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**ASSESSMENT OF ORDINARY CONSUMER  
REPRESENTATION IN LIBERALISED MOBILE  
TELECOMMUNICATIONS MARKETS**

*A CASE STUDY OF NIGERIA*

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A thesis submitted in partial fulfilment of the  
requirement of the University of Westminster for the  
degree of Doctor of Philosophy

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## ABSTRACT

This study on the assessment of ordinary consumer representation in the liberalised mobile telecommunications market in Nigeria is situated within the broader perspective of the public interest and in the context of policy and institutional failure (what happens after policies are adopted?). It focuses on aspects of compliance monitoring and enforcement; areas that do not receive adequate attention in policy literature.

The study is conducted using the New Institutional Economics framework and its analytical tools: transaction costs, property rights and agency. It adapts and extends the Saleth and Dinar (1999) institution decomposition model to deconstruct the mobile institution into four main components: policy, law, administration and enforcement for analytical purposes. Using document analysis and semi-structured interviews as main methods, this study provides insights into how the regulatory framework relegates the protection of ordinary consumer interest and how this has implications for the delivery of the stated policy objectives.

The main findings reveal that: 1) due to inconsistency in the procedural definition of consumer interest and weak institutional structures, such as enforcement mechanisms, the regulator and mobile service providers do not hold ordinary consumers' interest at levels consistent with policy and law; 2) there is need for legal provisions for independent statutory consumer bodies to ensure ordinary mobile consumers' influential participation in the regulatory-decision-process and facilitate their capacity to harness the legal provisions in their interest; 3) there is need to make the arbitration process focused on the ordinary consumer, as currently it involves substantial resources-funding, time and expertise- beyond the capacity of ordinary consumer.

Telecommunications policy and the institutional framework in place have so far benefitted mobile companies in Nigeria rather than ordinary consumers. The existing policy failure, as discussed in this case study, can provide inspiration for rethinking the place of the ordinary consumer. The study's focus on mobile is important given the growing significance of this sector throughout Africa and globally too.

**Keywords:** Communications; Telecommunications; Mobile telephony; Consumer; New institutional economics; Ordinary consumer representation; Enforcement; Nigeria

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*To St Joseph*



## **DECLARATION**

I declare that all the material contained in this thesis is my own work

Martha Kanene Onyeajuwa

July 2016

## LIST OF ABBREVIATIONS

ACCAN	Australian Communications Consumer Action Network
ADAPTI	Advanced Digital Awareness Programme for Tertiary Institutions
ADR	Alternate Dispute Resolution
AIRTEL	AIRTEL Networks Limited
ALTON	Association of Licensed Telecommunications Operators of Nigeria
ARPU	Average Revenue Earning Per User
ATCON	Association of Telecommunications Companies of Nigeria
CAB	Consumer Affairs Bureau
CCAAC	Commonwealth Consumer Affairs Advisory Council
CCC	Customer Care Centres
CCI	Consumer Care Index
CCK	Communications Commission of Kenya
CDMA	Code Division Multiple Access
CEON	Consumer Empowerment Organisation of Nigeria
CI	Consumer International
CIL	Communications Investments Nigeria Limited
CISAS	Communications and Internet Services Adjudication Scheme
CITC	Communication and Information Technology Commission
COMESA	Common Market for Eastern and Southern Africa
COP	Consumer Outreach Programme
CPC	Consumer Protection Council

CR	Consumer Representation
CSaRO	Centre for Sustainable and Responsible Organisations
CSEA	The Centre for the Studies of Africa
CSG	Civil Society Group
CSI	Consumer Satisfaction Index
CSS	Consumer Satisfaction Survey
CTO	Commonwealth Telecommunication Organisation
CTM	Consumer Town Hall Meeting
DAP	Digital Awareness Programme
DTI	Department of Trade and Industry UK
ECOWAS	Economic Community of West African States
ELP	External Line Plant
EMTS	Emerging Markets Telecommunication Services Limited (trading as Etisalat)
ETACS	British First Generation Analogue Mobile System
EU	European Union
FCC	Federal Communications Commission
FCT	Federal Capital Territory
FWA	Fixed Wireless Access
GBP	Great Britain Pounds
GDP	Gross Domestic Product
GLO	Globacom Limited
GSM	Global System for Mobile Communications

GSMA	Global System for Mobile Association
IBRD	The International Bank for Reconstruction and Development
ICAF	Industry Consumer Advisory Forum
ICAEW	Institute of Chartered Accountants in England and Wales
ISP	Internet Service Provider
ITC	Information and Communication Technology
ITU	International Telecommunication Union
ITU-D	International Telecommunication Union-Development
ITU-T	International Telecommunication Union-Technology
IVR	Interactive Voice Response
KPI	Key Performance Indicator
LGA	Local Government Area
M-Tel	The mobile arm of NITEL
MNP	Mobile Number Portability
MOC	Ministry of Communication
MOU	Memorandum of Understanding
MTN	Mobile Telecommunications Limited
MTR	Mobile Terminal Rate
MTS	Mobile Telecommunications Services
NATCOM	National Association of Telecom Consumers
NCA	Nigerian Communications Act
NCC	Nigerian Communications Commission

NET	Nigerian External Telecommunications
NFMC	National Frequency Management Council
NGO	Non-governmental Organisations
NITEL	Nigerian Telecommunications Limited
NTDP	National Telecommunications Development Plan
NTP	National Telecommunications Policy
NTRA	National Telecom Regulatory Authority
OFCOM	Independent Regulator and Competition authority for the UK Communications Industries
OFCA	Office of the Communications Authority of Hong Kong
OFTA	Office of the Telecommunications Authority
OFTEL	Office of the Telecommunications UK (replaced by Ofcom in 2003)
OTELO	Office of the Telecoms Ombudsman
P&T	Post and Telecommunications
PAYG	Pay As You Go
PCR	Price Cap Regulation
PNL	Private Network License for Microwave Radio
PostRS	Postal Redress Scheme
PTO	Private Telecommunications Operators
QoS	Quality of Service
SA	South Africa
SADC	Southern African Development Community
SAP	School Access Programme

SIM	Subscriber Identity Module
SMP	Strategic Master Plan
SMS	Short Messaging Service
SNO	Second National Operator
STD	Subscriber Trunk Dialling
TCP	Telecoms Consumer Parliament
TCPC	Technical Committee on Privatisation and Commercialisation
TRASA	Telecommunications Regulatory Association of South Africa
UCAN	United Consumer Association of Nigeria
UKRN	United Kingdom Regulators Network
UN	United Nations
UNILAG FM	University of Lagos Radio Station
US\$	United States Of America Dollars
USA	United States Of America
USP	Universal Service Provision
WAO	Western Australia Ombudsman
WD	The Word Bank

## **CHAPTER 1 Introduction**

### **1.1 Background on the Issue, Objectives and Research Questions**

Nigeria is Africa's largest economy, with an estimated population of 170 million, and has the largest mobile market in Africa, with mobile telecommunications contributing over 8.5% of the nation's GDP (GSMA, 2014). The Nigerian mobile market has recorded an annual average of ten million subscriber active lines, since 2001. This constitutes one major success story in the telecommunications sector. The number of active mobile lines and penetration (connection) level have increased exponentially from 25,000 lines and 0.025% in 2001 to 148,681.36, and 107.8%, respectively, in 2015, with about 98% of connected subscribers registered on the pre-paid payment platform (NCC.Communicator, 2015). Before the liberalisation of the mobile market in 2001, deployment of fixed telecoms infrastructure was grossly insufficient and problematic due to inadequate infrastructure, uneconomic investment patterns, poor maintenance culture and management, and unreliable public electricity supply. The telecommunications infrastructure in rural areas, if it existed, was rudimentary. Links were installed to serve political elites without complementary external line plants to serve potential ordinary consumers (Thussu, 2006).

Considering the limitations of fixed technology, mobile proved to be an appropriate and effective technology in servicing everybody wherever it was deployed government, public servants, farmers, petty traders, companies, providers of utility services, schools, households. This is an indication that liberalisation of the mobile telecommunications sector in Nigeria despite its attendant competition problems did positively influence higher network penetration. Consequently, market liberalisation has improved the life of Nigerian consumers in terms of social relations, work, employment, banking, education and security. For most of the consumers, their first access to telecommunications has been through mobile.

