumer Advisory Council which consists of the Secretary General of the Ministry responsible for consumer affairs or his representatives with other sixteen representatives of consumers, manufacturers and suppliers interest, upon which among the members a chairman and a deputy are appointed to chair the activities of the council.[25]

Furthermore, the Act established the Tribunal of consumer claim and an aggrieved consumer may refer a monetary claim that does not exceed RM25, 000 to the Tribunal. But where a consumer's claim arises from personal injury or death, then that should be referred to the civil court and not the Tribunal in this case.

The Consumer Protection Act comprises of 14 parts that deals with selected areas of not yet provided for in other statutes, but does not seek to repeal any existing law. They also provide simple, inexpensive way for the consumer to redress their grievances and relief of a specific nature.

1.3 The Regulatory Framework in the Nigerian and Malaysian Telecommunication Sector.

a. Consumer Protection in the Nigerian Telecommunication Sector.

The Nigerian Communication Act 2003 which repealed the Nigerian Communication Commission Decree 1992 is the principal legislation that regulates telecommunication sector in Nigeria with the objectives to create and provide a regulatory scheme for the Nigerian communications industries and all matters related to the sector[26]. The Act is also aimed at promoting the implementation of the national communication and telecommunication policy and the regulatory framework for the Nigerian communications sector[27]. The Act also gives maximum protection to the consumers by mandating the telecommunication industries to be providing service to the standard as prescribed by the Nigerian Communication Commission and to adequately address consumers' complaints. Again the Act established the Nigerian Communication Commission.

The Nigerian Communication Commission was established by the National Communication Act 2003and saddled with the responsibility for the

[24] Section 7(1) &(2) of C P A 1999
[25] Section 74(1) (a),(b) &(3)
[26] Section 1of Nigerian Communication Commission Act 2003
[27] Section 1(a) and (b) of Nigerian Communication Commission Act 2003

regulation of communication sector[28]. The commission is headed by an executive vice chairman and the functions of the commission includes the protection and promotion of the interest of the consumers against unfair practices including but not limited to matters relating to tariffs and charges for the availability and quality of communications services, equipment and facilities[29] and ensuring that licenses implement and operate at all times the most efficient and accurate billing system.

The National Communication Act gives wide-ringing powers to the National Communication Commission to ensure good telecommunication service delivery to consumers in the country, but this can only be achieve when the affairs of the commission are properly administered.

The Nigerian Communication Act empowered the Commission to make and publish regulations pursuant to the powers conferred upon it in that direction, in 2007 the commission published consumer code of practice Regulation which was specifically made to confirm and clarify the procedures to be followed by licensee in the preparation of approved consumer code of practice in accordance with the provision of the Act[30]. The regulation is to shape and determine the features of any consumer code to be prepared by the licensees[31].

Also attached to the regulation is a General Consumer Code of practice (The General Code)that provide direction on the required terms that a consumer code to be prepared by any licensee should complied with before the commission approved the consumer code of practice prepared by the service providers. The General Code serves as a minimum set of requirements and minimum standard that the licensees must comply with for provision of their services to the consumers.[32] The General Code applies to all licensees and in regard to all telecommunications services offered to the public[33]. The licensees are required by the General Code to provide consumers with information on their services that is complete, accurate and up-to-date in a simple and clear language[34]. Under the General code timely respond is required for whenever a subscriber make request for information regarding their services. The licensee shall provide to the consumers a complete description of their service in the language of their understanding before entering in to any contract of service. By the General Code subscribers are to be provided with information on existing service arrangements including rates, terms and conditions for all the services offered. In the General

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[28] Ibid Section 3
[29] Section 4 (b) of Nigerian Communication Commission Act 2003
[30] Part 1, Section 2 Nigerian Communication Commission Consumer Code of Practice Regulation 2007
[31] Ibid
[32] Part 2, 5,Nigerian Communication Commission Consumer Code of Practice Regulation, 2007
[33] Part 1, 3(1) NCC Gen. Consumer Code of Practice Regulation
[34] Part 2, 6(1) NCC Gen. Consumer Code of Practice Regulation

Code, the service providers obligation include the provision to consumers of complete, accurate and in a simple , clear language information on services provided.[35]

Additionally, a subscriber is by the General Code required to be given a copy of written agreement for such service provision. Information on level of service quality of telecommunications services offered by the service providers is equally to be provided to the consumers.[36] Taking in to cognizance that service failures are bound to occur, the general code requires the consumer code to be drafted by the telecommunication companies to make provision for information specifically regarding any compensation, refund or other arrangements which may apply if the contracted service levels are not met. All the forgoing provisions contemplates a written agreement stating clearly the terms of the contract between service providers and consumers before any contract for the provision of any service is entered.

