



**TECH HIVE**  
ADVISORY

# **THE ROLE OF CONSUMER PROTECTION AUTHORITY IN REGULATING DIGITAL SERVICES**

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## Introduction

In the recent decade, advances in information and communication technology have greatly changed lives and opened up new possibilities for consumers and businesses. However, it also confronts consumers with some unique obstacles not found in traditional business interactions.<sup>1</sup>

The role of any Consumer Protection Authority is essential to advance consumer interests. The Federal Competition and Consumer Protection Commission (FCCPC), under its enabling Act<sup>2</sup> has the mandate to intervene in any sector involving products and services to promote and safeguard the interests and welfare of consumers, amongst others.

<sup>1</sup> United Nations Conference on Trade and Development, 'Consumer Protection in Electronic Commerce' [https://unctad.org/meetings/en/SessionalDocuments/cicplpd7\\_en.pdf](https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf) accessed 1 December 2021.

<sup>2</sup> Federal Competition and Consumer Protection Act (FCCPA), 2018.

## The Intersection Between Consumer Rights and Digital Services

The scope of the Federal Competition and Consumer Protection Act (FCCPA), 2018 covers all commercial activities in Nigeria and the Interpretation section of the Act defines goods to include almost all types of products, goods and services. For instance, the definition of goods as provided for in the FCCPA includes ships, aircraft, vehicles, minerals, trees and crops – whether attached to land or not – as well as gas and electricity. Service is defined broadly to include service of any description, whether industrial, professional or any other service, and the sale of goods, where the goods are sold in conjunction with the rendering of a service.<sup>3</sup> The FCCPA's definition of goods and services does not specifically reference digital services offered by technology companies; nevertheless, the definition can be broadened to include digital services because they are essentially still products and services, even if they are delivered digitally to consumers.

Technology companies and digital services are greatly impacting consumer markets in diverse ways that were unimaginable a generation ago. A quick google search of “The big 5 tech companies” would list Amazon, Apple, Alphabet, Microsoft and Facebook which cumulatively is worth over \$7.5 trillion.<sup>4</sup> However, even more important is the diverse goods and services they render from global e-commerce services to advertising, cloud computing, consumer electronics, computer software and social networking.

As a result of the wide range of opportunities available to consumers, such as finding the goods and services they need in e-commerce, fintech, lendtech, proptech, social networking, or communications, as well as providing businesses with access to consumers online, technological companies are becoming increasingly relevant and indispensable for both consumers and businesses.

These prospects must continue to be exploited to contribute to long-term,

<sup>3</sup> Section 167 of the Federal Competition and Consumer Protection Act (FCCPA), 2018.

<sup>4</sup> Editors, Marker. “The 5 Biggest Tech Companies Are Now Worth More than Japan's GDP.” Marker, 16 Feb. 2021, <https://marker.medium.com/the-5-biggest-tech-companies-are-now-worth-more-than-japans-gdp-9d56bcbe6db6>.

## Pervasive Trends in the Digital Economy and its Implication on Consumer Protection

There is no doubt that the activities of some of these technology companies have adverse effects on consumers and expose them to harm online. In 2017, the United Nations Conference on Trade and Development (UNCTAD) identified the challenges faced by consumers, in developing countries for instance Nigeria, at the hands of technological companies.<sup>5</sup> Some of them include :

### **Deceptive information and marketing practices with respect to both goods and services and prices**

An active Nigerian social media user at some point has come across the trend “what I ordered vs. what I got”<sup>6</sup>. Oftentimes companies post deceptive images to manipulate consumers into opting for goods that they wouldn’t have bought if they saw the original pictures. According to Section 123 (1) of FCCPA<sup>7</sup>, a producer, importer, distributor, retailer, trader or service provider shall not make any false representation to a consumer in a manner that is likely to imply any false or incorrect, erroneous, deceptive or reasonably misleading representation concerning goods and services. Similarly, Article 84 of the Advertising Code<sup>8</sup> provides that the product advertised must conform to the descriptions as provided in the advertisement. Section 4.2 of the Central Bank of Nigeria’s Consumer Protection Regulation<sup>9</sup> also provides that advertisements shall be factual and unambiguous, expressed in clear and simple language and shall not be offensive, misleading, deceptive, injurious, or exaggerate the benefits of the products or services being advertised. However, irrespective of these laws, consumers are still susceptible to deceptive advertisements and representations. A classical example is posting glamorous properties which are not a representation of the actual property on Proptech websites to induce people to buy or rent properties. A lot of times along with misleading advertising pictures is a false declaration of promo prices. An item which originally costs five thousand carries a percent off with the new price being four thousand five hundred naira.