These benefits are the result of issuing mobile (GSM technology) licences to network/service providers, MTN, AIRTEL and M-TEL. The attempt by M-Tel to roll out a GSM network was unsuccessful largely due to the aborted planned attempts to privatise M-Tel's mother company NITEL. Subsequently, GLOBACOM and ETISALAT joined the mobile market in 2003 and

2008 respectively. These four mobile service providers offer digital mobile services in the 900/1800/2100 MHz spectrum bands. The latest data on market share (GSM technology) as of December 2014 are as follows: Etisalat 15%, Airtel 20%, Globacom 21% and MTN 44% (refer to Chapter 3 for more details on GSM market). Mobile telephony accounts for 98% of total telephone subscriptions and remains the preferred means of communication in Nigeria.

However, the Nigerian ICT policy (2012) observed that over 20% of total landmass in the country has no form of basic telephony. Sequel to this, the Universal Service Provision Fund-USPF<sup>1</sup> (2013) identified a total of two hundred and seven (207) clusters, with an estimated population of thirty six million and eight hundred thousand (36.8m) people, as areas with gaps in voice telephony and transport networks in Nigeria. The USPF plans to use these data to design projects to cover the identified areas with basic telephony as well as inform service providers' rollouts such that everyone in Nigeria, irrespective of location, is connected in the 21<sup>st</sup> century. The 2013-2018 national broadband plan specifies coverage targets for this period as 35% in 2013, 60% in 2015 and 80% in 2018 (ICT.policy, 2012). It would appear that the USPF is silent on universal service obligations. It does not specify if basic level provision of universal service in telecommunications is defined in fixed/fixed wireless telephony, mobile telephony, or broadband service. It is also silent on expanding challenges to ordinary consumer take-up of mobile telephony such as special pricing schemes to facilitate affordability.

Meanwhile price affordability and mobile coverage are identified as two key barriers to mobile penetration to un-served and under-served areas of Nigeria (GSMA, 2014). For instance, the GSMA Analysis -Country Overview: Nigeria, June 2014 Report- remarks that the cost of running a mobile in Nigeria is about 5% of personal income, seen to be significantly above the threshold value of 2-3% of personal income, below which penetration rates begin to increase

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<sup>1</sup> USPF is established by the Nigerian Federal Government to facilitate the achievement of national ICT policy goals for universal access and universal service in rural, un-served and under-served, areas in Nigeria. The fund is managed to support the widest possible access to affordable telecoms services for social equity and inclusion for Nigerian citizens.



sharply. For instance, making an international call in Nigeria at present attracts a rate of N 60 (US\$ 0.3) per minute and it amounts to 10% of the daily minimum wage of N 600 (US\$ 3). According to GSMA (2015), a large proportion of the unconnected people in Nigeria fall within the low-income bracket, classified by the World Bank as the poverty line for developing countries.

Nigerian telecommunications has better mobile infrastructure provisioning in urban areas than in rural areas, as discussed in chapter 3. The GSMA -Analysis: Country Overview: Nigeria, June 2014- reports of high penetration rate masks a pronounced mobile divide. In spite of the fact that Nigeria has a 50:50 split in population between urban and rural areas, urban ownership is around 1.4 times higher. Similarly, another striking divide, in terms of mobile subscription, exists between the southern and northern regions of Nigeria: in terms of access within a household to mobile phones, the southern regions (including major metropolises such as Lagos) are well ahead of northern regions (GSMA, 2014:14). In addition, the security challenges posed by terrorist groups in the North East regions adversely affect network expansion and maintenance.

Therefore, it would appear that despite the success story of the Nigerian telecommunications in terms of penetration, the ordinary consumer is paying too high a price for the benefits from liberalisation of the mobile market. The reason being that since the Nigerian mobile market was opened up for competition in 2001, it has been incessantly plagued by poor quality of service, inaccurate billing and high prices, loss of service, inability to load credit, drop calls, unsolicited messaging, and inefficient customer care services (NCC, 2005; Okonji, 2012; Okonji, 2015). These issues progressed and remained unresolved such that in 2003, 2008 and 2012 the telecommunications industry witnessed extremely poor network performance. In each of the three occasions, the Nigerian Press was over-laden with so much consumer grievances that as a result both the Senate and the House of Representatives jointly called for a public hearing on the poor telecommunications network performance. Sequel to the hearing in 2008 the Nigerian Communications Commission had to impose sanctions on the culpable mobile service providers to make a uniform token refund to each of their consumers for service degradation.

In spite of this intervention, quality of service remained poor and consumer grievances unabated.

This study will use the three examples, given in Box 1 below, to illustrate the level of poor quality of service that prevails in the Nigerian telecommunications sector.

**BOX 1. VIEWS ON THE STATE OF TELECOMS SERVICE IN NIGERIA**

1) In 2011, the Lagos State House of Assembly urged the Federal Government to strengthen efforts in monitoring activities of the telecommunications providers in the country in view of their poor services. In summary, the Speaker of the House said, “We are all affected; I have up to a dozen cell phones linked to all the service providers. The incessant drop calls and unwanted deductions for calls not made can be annoying. In spite of the multitude of complaints, from citizens, the problems still persist” (Punch, 2011). The Assembly adopted the motion to commence a debate on a Consumer Protection Bill aimed at empowering and protecting consumers;

2) An online columnist wrote, “The mobile telephone crisis is across the board – and it’s become nothing short of a scandal . . . Why has the government failed to compel these companies to plough some of their stupendous earnings into infrastructural development? . . . Why does the government look the other way as Nigerian consumers are forced to accept substandard service – and perhaps blatantly exploited?” (Ndibe, 2013); and

3) The Chairman of the Senate Committee on Communications expressed concern over poor telecoms service in the country to the Minister of Communications Technology during the budget defence by the Ministry at the National Assembly, saying: “Until there is a seamless network service, there is no way the committee can shy away from raising alarm in the face of poor quality of service because the situation is perplexing”. He accused the Ministry of apparent quietness and reluctance to kick start the National Rural Telephony Project which, according to him, would have relieved pressure on the GSM” (Elebeke, 2014).

The On-line Columnist (quote 2 in Box 1), reflected the voice of consumers in general and the Speaker of the House of Assembly (quote 1 in Box 1) spoke on behalf of the ordinary consumer – when he referred to “complaints from citizens” – while the Chairman of the Senate Committee on Communications (quote 3 in Box 1) reflected the concern of the legislators. These voices show the pervasive nature of the problem. “We are all affected” the speaker affirmed. However, in this national malaise the ordinary consumer, particularly the vulnerable and the low-income earners, are more affected.

In the years following liberalisation, no attention was paid to quality of service. This is confirmed in a graphic explanation of the genesis of poor quality of service by the first Chief Executive of the Nigerian Communications Commission, in his 2009 annual report where he described the Nigerian telecommunications as:

"A man in the desert and all he wanted was water. He was not concerned about the quality; pure or dirty as long as it is water. So also is the case of Nigeria telecoms. All we wanted was a telephone to communicate with, and we were not concerned with quality of service. As the industry began to leave its infancy and maturing, the quality of service becomes a major concern" (NCC Annual Report, 2009:12).

The International Telecommunication Union (ITU), in its recommendations E. 880, defines service quality as "the collective effect of service performances, which determine the degree of satisfaction of a user of the service". Ordinary consumer satisfaction is key to this study, which seeks to evaluate the extent to which the Nigerian mobile telecommunications market has enabled or not mobile policy implementation and outcome with focus on the promotion and protection of ordinary consumer interests. This involves understanding the interplay that continuously goes on between the major participating market players: ordinary consumer, service providers, the Commission and Legislator in the competitive mobile market.

However, before proceeding with delineating the study's objectives and research questions, it is important to define who the ordinary consumer is in this study and to set the study in broader perspective.

### **How is the ordinary consumer defined?**

In broad terms, 'ordinary consumer' is defined as household (or residential) as opposed to non-household (or business) consumers. In this study, 'ordinary consumer' is defined as a person (an individual) who has a SIM card duly registered in her/his name. It excludes a person who has or uses mobile phone services in his/her official capacity. The ordinary consumer is also legally defined, in this study, as a person – as distinct from a corporate body or partnership – who subscribes to and uses a mobile communications service. In line with this, the term ordinary consumer also excludes representatives of corporate organisations, big or small,

governmental and non-governmental, profit or not-for-profit, international, national or local. A detailed explanation and implications of key terms in the legal definition is given in Chapter 5.

### **Situating the study in broader perspective**

The foregoing discussions highlighted four key consumer issues: access, affordability, network coverage, and quality of service, which have direct implications to ordinary consumer protection in the liberalised mobile markets. These four issues align with both universal service and the public interest and underpin the promotion and protection of ordinary consumer interests, which also form the rationale for regulation (e.g. Baldwin, Cave & Lodge, 2012; Lunt & Livingstone, 2012). Liberalisation does not automatically work for the public interest. Consequently, it makes sense to situate this study within the broader perspective of the public interest in the context of policy and institutional failure in terms of what happens after policies are adopted which surprisingly has received little attention theoretically or empirically, at least in telecommunications (For more details refer to Chapter 2).