The General Code also requires licensees to ensure accurate and timely billing of consumers. The consumers are equally to be provided with full description of the charges for which the consumers are billed, the total amount billed, applicable credits, payments or discounts and the net amount payable by the consumer.[37]

Again the NCC issued a complaint Adjudication Guidelines pursuant to the powers conferred on it by the Nigerian Communication Act which provides the General guiding principles and procedures for resolving dispute by the commission.

The Complaint Adjudication Guideline provides a forum for inexpensive, fair, impartial and effective adjudication as a means of resolving inter-operator and consumer-related disputes in telecommunication sector.[38] The guidelines provides procedures for resolving disputes by the NCC where in a panel is setup to look into complaints received from a consumer without any unnecessary delay and the panel should adhere to the rules of natural justice. A person claiming of violation of his rights under the communications laws or other communication legal regulatory instrument including regulations, licenses, guidelines etc. can complain to the commission in writing. The respondent i.e. the person against whom the complaint is made will be served with the copy of the complaint[39], and he is required to respond within 7 days after the receipt of the writing complaint

[35] Part 2, 6 (1) of Nig. Communication Commission General Consumer Code of Practice, 2007
[36] Ibid Part 2, S. 8(2)
[37] Ibid Part 4, S. 22(e) & (f)
[38] Article 1:6 of Nig. Communication Commission Complaint Adjudication Guidelines
[39] Article 2:1 of Nig. Communication Commission Complaint Adjudication Guidelines

to the commission. Thereafter the commission shall within 5 working days determine whether or not parties would be required to appear before a panel to be constituted by the commission to make submission and/or representation of their respective cases.[40] Where the commission considers appearance of the parties, the complainant is then required to file formal complaint within 7 days. He is also required to serve the respondent with formal complaints and obtained a satisfactory proof of such in that respect.

It should be noted that complaints to be filed must be in the format as provided by the guidelines.[41]

After the complainant served the respondent with the formal complaints, the respondent is required to make a written submission of his response to the complainants within 7 days. The response is also to be in the format described in the Guidelines.

Thereafter the commission is required to review all the papers within 5 days in order to determine whether additional information of submission is required from the parties. Where the commission required such additional information a request is immediately issued and a response to the request shall be made within another 7 days in 6 copies. It is to be delivered to the other party and proof of such service is to be obtained.

Within 14 days of the receipt of the last submission, the commission shall fix a date for the hearing of complaints. The hearing shall not exceed a period of 30 days within which the commission is expected to determine same and issues its decision.[42]

It can be deduced from the above that the minimum duration for the resolution of complaints is a period of sixty days. The procedure is highly rigorous and time consuming just like in a court procedure. It is against the spirit of timeous disposal of consumer complaints as required by the Consumer Protection Council Act. The commission is empowered by the National Communication Act to make and publish regulations for a range of issues spelt out under the said Act[43]. The issues includes the issue of tariffs, fees, charges, rates, fines and general quality of services provided by the telecommunication service providers to consumers.

In 2008 the commission made and published the Quality of service Regulation. The said regulations were made to identify minimum quality of

[40] Article 2:3 of Nig. Communication Commission Complaint Adjudication Guidelines
[41] Ibid Article 2:4
[42] Article 2:12 of Nig. Communication Commission Complaint Adjudication Guidelines
[43] Chapter1, Section1, 104(a) and 107 N C Act 2003

service standards and associated measurement, reporting and record quality keeping tasks pursuant to section 104(a) of the Act.[44] The regulation was formed to identify service deficiencies, improve in the quality of service and to encourage or direct appropriate actions.[45]

The said regulations is aimed at maintaining service quality taking in to cognizance environmental and operating conditions by making information available to help with informed customer choice of service and licensees. It also improves the operation and performance of interconnected network and assisting the development of related telecommunications markets.

b. Consumer Protection in the Malaysian Telecommunication Sector.

The Communication and Multimedia Act 1998 (CMA) is a comprehensive piece of legislation in Malaysia that spells out the regulatory institution and structure for the converging Communications and Multimedia Industry. Among the objectives of the Act includes promoting national policy objectives for the communication and multimedia industry and establishing a licensing and regulatory framework for proper implementation of the national policy objectives.[46] The Act also establishes the powers and functions for the Malaysian Communications and Multimedia Commission.