<sup>5</sup> United Nations Conference on Trade and Development, ‘Consumer Protection in Electronic Commerce’ [https://unctad.org/meetings/en/SessionalDocuments/cicplpd7\\_en.pdf](https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf) accessed 2 December 2021

<sup>6</sup> <https://yen.com.gh/186013-what-i-ordered-what-i-got-lady-cries-carpenter-finally-delivers-her-chairs.html>

<sup>7</sup> Section 123 of the Federal Competition and Consumer Protection Act (FCCPA), 2018

<sup>8</sup> Section 84 of the The Nigerian Code of Advertising Practice

<sup>9</sup> Section 4.2 of the Central Bank of Nigeria’s Consumer Protection Regulation

## **Data security breach and online scams, identity theft and frauds**

In 2020, 1.4 million complaints were for identity theft, up from 651,000 in 2019. Identity theft complaints accounted for 29 percent of all complaints received by the Federal Trade Commission, up from 20 percent in 2019. About 2.2 million reports were fraud complaints and 1.2 million involved other complaints.<sup>10</sup> Tech companies should be accountable for any loss that arises as a result of their weak security systems or negligence. People take over other people's accounts on social networking platforms and use such accounts to defraud the public.

## **Difficult or impossible returns and refunds policies for defective goods and services**

Although, section 122 of the FCCPA<sup>11</sup> provides consumers for the rights of consumers to return goods, more often than not, tech and digital companies often make their no refunds and no return policy inconspicuous, and where these options are available they are made tedious and tiring, or the processes for effecting them are simply non-existent.

## **Lack of clear and sufficient information on goods and services**

Another harmful practice is the deliberate and unintentional unclear, ambiguous and insufficient information used to lure consumers into subscribing to a good or service. A classic example is the Digital lending space where borrowers are encouraged to take loans without adequately displaying interest rate and pricing or making the terms and conditions of such loans difficult to understand.<sup>12</sup> Section 114 of the FCCPA provides that any notice, document or visual representation must be provided or displayed in plain language and reasonable enough to be understood by consumers with average literacy skills and minimal experience.<sup>13</sup> According to Section 115 an organization cannot display any goods or services for sale without adequately displaying to the consumer the price of those goods or services.<sup>14</sup> Section 4.1 of the CBN Consumer Protection Regulation provides that institutions must ensure that documents provided or made available to consumers shall be written in clear, legible and simple English language and provided in a durable form for future reference.<sup>15</sup>

<sup>10</sup> Facts + Statistics: Identity Theft and Cybercrime | III. <https://www.iii.org/fact-statistic/facts-statistics-identity-theft-and-cybercrime>. Accessed 2 Dec. 2021.

<sup>11</sup> Section 122 of the Federal Competition and Consumer Protection Act (FCCPA), 2018

<sup>12</sup> Digital Lending: Inside the Pervasive Practice of LendTechs in Nigeria <https://techhiveadvisory.org.ng/wp-content/uploads/2021/11/lendtech.pdf> accessed at 3 Decemebr 2021

<sup>13</sup> Section 114 of the Federal Competition and Consumer Protection Act (FCCPA), 2018

<sup>14</sup> Section 115 of the Federal Competition and Consumer Protection Act (FCCPA), 2018

<sup>15</sup> Section 4.1 of the Central Bank of Nigeria's Consumer Protection Regulation



### **Drip pricing practices, where the final amount due is not known until the whole process is complete**

This is a marketing practice where businesses advertise attractive prices which are actually unattainable because they add non-optional fees during the checkout process. Section 115(3) of the FCCPA<sup>16</sup> states that consumers shall not pay a price for goods or services different from the price that was displayed.

### **Resistance to or delay in providing redress by financial institutions upon receiving consumer complaints**

The Central Bank of Nigeria Consumer's Protection Regulation mandates financial institutions develop internal policies for complaints handling and redress. CBN also released a circular in 2020 to enhance service quality revised timelines for quick refunds when customers experience disputed/failed transactions on PoS or Web transactions to seventy-two hours.<sup>17</sup> However, consumers sometimes have to still wait up to eight working days to resolve their complaints.

### **Deceptive collection of Consumer Data**

Numerous digital products and services access and collect various types of consumer data. Some of that data may be necessary for the functionality of the digital product or service. However, some businesses design products and services to collect consumer data for other purposes, such as using it to display targeted ads, sending unsolicited marketing emails or selling it to third parties. Therefore, consumers should not be misled about free products or services that are advertised because they just might be using their data to pay for them unknowingly.