### **The research objectives and research questions for this study**

The objectives of this research are to investigate how the key industry players (the legislators, regulators and the services providers) defined the ordinary consumers' interests; to examine the regulatory framework with a focus on the structures and processes that have been deployed to engage and empower the ordinary Nigerian mobile consumers to effectively participate in the regulatory process; and to evaluate the adequacy or otherwise of the complaints management processes of the market players and the regulator and assess how effective the existing complaint handling mechanisms have been. According to the ITU: "access to a fair and transparent complaint process, with sanctions for non-compliance, remains an essential part of an effective consumer protection framework" (ITU, 2009: 27).

In addition, this study evaluates the effectiveness of the existing enforcement mechanisms with focus on ordinary consumers' interests and protection. "Markets need clear and certain rules but they also require that such rules are effectively enforced" (Vukowich, 2002:96).

The three research questions that are addressed in this study are:

RQ1. If and how have the legislators, regulators and market players in Nigeria defined the ordinary consumer interest in the field of mobile communications?

RQ2. Focusing on regulatory structures and processes, how have ordinary consumers been represented since the liberalisation of the Nigerian mobile market in 2001?

RQ3. What processes have been established in the Nigerian mobile sector for the resolution of ordinary mobile consumer complaints and how effective have they been?

## **1.2 Study Methodology**

### **1.2.1 Epistemological/philosophical considerations**

In the process of conducting social research the considerations that are taken into account between qualitative research and quantitative research, depend on a range of factors including the nature, objectives and epistemology of the research (Snape & Spencer, 2003). The phenomenon of mobile telecommunications market embodies man-science interface and as such, a comprehensive insight into its complex interrelations can only be achieved through a mixed methodological approach. This is clearly reflected in the empirical documents used in this study, which contain both qualitative data (for example, legal documents and media reports) and quantitative data (for example, Commission's Annual Reports and Industry Statistical Reports).

Qualitative research requires an understanding of an event in its natural or social setting: often it is perceived as inductive in the sense that it uses evidence "as the genesis of a conclusion" while quantitative research is deductive, using "evidence in support of a conclusion" (Snape & Spencer, 2003:14). Furthermore, the assumptions that underpin social research are referred under two opposing epistemological stances: positivism, which upholds that the methods of inquiry in natural sciences are appropriate in social sciences, and interpretivism, which opposes the application of such methods in social research (Bryman, 2012). In this study, both induction

and deduction are employed in extracting findings and arriving at conclusions in accordance with the nature of the data in line with Snape & Spencer, (2003).

The empirical material relevant to the study's purpose are grouped in two broad categories: primary sources and secondary sources. The primary sources, comprising the policy and legal documents are authentic sources and are of universal application in the Nigerian telecommunications sector and as such these documents were objectively analysed according to the 'spirit and letter' which admits an interpretative approach. This approach was also applied to some of the secondary sources.

The secondary sources (e.g. Commission's internal and industry reports, research/ academic/ official reports etc.) are considered as 'text' which have specific meaning regardless of their origin from which the researcher endeavoured to extract findings. Although media reports (e.g. *the NCC Communicator* and online newspapers) are part of the secondary sources they are treated qualitatively as social products that provide context, meaning and colour to the events and issues in the sector. The data these documents yield were analysed inductively to support and/or validate the data from the other secondary sources.

Data collection was also supplemented with semi-structured interviews. These interviews deepened my understanding and threw more light on my experience of some key issues in the mobile telecommunications market. The interviews helped me to access the experiences of the interviewees and to compare their perceptions of those experiences with the views, which I had developed during my professional career in the industry and my involvement in the Telecommunication Consumer Parliament – a consumer outreach programme organised by the Nigerian Communications Commission (Commission). These interviews, which were recursive, also helped to clarify some grey areas. For example, the interview with a senior officer from the Association of Licensed Telecoms Operators of Nigeria (ALTON) did not only confirm the neglect of consumer interests by services providers but also threw light on why the operators are unable to fulfil their obligation to their consumers (See Box 5, Section 7.4.4). The subjective aspects of these interviews were taken into account during data analysis by adopting an interpretative approach.

Triangulation is necessary in document analysis because documentary information is usually context-based and as such “must be contextualised with other forms of research”, (Forster 1994:149 cited in May, 2001:187). Hence, the rationale for triangulation is because “no single method ever adequately solves the problem of rival explanations”, because various sources of data “reveal different aspects of empirical reality” (Patton, 1999:1192; Denzin, 1978). The findings emanating from this study benefitted from triangulating the primary and secondary sources with semi-structured interviews. Triangulation of sources was not necessarily to confirm that the data sources produce similar results rather it enhanced my access to additional data that, to some extent, filled the gaps left by the difficulties I encountered sourcing documents from the Commission and services providers. Triangulation also facilitated to enhance the researcher’s confidence by increasing her knowledge of the various phenomena and issues from different perspectives emanating from various data sources. Hence, the validity of this study rests on the fact that appropriate methods have been chosen and applied and the findings are based on relevant empirical documents (Flick, 2009).

### **1.2.2 Case study design**

Case study is a commonly applied method in research in many disciplines such as sociology, anthropology, political science and economics due to its distinguishing feature, which facilitates the understanding of complex social phenomena (Yin, 2009 cited in Maegli, 2012). The case study method is preferred “when “how” or “why” questions are being posed, when the investigator has little control over events” (Yin, 2003:1). Case Study research allows the use of different sources of data collection techniques: such as document analysis and survey (e.g. e-mail and interview questionnaires), it can be either qualitative or quantitative or both while case study designs may involve single- and multiple-case studies (Yin, 1994; Yin, 2003). A single-case study method is often employed in telecommunications policy research with focus on single country case, since multiple-case studies are difficult to conduct and replicate over time and geography due to rapid changes in technologies/markets and variation in countries’ adaptation of the so-called global best practices in institutional endowments and arrangements (Sutherland, 2016).

Therefore, this research employs a qualitative single-case method to gain in-depth understanding of the context that setup the competitive mobile market. For instance, how historic institutional evolution influences telecommunications policy, legislation and regulatory regime; how regulatory regime interacts with market players and how regulatory incentives shape markets and the behaviour of market players. Yin (2003:10) confirmed that: “case studies, like experiments, are generalisable to theoretical propositions and not to populations or universes”.

The case for this study is Nigeria, chosen based on increasing and recurring consumer grievances. In addition, the scarcity of research on the demand side of the markets particularly with focus on telecommunications policy and institutional performance in terms of what happens after policies are adopted in mobile telecommunications markets stimulates in the researcher a strong desire to contribute to academic literature in the area of ordinary consumer representation. Thus following from the previous discussion, this case study on ordinary consumer representation in the Nigerian competitive mobile market is conducted using document analysis; primary sources in triangulation with secondary sources and semi-structured interviews, to gain deeper understanding of the extent to which ordinary consumers’ interests have been promoted and protected.

### **1.2.3 Data collection methods and sampling techniques**

Research design provides means to collect and analyse data from a population (May, 2011). This study adopts qualitative data collection methods from relevant policy documents, secondary sourced documents and semi-structured conversational interviews. The key instrument used for data collection is document analysis. Purposeful Sampling technique was employed in the selection of primary and secondary documents that are relevant to the study’s research questions. Purposeful sampling technique allows a researcher to rely on personal judgement to select samples with particular characteristics, which will facilitate full investigation, and understanding of the research problem (Ritchie, Lewis & Elam, 2003). Fink (2003:1) agrees that: “A good sample is a miniature version of the population – just like it, only smaller”. Purposeful sampling was also employed in the selection of participants for interviews. In this study, the criteria used for selection of participants is experiences or expert knowledge



in policy implementation in the Nigerian telecommunications sector as well as in the field of telecommunications with focus on the study objectives. The reason was to draw participants with high level of expertise, within and outside Nigeria and the Nigerian Communications Commission (Commission), who provided the necessary clarification and confirmation for this study.

### **Document analysis**

Document analysis is suitable for this study as policy documents are usually well articulated and tend to explain in detail, circumstances surrounding the provisions given, reasons backing them up, when they apply or not apply, as well as provide materials to facilitate further research investigation (Karppinen and Moe, 2012; May, 2011). In addition, document analysis can be unassuming and thus tends to minimise transcription errors due to loss of meaning (Silverman, 2006; Creswell, 2009).