Under the said Act, the Minister has powers to make regulations, to be published in a Gazette on issues relating to any fees, charges or rates to be imposed and any redress including compensation or penalties in respect of a breach of or offence against any subsidiary law,[47] any matter which the Act empowers him to do so.

The Minister is empowered by the Communication and Multimedia Act to establish an Appeal Tribunal to review the decision taken by the Malaysian Communication and Multimedia Commission in any dispute referred to it and the decision of the Appeal Tribunal is final and binding on the parties.

The Act (CMA) further mandates the providers of network facilities, network service and application service to interact with the consumers in reasonably manner and attain to their complaints adequately.[48] To a large extend, it can be said that the consumers have being given a greater protection by the Act.

[44] Part 1, Paragraph 1of NCC Quality of Service Regulation 2008
[45] Ibid Paragraph 2
[46] Section 3(1)(a)&(b) of Communication & Multimedia Act 1998
[47] Section 16(1)(d)&(h) of Communication & Multimedia Act 1998
[48] Section 188(1)(a)&(b) of Malaysian Communication & Multimedia Commission Act 1998

The Malaysia Communication and Multimedia Commission (MCMC) was established by the Malaysian Communication and Multimedia Act 1998 and saddled with the responsibility of supervising and regulating the communications and multimedia activities and to enforce the communication and multimedia laws in Malaysia. The Commission comprises of a chairman, three government representatives and two to five other members, all shall be appointed by the Minister of Energy, Communication and Multimedia.[49]

The Malaysian Communication and Multimedia Commission is empowered by the Communication and Multimedia Act from time-to-time to issue directions to in relation to the compliance or non-compliance with any license conditions and the remedy of a breach of such condition. Apart from all the powers and procedures conferred on the commission by the Communication and Multimedia Act, the commission has additional powers and functions conferred upon it by the Malaysian Communication and Multimedia Commission Act 1998 which includes; implementing and enforcing the provisions of the communication and multimedia activities, and carrying out any function under any written law as may be directed by the Minister.[50] The commission is also left with the powers to set out the guidelines for making, receipt and handling of consumers' complaints against the service providers.

Also the commission is empowered by the Act to form a Consumer Forum which prepares consumer code that include model procedures as to handling of consumer complaints and dispute through ADR and makes provision for compensation of consumers for breach of the service code by the service providers.

In 2003, the commission published a General Consumer Code of practice for the communication and multimedia Industry. Among the objectives of the code is to provide a standard for the communication and multimedia service providers for the benefit of consumers, and to promote a high level of consumer confidence in service delivery from the Industry.[51]

The General Consumer Code applies to all licensed service providers and all non-licensed service providers who are members of the Consumer Forum. It also spelt out the obligations of the service providers and that of the consumers. For instance the code mandates a service provider to provide all the necessary description of services which the consumer intends to acquire from the service providers in a clear language before entering in to the contract.

[49] Ibid Section 6(a),(b)&(c)
[50] Section 16(1)(b),(e) & (j) of Malaysian Communication & Multimedia Commission Act 1998
[51] Part 1, 5.1 (e)&(f) of General Consumer Code

Under the General code, consumers' complaints will first be lodged to the service provider concerned, but in the event the consumer is not satisfied with the service provider's decision, then the consumer may lodge a complaint to the Consumer Forum.[52] Where the service providers breached a consumer code or any mandatory standards issued by the Malaysian Communication and Multimedia Commission, the service providers are mandated by the General Consumer Code to compensate the consumers, thereby returning them to the initial position before the occurrence of the breach.[53]

Another Industry Forum that acts as a consultative body to the commission is Content Forum which prepares a content code to address matters dealing with offensive or indecent content.

For a consumer to lodge complaint to the content forum, the complaint must be in writing, specifying the part of the content code alleged to be breached with all the supporting documents. The complaint will directed to the chairman of the content forum, and where the complaint lacks merit, the chairman will notify the complaint and no further action will be taken.[54]

But where the complaint needs further investigation, the written complaint will be served on the party complained against for his response within two working days. Then the chairman will review the complaint and the response if any. If the chairman found that the complaint still lacks merit, he will circulate his opinion together with the complaint and the response if any to the Bureau members within four working days of the receipt of the complaint. If the members agree with the view of the chairman, the Bureau will write to the complainant that his complaint lacks merit and this will be done within three working days.[55]

But where the chairman considers the complaint to be of substance, both the copies of complaints and that of the response will be circulated to the members for their consideration. If the views of the members are unanimous, the parties will be inform of the decision, but where their opinion differs, a meeting will be convene within three working days to deliberate on the matter, there after the parties will be inform of the decision of the Bureau.[56]

If the Bureau found out that there has been a breach of the code, it may impose the fine not exceeding fifty thousand ringgit RM50, 000. The Bureau may also refer the offending party to the commission for further appropriate action.