### **Anti-Competition Activities**

Anti-competitive practices can include unfair mergers, cartel conducts, collusions, price-fixing, the overbearing influence of vested interests, deceptive marketing practices, monopolisation, price discrimination, political patronage, and predatory pricing others.<sup>18</sup> A noticeable trend is the participation of individuals or small firms to take product samples to a foreign country, replicate on a big scale, and dump at a predatory price into a market where fair competition cannot exist.

<sup>16</sup> Section 115 of the Federal Competition and Consumer Protection Act (FCCPA), 2018

<sup>17</sup> CBN Revises Timelines for Dispense Errors, Refund Complaints <https://www.cbn.gov.ng/out/2020/ccd/press%20release%20on%20payment%20channels.pdf> accessed at 4 December 2021. Section 6 of the Central Bank of Nigeria's Consumer Protection Regulation also provides guidelines for Internal Dispute Resolution for complaints

<sup>18</sup> "Anti-Competitive Practices in Nigeria: What It Does to the Economy." TheCable, 11 Oct. 2021, <https://www.thecable.ng/anti-competitive-practices-in-nigeria-what-it-does-to-the-economy>. Also, Section 107-109 of the Federal Competition and Consumer Protection Act (FCCPA), 2018

## Protection of personal data and privacy

Personal data is crucial to online businesses because it helps them gather market insight and profile individual customers. However, when making purchases online, customers may be more vulnerable. The increased use of credit and debit cards for online purchases has increased the regularity with which providers and intermediaries acquire and trade personal information about consumers. Service providers also use different tracking technologies to profile online behavioural patterns of consumers.

## Inadequate or non-existent customer care services

According to a Harvard Business Review, American consumers spend, on average, 13 hours per year in calling queues with an estimated monetary cost of \$38 billion.<sup>19</sup> Moreover, a third of complaining customers must make two or more calls to resolve their complaints. And that ignores the portion who simply give up out of exasperation after the first call.<sup>20</sup> Consumers are usually faced with an automated voice menu, put on hold, or told that the agent is not authorised to resolve their complaints. Even worse, some tech outfits do not even offer customer care services or support leaving the consumers with no complaint channel or access to redress .

## Use of Dark Patterns

Dark design uses design mechanisms to mislead users into doing something they didn't intend to do in order to benefit the website or App owner.<sup>21</sup> It involves manipulating to influence human behaviour and decisions. For example, purchasing something or signing up for a service. The use of dark patterns is obvious in flight aggregators, hotel aggregators, betting and e-commerce websites. Unfortunately, millions of Nigerians use these services without realising they are being tricked into making decisions, and regulators are unaware of the extent of the problem..

<sup>19</sup> Dukes, Anthony, and Yi Zhu. "Why Is Customer Service So Bad? Because It's Profitable." Harvard Business Review, Feb. 2019. hbr.org, <https://hbr.org/2019/02/why-is-customer-service-so-bad-because-its-profitable>.

<sup>20</sup> Dukes, Anthony, and Yi Zhu. "Why Is Customer Service So Bad? Because It's Profitable." Harvard Business Review, Feb. 2019. hbr.org, <https://hbr.org/2019/02/why-is-customer-service-so-bad-because-its-profitable>. Accessed 3 Decemeber 2021

<sup>21</sup> Manyame, Amanda, and Oloyede, Ridwan. "Dark Design: The Art of Deception by Design" <https://techhiveadvisory.org.ng/wp-content/uploads/2021/11/th-DARK-DESIGN.pdf> Accessed 4 December 2021



## Curbing Anti-Consumer Practices

- The FCCPC can help boost consumers' trust in e-commerce by developing transparent and effective consumer protection policies to ensure consumers receive the same degree of protection even in the digital space. In addition, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Consumer Protection in the Context of Electronic Commerce, updated in 2016<sup>22</sup>, was also designed to help ensure that consumers are no less protected when shopping online than when they buy from their local store or order from a catalogue.

- To enhance consumer protection in the digital economy, legislators and enforcement agencies must increasingly focus on four aspects of consumer protection: legal and policy frameworks; dispute resolution and redress; enforcement, including cross-border cooperation; and consumer empowerment and business guidance. The United Nations revised its Guidelines for Consumer Protection in 2015<sup>23</sup> to include a specific section for the regulation of e-commerce. The FCCPC can take a cue from this and update our consumer protection laws, policies and guidelines to ensure they reflect the new business models of the digital economy and are capable of curbing the activities of tech companies harmful to consumers. The updated laws will enable the FCCPC to set out core characteristics of effective consumer protection in the digital space.