The legal and policy documents in Nigerian telecommunications sector - such as the Telecommunications Policy, 2000, Communications Act, 2003, regulations and Digital mobile licence - serve as primary sources of data in the telecommunications sector and are relevant in achieving the study objectives and answering the three research questions, formulated to guide this telecommunications policy research (Bryman, 2004; Karppinen and Moe, 2012).

The secondary data sources include the Nigerian Constitution and historical documentation, research conducted by the Commission and other national and international regulatory agencies, industry annual statistical reports, official studies/reports from International Telecommunication Union, European Union, and the World Bank, academic articles, books, press releases and newspaper articles. The media-online newspaper articles on Nigerian telecommunications sector, as well as reports from the BBC, have proved very useful in this research by facilitating analysis of ‘documents as texts’ beyond the conventional method of analysis of ‘document as sources’ in which documents are written with the authors’ intention.

Karppinen and Moe (2012:186) explain that analysis of ‘documents as sources’ provides factual data and historic background of their development while in analysis of ‘documents as texts’ “documents can be treated explicitly as texts or social products that have consequences in

themselves irrespective of their authors' intentions", by providing context and meaning to events reported in other documents. For instance, the newspaper articles facilitate to expose the context and informal influences surrounding activities of the Commission and other visible and invisible players in the liberalised mobile market, which have implications on the protection of ordinary consumers in the mobile market.

However, in general, document analysis even when documents are used as sources still suggests some form of textual analysis, which can be achieved by developing suitable analytical tools with which to interpret the texts (Bryman 2001 cited in Karppinen and Moe, 2012). In this regard, the theoretical framework-New Institutional Economics (NIE) with its analytical tools-discussed in Chapter 2 facilitates the interpretation of the texts, during document analysis.

The classes of documents collected and analysed include the following:

Legislations include:

1. Nigerian Communications Act, 2003.
2. Nigerian Telecommunications Policy, 2000.
3. National Information and Communications Technology (ICT) final Draft Policy, 2012.
4. Council for Consumer Protection Act, 1992.

The Commission's regulations include:

5. Three Licences: Digital mobile service, Pre-paid calling card service, and framework for value added services.
6. Ten Regulations: Competition practices 2007, Universal access and universal service 2007, Consumer code of practice 2007 and Individual consumer codes of practice 2010, Enforcement processes 2005, Quality of Service 2012, Mobile number portability 2014, Registration of telecoms subscriber 2011, Code of corporate governance for the telecommunications industry 2014, Business rules & port order Processes for mobile number portability 2013, and Enforcement processes 2013 (draft).

7. Five Legal guidelines: Advertisement and Promotions; Consultations 2007; Dispute resolution 2004; Procedure for granting approval to disconnect telecommunications operators; and Complaint adjudication (draft).
8. Determinations: Reports on the Public Enquiries.
9. Consultation paper on Dominance in selected communications markets including digital mobile market.
10. Mobile Number Portability regulations; Registration of SIM card regulations; Advertisement & Promotions; and Enforcement Processes Regulation and other regulatory documents, including:
11. Eight Consumer fact sheets: Consumer bill of rights; Procedures for lodging a consumer complaint; Phone etiquette; Number portability; Obligations of service providers to Nigerian consumers of telecoms services; Safety tips for driving using mobile; What you need to know about SIM registration; and Consumer Affairs Bureau (CAB).
12. Yearend Subscriber/Network Data Report for Telecommunications Operating Companies in Nigeria for 2013 and 2014.
13. Nigerian Communications Commission Strategic Management Plan (2014 – 2018).
14. Five Commission's Annual reports, 2009 to 2013.
15. Two Commission's Consumer Affairs Bureau Annual Reports, 2011 and 2012.
16. Four Consumer Affairs Bureau quarterly reports.
17. 9 Compliance Monitoring and Enforcement quarterly reports.
18. Two Evaluation Criteria: CAB and Technical Standards Department.

19. Secondary research report: Consumer Protection in Nigeria commissioned by Consumer International; and Consumer Satisfaction Survey commissioned by the Commission.
20. Memorandums of Understanding between the Commission and two agencies: Consumer Protection Council and Advertising Practitioners Council of Nigeria.
21. Telecoms newsletter and Bulletins.
22. Media – online newspaper articles covering telecoms events and reports that impact on consumer protection and market competitions.
23. Relevant on-line documents and articles on consumer protection and communications policy adoption and implementation.

In addition, this research benefitted from materials and the views of experts who have contributed to the development of the Nigerian communications' legal and regulatory frameworks. Documents used also came from the NGOs involved in consumer protection as well as insights from some leading telecommunications equipment manufacturers and vendors especially on the features offered by the billing platforms susceptible to abuse by mobile service providers. Adequate care was taken to ensure that all the documents collected and analysed facilitate to evaluate the extent to which the ordinary consumer has been represented in the Nigerian mobile telecommunications sector.

### **Interviews**

The complementary semi-structured interviews or conversations with purpose (Lindolf, 2002) were undertaken with key policy-makers, stakeholders and other informants within and outside the Nigerian telecommunications sector whenever the need arose mainly for clarification purposes as well as getting familiarised with the context during document analysis. Lindlof and Taylor (2002) agree that interviews can be used in verification and validation stages as well as allow researchers to comment on information obtained from other sources. Therefore, interviews or (conversations) held in this study facilitated the understanding of some blind spots

in consumer issues and the historic context that led to their development which are usually not captured in policy documents. Blind spots include none-institutional or socio-political practices such as cronyism which impact on policy implementation and cause detriment to ordinary consumer (Freedman, 2008).

The researcher conducted fourteen interviews with key telecommunications policy-makers and stakeholders in Nigeria (third quarter 2014) and in London (second quarter 2015). The objectives for this study were duly communicated to the interviewees and their consents were obtained. The interviews consist of: four 2-hour semi-structured interviews; three 1.5 hour face-to-face interviews, including one conducted via Al Jazeera, for the 'Head to Head' TV show at the Oxford Forum, Oxford, UK, on 14<sup>th</sup> April 2015; and seven mixture of phone/e-mail interviews. Some of the interviews either started as face-to-face or as telephone discussions before the interviewees requested that the questions be sent through e-mail. The reason adduced was mainly due to time constraints, as the interviewees appear to be very busy people. In addition, the e-mail communications proved useful during the document analysis stage, as the researcher went back and forth to discuss gaps in the findings with these experts, both in Nigeria and in London including some Commission staff and consumer advocacy bodies, to get their views and confirm doubts. This researcher finds the e-mail interview beneficial as it eliminates the time and errors due to transcription. In addition, the respondents have sufficient time to think through the questions, add supporting data and evidence and sometimes extend the questions. On the other hand, its major disadvantage is that it takes more time to conclude an interview because the interviewees work at their pace.

The following semi-structured interviews are deliberately included in this methodology section because they facilitate better understanding of the context of the study.

The first semi-structured interview was with the Minister of Communications at the time of the Nigerian telecommunications reform of 1992 and an Executive Commissioner in the Board of the Commission (from 2000 to 2010) at the time the mobile market was opened up to competition in 2001. This interview is particularly important because the Minister of Communications served as the telecommunications sector regulator during the monopoly era in Nigeria. The two-hour semi-structured interview revealed that consumers were accorded

rights, which were well documented before the reform. Secondly, it revealed that the previous ministers who were military men were not aware of the digitalisation trends in the world until he, a civilian permanent secretary who has been representing Nigeria in ITU meetings, took over from the last military minister in 1990. He hired a consultant and handed him copies of the Australian and the British Telecommunications' Acts to study and come up with a document for Nigeria. This document scaled through the Council of Nigeria Ministers as well as Government approval in 1991 and was published under the Military regime as Decree 75 in 1992.

The key driver for the reform was the need for telecommunications infrastructural development and the need to avoid digital exclusion. The second driver, he said, was the handicap ordinary people had to overcome in order to have access to basic telephony, which was, at that time, regarded as a luxury. This trend was reversed with the licencing of private operators to compete with the incumbent.

The Minister confirmed that the Decree allowed only limited competition in the telecommunications sector. Hence, although the Nigerian telecommunications sector was liberalised in 1992, the National Assembly reviewed Decree<sup>2</sup> 75 in 1999, by when the civilian government came into office, to become an Act and to allow full competition in telecommunications sector. The Telecommunications Act, 1999 (reviewed Decree 75) ushered in the second phase of telecommunications reform in 2001, with opening up of mobile market to competition. The review of the Telecommunications Act, 1999 was initiated, executed, and funded by the Commission when the interviewee - Minister – was Executive Commissioner in the Commission's Board and this researcher was the Director, Standards in the Commission. The review, which received Government approval, was published in 2003, as the Nigerian Communications Act, 2003.