[52] Part 6, provision 6, 6.4 of General Consumer Code
[53] Part 6, provision 6, 6.18 of General Consumer Code
[54] Part8, 4.1 & 4.2 of communication & multimedia content forum of Malaysia
[55] Part 8, 4.4&4.5 of Communication & Multimedia Content Forum of Malaysia
[56] Part 8, 4.6 a&b of Communication & Multimedia Content Forum of Malaysia

The content forum also mandates the Bureau to publish its findings of the inquiry after conclusion within thirty days.[57]

1.4 Conclusion and Recommendations

The role of government in the protection of consumer in the modern markets like telecommunication is very paramount especially in the area of regulations, policy making and establishment of agencies for the enforcement of consumer law. Despite the existence of the statutory and regulatory agencies in both Nigeria and Malaysia, the Nigerians are still faced with unnecessary deductions of subscriber's credit and difficulties in loading recharge cards as result of breakdown of system, while Malaysians are faced with a great challenge of broadband services from lack of coverage, disconnection and in some cases total breakdown of the broadband services. Notwithstanding the above shortcomings, if the following recommendations are implemented, telecommunication consumers would be more protected in both Nigeria and Malaysia respectively.

1. Nigerian Consumer Protection Council Act should be amended to widen its scope and powers by spelling out the consumer rights and manufacturers or suppliers obligation and to establish a special court to handle consumer grievances as obtainable in Malaysian Jurisdiction.
2. Section 16 of Nigerian CPC Act that requires the Council to apply to the court for an order to enforce its provision via the Attorney-General of the Federation is unnecessary. The Council should be given direct power of prosecution in all cases falling within the council's scope of powers and functions.
3. There should be more awareness campaign in Nigerian jurisdiction through consumer education and awareness programs like in the Malaysian jurisdiction where they have student consumer movement which comprises of university students working together, helping each other in conducting consumerism-related activities and school consumer clubs which were set up by the Domestic Trade, Co-operatives and Consumerism in conjunction with the Ministry of Education for conducting consumerism-related activities at the secondary school level.
4. Both the NCC and the MCMC should be proactive; they should not shy away from exercising their policing powers for the benefit of the consumer.
5. The NCC and MCMC should impose fines on defaulting operators or service providers and in extreme cases revoke the license of a notorious

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[57] Part 8, 9.2 of Communication & Multimedia Content Forum of Malaysia

and habitual defaulter. In this regard, the NCC should review upwards its fines, in order to serve as a deterrent to operators who neglect to offer quality services to their customers. Where necessary the regulators should revoke the operating license of a service provider who repeatedly violates the regulations issued by the NCC or MCMC.
The telecommunication operators should make their customer care service baseline always available to effectively deliver services by prompt response to consumer's complaints.
Other areas for review are part VII of Nigerian Communication Act and Chapter 7 of Malaysian Communication and Multimedia Act both on notification and resolution of disputes. Section 73 of the Nigerian Act provides that 'The Commission shall have powers to resolve disputes between persons who are subject to this Act ("the parties") regarding any matter under this Act or its subsidiary legislation, and Section 82 (1) & (3) of the Malaysian Act states that if parties to a dispute regarding any matter under this Act or its subsidiary legislation could not resolve by negotiation, the parties may seek resolution of the dispute by the commission. These provisions are ordinarily good as their essence is to foster the growth of alternative dispute mechanism through consultation, mediation, arbitration and conciliation. It is however saddening that the legislations did not recommend the use of professionally qualified personnel in this exercise; though it provides that the decisions of the commissions shall be enforceable before the court without more.
The worrisome part of these provisions is that the commissions; ordinarily an administrative outfit, are indirectly turned into a judicial organ ranking parri-passu with the Federal High Court since reference to court under the Nigerian Act means the federal high court, while under the Malaysian Act means the High Court.

9. Furthermore the duo Acts provides that a decisions made by the Commissions under these Part and chapter may be enforced by the Court as if the decisions are the judgments of such Courts provided that the Commissions have issued certificates to the complainants for leave to proceed to the Courts for the enforcement of the decisions as provided under Section 78(2) of Nigerian Communication Act and Section 89 of Malaysian Communication and Multimedia Act. However, no certificates are required if the actions are taken by the Commissions under these sections. The import of these provisions is to make the commissions judges in their own cause contrary to the principle of law: Nemo judex in causa sua, which is you shall not be a judge in your own case.