<sup>22</sup> Consumer Protection in E-commerce: OECD Recommendation <https://www.oecd.org/sti/consumer/ECCommerce-Recommendation-2016.pdf> Accessed at 3 December 2021

<sup>23</sup> United Nations Conference on Trade and Development, 'Strengthening Consumer Protection and Competition in the Digital Economy' [https://unctad.org/system/files/official-document/tdrbpconf9d4\\_en.pdf](https://unctad.org/system/files/official-document/tdrbpconf9d4_en.pdf) Accessed 2 December 2021



- The FCCPC is the apex authority with regards to consumer protection in Nigeria. The extent of its powers to regulate is quite comprehensive so much so that the FCCPA states that it has concurrent jurisdiction<sup>24</sup> with other regulators who have a regulatory oversight and in the event of conflict between the FCCPC and other regulators, the FCCPC will take precedence over the said regulator. Some of these other regulators include the Central Bank of Nigeria(CBN), Nigerian Communications Commission(NCC), The Nigerian Electricity Regulatory Commission(NERC), National Information Technology Development Agency (NITDA), National Agency for Food and Drug Administration and Control (NAFDAC), The Standards Organisation of Nigeria (SON), Nigerian Civil Aviation Authority (NCAA) and the Nigerian Broadcasting Commission(NBC). A collaboration with these regulators can help ensure that businesses protect consumers' privacy through a mix of proper control, security, transparency, and consent methods connected to the gathering and use of consumers' personal data. An example is the recent partnership between the FCCPC and NITDA to tackle the pervasive practices of Lendtechs.<sup>25</sup> Although this is a step in the right direction; more collaborations are encouraged amongst regulators to effectively and adequately protect consumers.
- The FCCPC can also train staff on issues that affect or impact consumers in the digital space. This will enable staff to understand how to approach and respond to complaints filed by consumers and help them seek redress.
- It is critical for consumers and businesses to understand their rights and obligations, and thus the need for the FCCPC to take a proactive approach in promoting digital literacy amongst consumers, so that they are aware of their rights, how to exercise them and the various channels through which they can lodge their complaints. In addition, businesses are also provided with guidance on how to comply with consumer protection laws.
- Specialised units for the regulation of tech companies can be set up within the FCCPC. These units can carry out regular online sweeps, investigations and sanctions. Online sweeps are a series of checks conducted on websites and applications at the same time to uncover consumer law violations in a specific industry. They are a two-step procedure in which enforcers examine websites for breaches and then use that information to take action. An example of these specialised units can be seen in France under the consumer protection board, which has a centre for e-commerce surveillance.<sup>26</sup>

<sup>25</sup> "Nigeria: NITDA Announces Collaboration with FCCPC to Tackle Data Abuse by Money Lending Operations." DataGuidance, 15 Nov. 2021, <https://www.dataguidance.com/news/nigeria-nitda-announces-collaboration-fccpc-tackle-data>. Accessed at 30 November 2021

<sup>26</sup> United Nations Conference on Trade and Development, 'Strengthening Consumer Protection and Competition in the Digital Economy' [https://unctad.org/system/files/official-document/tdrbpconf9d4\\_en.pdf](https://unctad.org/system/files/official-document/tdrbpconf9d4_en.pdf) Accessed 2 December 2021

- The FCCPC can improve consumer satisfaction through improving consumer access to dispute resolution and redress platforms, which should be seen as part of the broader scope of consumers' right to access justice.

- The FCCPC must update our anti-competition law to accommodate the new and existing tech companies. In 2018, Germany, for example, updated its competition law to reflect the new features of digital marketplaces, including a new provision that recognizes free products or services provided by online platforms as a market. The acquisition of promising start-ups by large online platforms is increasingly being recognized as a factor in eradicating future competitors. As a result, changing merger control regimes is critical to empowering the FCCPC to analyse such deals.<sup>27</sup>

- Because digital markets are evolving rapidly, consumer protection legislation enforcement must be more aggressive and responsive. Rather than reactive, enforcement must be proactive by reigning down on tech companies who engage in harmful consumer practices.

- The FCCPC must ensure that fair play is upheld and ban unfair business practices that are likely to stifle competition and result in higher pricing, lower quality or service levels, or less innovation.

It is clear that the consumer protection laws currently implemented are insufficient in upholding and preserving consumer rights within the digital space. The FCCPC needs to take proactive steps and be at the forefront of protecting consumers and their rights in the digital space.





## AUTHORS

Adedolapo Evelyn Adegoroye

Oluwagbeminiyi Ojedokun

Oyindamola Banjoko

Ridwan Oloyede



**TECH HIVE**  
ADVISORY