The second semi-structured interview was with the telecommunications consultant who was commissioned by the Minister of Communications to develop the legal framework- Decree 75

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<sup>2</sup> Decree, 75: the name decree implies that the Government in power is Military that has not been democratically elected by the people for the people.

which informed the telecommunications reform in Nigeria in 1992 and also, with due amendment in 1999, became Act, 1999 which led to the opening up of the mobile market to competition in 2001. This in-depth interviewee confirmed the Minister's account of the Nigerian telecommunications legal transformation. He revealed that the document he produced for the then Hon Minister of Communications which was published as Decree 75 was an adaptation, not a carbon copy, of the Australian Act which he found more relevant to Nigeria. He did not use the British telecommunications law because he did not find it suitable for Nigeria, for instance, besides having Ofcom as the regulator, the British system has no board of governors or directors or whatever, hence he advised the Minister accordingly.

Another semi-structured interview with ex-Director of the Commission's Consumer Affairs Bureau sought to understand why there existed a significant gap between the formal rules in consumer protection and the rules in use in the competitive mobile market. The interviewee revealed that in Nigeria it is the seller's market hence the situation in the mobile telecommunications market is not different.

The above semi-structured interviews bring to fore the role of path-dependency and strategies employed by dominant policy-makers, in this instance the Minister of Communications, serving as telecommunications regulator then, to single-handedly initiate and introduce the Decree 75, which informed the Nigerian telecommunications reform in 1992. This was the norm during the thirty years of military authoritarian regimes preceding the regulatory regimes discussed above. It is part of the legacy the politicians and technocrats inherited from the military rule and held onto because it served their personal interest. It confirms that history matters and draws attention to the importance of historic policy legacies and broader country characteristics such as weak democracy, weak institutions marked by bureaucratic corruption non-transparent transactions as well as very little history of civil society. These legacies still prevail in the socio-economic, political and regulatory environment in the Nigerian telecommunications sector as evidenced in Part II-empirical section of this study. It also explains why ordinary consumers' views are not sought for and taken into consideration by the Commission in implementing policies on matters of interest to them.

However, it is worth mentioning that the researcher made abortive attempts to interview the then Commission's Chief Executive Officer (CEO) under whose watch the mobile market was opened to competition in 2001 and who initiated the review of the Telecommunications Act, 1999 to create the current Nigerian Communications Act, 2003. Unfortunately, he did not manage to get back to me in this regard, as he promised, probably because he was then fully engaged with his campaigns to be elected to the Senate of the Federal Republic of Nigeria.

One wonders why these conversations seem novel. This question is answered by Kingdon (1995 cited in Van den Bulck, 2012:224) who found out that:

“Policy-makers often do not know where policies have come from. He concludes from it that the policy process is tainted by coincidence and chance as much as negotiation and insight”.

The other interviews have been equally very useful in complementing the document analysis as evidenced from the empirical Section-Part II of the study.

#### **1.2.4 Data Analysis**

##### **Institution Decomposition Model**

Saleth and Dinar in 1999 established a comprehensive model for evaluating institutional performance. To achieve this, Saleth and Dinar (1999) decomposed water institution into three main components: policy, law and administration and in the second stage, they further decomposed each of the three components of water institution into the component's aspects. However, this study seeks to extend Saleth and Dinar (1999) decomposition model by introducing enforcement as the fourth component of the mobile institution. In this way, this study seeks to fill a gap and to facilitate the evaluation of the Nigerian mobile institution with focus on consumer representation.

The Nigerian mobile telecommunications institution is decomposed into four main components, namely: mobile policy, mobile law, mobile administration and mobile enforcement. The aim is to 1) assess if the regulatory reform in the mobile market is supported



by appropriate institutional arrangements, and 2) to ascertain the contribution of each of the four components of the mobile institute (policy, law, administration and enforcement) to the promotion and protection of the ordinary consumers' interest in the Nigerian mobile telecommunications sector.

The study will also take notice of the extra-institutional factors like the prevailing regulatory environment in drawing conclusions. It will be guided by the NIE approach particularly the Transaction cost, Agency and Property right aspects in evaluating how each of the main components of the Nigerian communications institution has enabled or disabled the definition of the ordinary consumer and ordinary consumer interest in the liberalised mobile market.

Transaction cost with reference to ordinary consumers includes the cost of accessing and assessing information, the preparation and submission of documents to public inquiries and arbitration, time and effort required to contact the Commission's or services providers' help desk or contact centres and switching costs. On the part of the Commission it includes the cost of monitoring and enforcement because the proper functioning of institutions, with reference to the Transaction Cost Theory, depends on the costliness of enforcement (North 1990). Agency problems are likely to occur between the Nigerian Legislature, as the principal, and the Commission as the agent, if the politicians/service providers capture the Commission. Alternatively, if the Commission acts in a manner that is not transparent or inherently difficult to monitor or if the Legislature lacks the control mechanisms to achieve effective and direct impact on the Commission's behaviour. It is not easy to ascertain or assess if an agent will always act in the best interest of the principal (North, 1990; Jensen and Meckling, 1976). Property rights include the operating guidelines such as the roll out obligations as well as several incentives- disincentives embedded in the licenses. It has implications for the availability, accessibility and affordability of telephones services. The promotion and protection of consumer interest is tied to how these situations play out in practice.

In general, in each of the three empirical chapters of part II, the researcher starts the analysis with the National Telecommunications Policy (NTP), to find out if the NTP in its vision of the telecommunications sector had issued any directions on the promotion and protection of ordinary consumer with focus on the chapter's objective. Thereafter, the analysis shifts to the

mobile law (the Act 2003) to assess if there are provisions in mobile law for the promotion and protection of ordinary consumer with focus on the chapter's objective to facilitate the actualisation of the directives of the NTP and to ensure if there are provisions for achieving these in practice. Thereafter, the analysis shifts to the mobile administration and finally to the mobile enforcement respectively to examine how these components of the mobile institution have contributed to influencing the realisation of the policy objectives as it relates to the chapter's specific research question.

### **1.2.5 Role of the researcher and genesis of the researcher's interest**

One of the strengths of this study is the researcher's 'insider status' and cognate experience in the diverse fields of telecommunications in Nigeria from 1978 to 2010. The researcher is not only familiar with the research context but also has been an integral part of the market players during her professional career in the sector. The researcher has worked in various capacity, in the Nigerian Incumbent Network from 1978 to 2001: starting as pupil engineer in Nigerian External Telecommunications Limited (NET) to serve as Deputy General Manager (Planning and Operations) in Nigerian Telecommunications Limited (NITEL) from 1993 to 2001.

The researcher also has worked as telecommunications regulator in Nigerian Communications Commission (Commission) from Sept. 2001 – Jan. 2010: serving as Director of Standards from 2001 to 2004 and as Director of Traffic and Network Optimisation from 2005 to 2010. Therefore, the researcher's cognate experience in the diverse fields of telecommunications facilitates this study. Experience shows that in developing countries, service providers are sceptical of regulators and that both regulators and service providers, seldom engage with independent researchers concerning inquiry about their performance (Eniola, 2006). Thus mindful of the challenges that this study might bring, concerning critical engagement with the sector during data collection, it was necessary to choose policy document analysis as the primary source of data. This facilitates to create a critical distance for the researcher but at the same time enables the researcher to conduct unbiased research with high accuracy in data interpretation.

However, it is important to add that the researcher encountered many difficulties trying to get an interview with the immediate past Executive Vice Chairman of the Commission despite the introductory letter for the study, which the researcher's Director of Studies sent to him. The feedback from his assistants was that all regulatory documents were on the Commission's website. Unfortunately, the documents on the Commission's website did not sufficiently satisfy the study requirements. Furthermore, the Commission lags behind in publication, for instance its latest Annual Report is that of 2013. The same goes with their publications on the website, for example, the Technical Standards website has the Performance Indicators Comparative Report (mobile service) of January 2014 still tagged as latest (new) report as at March 2016.

At last, the researcher passed her requests to the Consumer Affairs Bureau and Public Relations Directorates through the Commission's Lagos Zonal Controller. Despite several phone calls and persistent e-mail exchanges for over two years- 2014 and 2015 inclusive, only three items were received out of the several items requested. In the end, the Zonal Controller confirmed that the Commission was not responding to the researcher's request.

It is equally important to note that one of the active voluntary telecommunications consumer advocacy body-NATCOM did not have the consumer code of practice and was willing but unable to source the consumer code, on behalf of the researcher, from the mobile service providers. The researcher had similar experience with some of the Commission staff, who were willing to assist but encountered difficulty sourcing the information on the researcher's behalf.

Non-online secondary sources such as the Commission's internal quarterly and annual reports, the individual consumer codes of the three mobile networks and other policy documents, proved very useful in the empirical section- Part II of the thesis. These documents were informally sourced from my former colleagues/friends who are still in the Commission and others who are now working in the mobile service providers' networks. As Metcalf (1998: 327) rightly observes, relationships forged with colleagues prior to conducting research frequently provide the researcher "much-needed emotional support" to the gains of the study. The internal reports contain actual events with corresponding data, which were either omitted or altered in the published versions.

With the exception of AIRTEL, the other three mobile service providers were reluctant to give out any consumer-related information. The enormity of this challenge can be seen from the following incident: The Commission hired a consultant to carry out a study on Operators Compliance Index. When the consultant was invited to make a presentation on the status of the project on 4<sup>th</sup> February 2013:

“the Commission received a report from the consultant highlighting the challenges faced in obtaining data from some network operators in Lagos State. The Commission visited the affected companies to facilitate the consultant to obtain the necessary data. Finally, the consultant made a presentation on 4<sup>th</sup> October, 2013” (NCC Annual Report 2013:81).

The inclusion of the above incident in the Commission’s 2013 Annual Report, indicates the magnitude of the problem. It is also an evidence of the Commission’s level of aptitude in handling violations of the provisions of the law by network operators (discussed in Part II- chapters 5, 6, and 7). It also confirms that operators are very reluctant to give out information about their activities even to the Commission. This experience is common among academic researchers in the telecommunications sector in Nigeria as observed by Dr Eniola Samuel (2006).

The researcher’s interest to study ordinary consumer representation in the digital mobile market can be traced to her observations from 2001 to 2009, while participating in Telecommunications Consumer Parliament (TCP) sessions as member of the Nigerian Communications Commission’s (NCC) team. This researcher observed that, consumers comprise diverse groups of people of varying interests and needs with ideologies and behavioural biases to which neither the regulator (Commission) nor service providers paid adequate attention to understand. Consumers are generally not adequately informed and most times service providers present them with choices that are not clear or neutral or which they cannot easily comprehend (for example, tariff plans). Hence, they tend to make wrong choices that impoverish them; consumers are generally unaware of legal provisions and their rights as well as existing channels of redress in the telecommunications sector and as a result are unable to hold their service providers accountable.

Furthermore, the consumer often appears to be helpless without the support of statutory advocacy bodies in the telecommunications sector, to nudge them in directions that are beneficial to them without limiting their freedom of choice (Thaler and Sustern, 2009). It would appear, as is erroneously assumed in literature on neoclassical economics, that ordinary consumers in Nigeria telecommunications were assumed rational and could maximise their preferences, at zero transaction cost, without consumer advocacy and representation. Finally, this researcher observed that under consumers' helplessness, quietude, and the absence of independent consumer representative bodies, services providers are able to avoid compliance to rules for a long time. These observations and reflections left in the researcher a strong determination not only to contribute to academic debates in literature in this context but also to enhance consumer interest and protection in practice.

However, to ensure a proper disposition to conduct this study having served in the Nigeria Communications Commission for ten years this researcher joined the UK Ofcom's Consumer Forum for Communications (CFC) in 2014. Ofcom-the UK Communications regulator-, hosts the CFC but it has an independent Chair, who is also independent of Ofcom. The CFC consists of more than eighty-(80) organisations and individuals who represent consumers and citizens and have an interest in communications. The CFC uses the eye of the consumer to monitor Ofcom's activities. For instance, it uses set criteria to evaluate if Ofcom has carried out a proper programme of research, to correctly judge and reflect consumers' interests while deciding on a particular matter as well as to establish the effectiveness of new policy that Ofcom implements on the particular matter. CFC uses outcome performance to ascertain the effectiveness of newly implemented policy by assessing: if all the service providers have adopted best practice for the sector on the particular matter; if performance improved over time on the particular matter, and if performance improved compared to other sectors in the UK as well as other countries outside the UK on the particular matter. The researcher has participated actively in the activities of CFC since 2014 and looks forward to actualising the indispensable experience gained from CFC in Nigeria particularly to ensure ordinary consumers are properly represented in the telecommunications sector.

The scope of this study period spans from the year 2000 to t year 2015. The reason for starting in year 2000 is that a new Nigerian Telecommunications Policy (NTP) was published in October 2000, in preparation for the liberalisation of the mobile market in 2001. The reason for ending in year 2015 is that fifteen years of post-liberalisation is appropriate to evaluate the aftermath of the Nigerian mobile market reform with focus on policy implementation and its implication for the representation of ordinary consumer in the competitive mobile market. Thus, 2000-2015 is an appropriate timeframe to address the research aims.

The limitation of this study is that since the key documents sourced for analysis in this research are developed purposely for the Nigerian telecommunications sector, it may tend to restrict generalisation of findings. However, some cross-country comparisons were made and the study references other countries, both developed and developing.

This section has discussed the use of single case study method involving triangulation of sources of data collection (primary and secondary sources of data and semi-structured interviews), used in conducting this research and this researcher's motivation and challenges in the course of this study. The next section discusses previous research and contribution to knowledge.

### **1.3 Previous Research and Contribution to Knowledge**

This research on communications policy with a focus on the aftermath of policy adoption in the Nigerian mobile market, which was opened up to competition in 2001 offers the first critical study on promotion and protection of ordinary consumer interests in the mobile market and aims to contribute to the scarcity of research literature in this area. In addition, this research aims to contribute to wider debates on policy failure in academic literature, a field that has not attracted adequate theoretical or empirical attention in telecommunications.

This study of ordinary consumer representation is timely as there is increasing recognition of the important role of the demand side of markets in the dynamic and complex regulatory process because competition alone is unable to achieve policy objectives. Thus engaging consumers appropriately as a means of achieving policy objectives in the mobile market is still evolving in many countries.

The literature reviewed revealed an interesting shift from the supply side (supply of service) to the demand side of the market (consumer welfare) with on-going debates, particularly in the UK and Australia, about the representation of citizens and consumers in communications policy and regulation. In this context and relevant to this study is an important paper written by Damian Tambini (2012) an ex-member of Ofcom's Communications Panel titled: Consumer Representation in UK Communications Policy and Regulation. The aim of the paper is to examine the role of the consumer representation in policy making with focus on the communications sector in the UK. The paper argues that there is an important role for Ofcom's Consumer Communications Panel and also that consumer advocates have an important role to play as a result of information overload, market failure and consumer behavioural biases. The paper's finding is that an ongoing role exists in media and communications for consumer advocates who should be independent of government and the regulatory body.

The above paper examines consumer representation in the UK communications policy-making process as an on-going concern as opposed to ex post assessment of ordinary consumer representation in the Nigerian competitive mobile market, with a focus on the aftermath of policy adoption, which is the thrust of this study. As explained above, recognition of the importance of the demand side (consumer welfare) of markets, such as engaging consumers appropriately with necessary institutional structures and processes, is evolving in many countries. This perhaps explains the dearth of literature on the topic.

Academic debates with regard to the regulation of commercial communications in general seem to focus on the design of optimum regulation or rules to stimulate the liberalised market performance. For instance, Levy and Spiller (1994) carried out a research of five countries (Argentina, Chile, Jamaica, the Philippines and the United Kingdom) and highlighted the major constraints in the design of optimum regulation as institutional endowments and regulatory governance. They argued that these two factors – institutional endowments and regulatory governance – influence the regulatory incentives (i.e. regulation or rules) and consequently the sector's performance. Their findings reveal that performance varies from one country to the other. Researchers using Levy and Spiller's regulatory governance framework such as Increasing Regulatory Capacity have conducted many country case studies. The role of the

region in shaping national ICT policy in Southern Africa (Gorp, 2008). However, these country case studies did not pay any significant attention to consumer interests and protection.

Concerning the state of consumer interest and protection in Nigeria three research reports, exist. In 2013, the Consumer International and Open Society Initiative for West Africa commissioned a Nigerian NGO - Consumer Awareness of Nigeria to undertake a study: 'Research Report on the State of Consumer Protection in Nigeria: A review of the Consumer protection in the Telecommunications sector in Nigeria', the result of which was published in January 2014. The project's aim was to empower individual consumers through the realisation of their rights. The Focus Group Discussions revealed that most consumers are neither aware of the relevant laws that give them protection in their daily transactions nor aware of the channels of redress. Consumers detest using the court for redress because of the high cost of litigation and because they lack faith in the judicial system and "for similar reasons including sentiments, complaints are not readily lodged with service providers" (CI, 2014:6).

The second research 'Nigeria Consumer Satisfaction Survey' was undertaken in 2012 for the Consumer Affairs Bureau in the Commission by the NCC Consumer Satisfaction Survey Team (NCC.CSS, 2012). The research team comprises the Commonwealth Telecommunications Organisation and three other national companies. It is the first and only nationwide consumer survey conducted by the Commission since 2001. The objectives of the project were to: determine the quality of service provided by mobile, fixed phones, and internet service providers, and the robustness of their complaint management process; ascertain consumer complaints' profile and frequency; determine consumer awareness of their rights, benefits and the obligations to service providers; and make recommendations for how consumer awareness of their rights could be improved. The findings of this research include that 32% of mobile phone users made a complaint in previous year; high status users and more sophisticated groups of mobile phone users were more willing to complain reflecting a stronger sense of empowerment.

The third research is an academic research conducted by Dr. Eniola Samuel in 2006 for a degree of Master of Business Administration – 'Customer Satisfaction in the Mobile Telecommunications Industry in Nigeria.' The aim of the research was to investigate the overall



customer satisfaction of the mobile telecoms industry; the relationship between satisfaction and demographics; and factors influencing satisfaction. The research findings are: 5% of respondents were highly satisfied and 57% satisfied; a mix of network quality, billing, and customer support and validity period had stronger relationship with satisfaction while age, gender, employment and location variables presented weak relationship. The author remarked that unlike the developed countries there is dearth of research despite the economic and social benefits of the mobile telecoms to the Nigerian economy and market, and confirmed that his contacts with the mobile service providers for any useful information yielded no response. He wrote that the few pieces of literature available focus on the impact and development of telecoms, communications and mobile telephony and that the limitations affected his study.

### **Contribution to knowledge**

This study about the aftermath of policy adoption in the Nigerian telecommunications sector is novel. It offers the prime critical study on the promotion and protection of ordinary consumer interests in the liberalised competitive mobile market since 2001.

This study seeks to make four main contributions to the field of telecommunications policy research:

First, the empirical study conducted in Part II suggests this study as a good case of policy failure, a field that has not attracted adequate attention either theoretically or empirically in literature (Bovens and Hart, 2016). Hence, the study contributes to the knowledge base in academic literature on policy failures, by giving explanations to what went wrong with protection of ordinary consumers in the competitive mobile market as well as evaluating the practical issues involved. In particular, this study by using the new institution economics framework draws attention to the importance of policy legacies and broader country characteristics such as lack of independent statutory consumer bodies and well-resourced civil societies as well as the weak institutional structures and capacities, including none-responsive monitoring and enforcement mechanism, to explain policy failure.

Second, in contrast to neo - liberal thinking this study confirms the importance of regulation not only in facilitating the introduction of competition but also in delivering policy objectives

and the anticipated benefits to *ordinary* consumers. Therefore, since most debates in the literature reviewed on post-liberalisation are centred on policy and regulatory frameworks that specifically target competition, the results of this research aim to contribute to broader debates that liberalisation also requires policy and regulatory framework that specifically targets the ordinary consumers' interests and protection.

Third, this study makes another contribution by adapting the institution decomposition analytical framework by Saleth and Dinar (1999) to provide the means of evaluating how the Nigerian mobile institution has enabled or disabled the representation of the ordinary consumer in the competitive mobile market. In addition, the study extends Saleth and Dinar (1999)'s three-components (law, policy and administration) by introducing enforcement as the fourth component of institution. In this way, this study aligns with North (1990, 2005) to emphasise that the consideration of enforcement mechanisms is important for institution decomposition analysis in telecommunications.

Fourth, this is especially the case for developing countries. The study presents detailed evidence about the issues surrounding consumer interest and influential representation in the Nigerian telecommunications sector and aims to contribute to knowledge in this area.

Finally, the study's focus on the mobile sector is important given the global significance of this sector. To the best of my knowledge, there seem to be no empirical research or methodological approach to evaluate how ordinary consumers have been represented in digital mobile telecommunications markets, perhaps due to continued emphasis on the supply side of markets and on policy-making, which is only recently shifting to the demand side.

#### **1.4 Organisation of the Thesis**

The remainder of the thesis is divided into two parts. The first part offers the analytical framework and background, comprising of three scene-setting chapters. The second part is the empirical research comprising three empirical chapters and the thesis conclusion.

This section explains the structure of the thesis.

The next chapter sets the scene by first situating this study -ordinary consumer representation in liberalised mobile market- into its broader perspective of public interest before building the theoretical and analytical frameworks that underpin the empirical research undertaken in the second part of the thesis. Thus, the chapter elaborates on the process for adoption of New Institutional Economics (NIE) as well as draws on literature on the conceptual framework of NIE, which focuses on transaction cost, agency and property right to provide the necessary guidance for the empirical chapters.

In addition, this chapter adopts Saleth and Dinar's (1999) Institution Decomposition Model to guide institutional data analysis in the empirical part of this study. However, in contrast to the water institution which Saleth and Dinar (1999) have broadly decomposed into three major components – policy, law, and administration – this study seeks to extend the model by separating the enforcement mechanisms as the fourth component of institution to facilitate institutional analysis. This conceptual separation is necessary because the enforcement function is vital for the regulatory agency to secure mobile sector compliance to existing regulations and thus enhances promotion and protection of consumers' interests. This is evidenced in the findings in Part II - the empirical chapters.

Study findings reveal that, in practice, it is difficult for the regulatory agency to be effective without the industry perceiving that tough enforcement mechanisms, which are in place, are ready for action (Ayres and Braithwaite, 1992,). Thus, Bandaragoda (2000:28) argues, “the gap between the declared rules and the rules-in-use is basically a result of the laxity in rule application and enforcement”.

In Chapter 3, the study presents a brief overview of the major historical events that shaped the present socio-political and economic environment of Nigeria in which the telecommunications industry operates. First, it flags Nigeria's natural and human endowments, which placed her as the largest economy in Africa with a telecommunications industry that is one of the fastest growing in the world.

In a short overview of the socio-political history it shows how the 3 years of civil war (1967-1970) at the heel of independence from Britain, the 30 years of military rule that followed and the discovery of oil in the 1970s left as a legacy a culture of corruption, clientelism and impunity. In 16 years of democratic rule, this legacy has been raised to unprecedented levels by the political elites. The result has been weak institutions, lack of infrastructural development, unemployment and poverty. It also gives an insight on how the bureaucratic and other forms of corruption have infiltrated and influenced the regulatory function as it relates to the promotion of the ordinary consumer interest and representation in the telecommunications sector.

In subsequent sections of this chapter, the study highlights the factors that led to the failures that characterised the evolution of the Nigerian telecommunications through the early years until 2001, the suppressed demand and the subsequent exponential growth in subscribers' numbers in the years following the liberalisation of the sector. It looked at the challenges the socio-political and economic environment presents to businesses and to the telecommunications industry in particular and argues that it adversely affects cost of doing business and the price the ordinary consumer pays. Finally, it highlights the vulnerability of the ordinary consumers and the different challenges they encounter in the liberalised, complex and fast changing mobile market and advocates for more commitment towards pro-consumer regulatory interventions.

Chapter 4 aims to explore the current global trend in ordinary consumer representation and complaints management, which will form the background for the interpretation of the findings in the empirical Chapters 6 and 7 of this study which focus on processes of ordinary consumer representation and complaints management respectively. The chapter starts by discussing the inevitable need for regulation in liberalised competitive markets. It asserts that the ultimate goal of regulation is the attainment of policy objectives that include the promotion of consumer interest. It reviews and affirms the crucial role of consumer representation bodies in facilitating consumers' influential participation in the regulatory process, which also tend towards the achievement of policy objectives. Finally, the chapter looked at consumer complaints management processes that are, at the same time, a potential cause of consumer complaints and an important dimension of consumer representation.

Chapter 5 is the first of the three empirical chapters. In its introductory section it reminds the reader that the major data collection methodological approach for the three empirical chapters will be ‘Document analysis’ guided by the theoretical framework based on New Institutional Economics with its three analytical tools: transaction costs, property rights and agency concept and facilitated by the adapted Saleth and Dinar (1999) Institutional Decomposition Model. The model decomposed water institution into three components: policy, law and administration while this study extended it to include the enforcement component of mobile institution. The chapter explains the decomposition of the Nigerian mobile institution into four major components – mobile policy, mobile law, mobile administration and mobile enforcement. It goes further to explain the evaluation of how each of the main components of the Nigerian telecommunications institutions and their main aspects have contributed to the definition of the ordinary consumer and ordinary consumer interest in the liberalised mobile market.

The main purpose of this Chapter is to address the first research question. It seeks to ascertain by analysing the policy and legal documents, if and how the legislators, regulator and market players in Nigeria have defined the ordinary consumer interest in the field of mobile communications. In each section it focuses on one component of the mobile institution and by analysing the provisions in the National Telecommunications Policy (mobile policy), the Nigerian Communications Act and regulations (mobile law), the Nigerian Communications Commission reports, publications etc. (mobile administration), and other relevant documents relating to monitoring and enforcement (mobile enforcement) it assesses the extent to which each mobile component has contributed or otherwise to the definition of ordinary consumer interests.

In this chapter, the thesis highlights the justification of conceptualising enforcement as a component of mobile institution for analytical purposes. It argues that without effective enforcement of set rules the provisions of the Act and regulations are at best mere optional guidelines. It also highlights the existence of conflict of interest in the Commission, which undermines ordinary consumer interests.

The focus of Chapter 6 is on the institutional structures and processes for the ordinary consumers’ influential participation in the regulatory process as it seeks answer to the question:

Focusing on regulatory structures and processes, how have ordinary consumers been represented since the liberalisation of the Nigerian mobile market in 2001? In seeking to answer this query, it examines the structures and processes, which are specifically provided to facilitate the realisation of four of the key dimensions of consumer representation, which were articulated in Chapter 4. These are provision of choice, provision of information, consultation, and efficient framework for consumer representation.

Following the strategy in Chapter 5, the thesis evaluates the individual contributions of the mobile policy, law, administration and enforcement to the representation of the ordinary consumer. It starts by investigating if the National Telecommunications Policy, in its vision of the proposed telecommunications sector, had issued any directions that relate to the four dimensions of consumer representation. Then the search is shifted to mobile law (The Act and its regulation) to assess if the provisions in the mobile policy have been given sufficient legal backing to ensure that ordinary consumers' opinion and interests are adequately considered in the policy-adoption processes with a focus on ordinary consumer representation. Attention is again shifted to the mobile administration and enforcement components of the mobile institution to assess how these components have contributed in influencing the realisation of the policy objectives as it relates to the representation of the ordinary consumer.

One of the important findings in this chapter is that there is no provision in the legal documents for the establishment, inclusion or support of independent consumer advocacy groups. Hence, the main argument in this chapter is that without well-resourced independent consumer body, the ordinary consumer will neither be able to harness the provisions in the mobile law nor hold the Commission and services providers to account. Nigeria has very little history of civil society and advocacy groups and this chapter highlights the importance of these issues.

Complaints resolution is one of the key dimensions of consumer representation and the focus of Chapter 7. The other dimensions – provision of information, consultation, and provision of choice and efficient framework for consumer representation – featured in the previous chapter. In this chapter, the focus is on the question: What processes have been established in the Nigerian mobile sector for the resolution of ordinary mobile consumer complaints and how effective have they been?

To address the Research Question Three, this study employed the extended Institutional Decomposition Model, which was used in the previous two empirical chapters. The analysis is based on the four main components of the mobile institution– mobile policy, mobile law, mobile administration and mobile enforcement and their main aspects in order to ascertain how they have influenced the ordinary consumer complaints management. In this chapter, the study also relied on the NIE analytical tools: transaction cost and agency in drawing conclusions.

The main findings include that the services providers' complaint handling process is inaccessible and ineffective. This prevailing situation is another outcome of the Commission's soft-handed approach to the enforcement of rules.

Chapter 8 presents a summary of the main findings of the thesis in its attempt to answer the three research questions.

## **CHAPTER 2 Sourcing Ordinary-Consumer-Centric Theoretical and Analytical Frameworks**

### **2.1 Introduction**

This chapter has two aims: first, to situate the study in a broader perspective of public interest and in the context of policy and institutional failure, and second, to establish a suitable theoretical framework to guide this study in assessing the extent ordinary consumers have been represented in the liberalised Nigerian mobile telecommunications sector. These aims are organised in four broad sections.

The first section reviews the traditional framework for the management of the telecommunications sector and locates it in the realm of public interest. It then attempts to come up with a clear definition of the public interest in telecommunications for the purposes of this study. This is necessary because the notion of the public interest appears ubiquitous, but rarely visible in practice.

The second section discusses the Economic Theory of Regulation and the Neoclassical Economic Theory and explains their limitations. For instance, the Neoclassical Economic Theory assumes that the consumer is fully armed with all the required information and that the consumer is both an articulate and rational being. The contrary argument is that although information is necessary, it is not sufficient by itself to guarantee competition benefits to the consumer due to consumers' limited capacity (Korobkin and Ulen, 2000). This and other gaps in neoclassical economic assumptions pose difficulties in the use of the neoclassical approach as a methodology for this study.

The third section compares the weaknesses and strengths of five institutional approaches, which facilitate the adoption of the broader New Institutional Economics (NIE) approach, which provides theoretical guidance for this study. This part discusses the three major analytical tools of NIE that are important for the study, namely: the transaction costs, property rights and agency. It confirms that institutions matter and highlights two critical claims of NIE about institutions which provide useful insights in this study: 1) it analytically allows for a clear distinction between institutions as the rules of the game (example: the United States



Constitution, the Nigerian Communications Act 2003) and organisations as the players in the game (example: the Senate, a regulatory agency); 2) it emphasises that the real incentive structure that shapes human exchange in a society consists of formal rules, informal constraints and their enforcement characteristics (North, 1990). These two claims are crucial in the understanding of the influences of institutions and institutional change.

Having established the significance of institutions in the theoretical section, the fourth part of the chapter answers the query - if institutions matter (theoretical framework), how can we study them (analytical framework)? This last section disintegrates institutions into key elements for analytical purposes. These elements will help to guide and structure the empirical part of the thesis. The analytical framework consists of an adaptation of the Saleth and Dinar (1999) institution decomposition model and extends it to include the enforcement component of institution. The decomposition process involves two levels: **1)** The mobile institution is decomposed into four components, namely: mobile policy, mobile law, mobile administration and mobile enforcement; **2)** the four components are further decomposed into their constituent aspects, sourced from literature and topical debates on consumer interests and protection. These institutional aspects form the basis for evaluating the contribution of the mobile institution to ordinary consumer representation in the Nigerian mobile telecommunications sector. Finally, the section explains how the institutional aspects facilitate to answer the three research questions.

## **2.2 The Public Interest in telecommunications: It underpins ordinary consumer interests in competitive mobile telecommunications market**

Governments and their agencies have the peoples' mandate, which obligates them to act in the public interest. Hence, governments will always intervene in order to achieve public interest goals like the migration of the broadcast industry from analogue to digital platform or to safeguard the public interest by enhancing national security through the establishment of a national telephone subscriber's database. Governments exercise this role through various regulatory mechanisms. However, what qualifies as public interest is open to debate. This section seeks to position this study into a broader framework by contextualising it within the public interest in telecommunications and in the context of policy and institutional failure.

The telecommunications industry and three other industries - transportation, energy and currency systems - are called infrastructure industries because they are imbued with a public function or affected with public interest since they influence commerce and discourse among the people in a society. Hence, infrastructure industries are always subject to regulatory intervention (Baldwin, Cave, & Lodge, 2012).

The concept of regulating in the public interest was first conceived in the United States of America (USA) and public interest was defined as the interest of the public or the public welfare. The Man-Ekins Act of 1910 gave AT&T a monopoly right and protected it from competitive market entry with a mandate to achieve public interest goals such as universality and price controls to promote affordability (Iosifidis, 2011; Blackman, 2007). Thus, AT&T's first advertising slogan – One system, one policy, and universal service – illustrates the company's philosophy of regulating telecommunications in the public interest. Some<sup>3</sup> developed countries of the world mostly in Europe soon adapted, in varying degrees, the USA model of using traditional monopoly operators to provide telecommunications services in the public interest.

Regulation of telecommunications tends to be more complicated than regulation of the other infrastructure industries. For instance, telecommunications operate as a common carrier under the old common law of social equity that obligates it to serve all customers without discrimination, in contrast to the transport sector where different modes of transportation may be more appropriate for different customers. In addition, and similar to other infrastructure industries, the regulator earns the trust and confidence of the stakeholders when the views of market players, including the ordinary consumers, are taken into account in regulatory process (Prakash and Potoski, 2015; Mansell and Raboy, 2011; Bhaher, 2011; Blackman & Srivastana, 2010; Muzzini, 2005; Baldwin and Cave, 1999, Arnstein, 1969).

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<sup>3</sup> For Milton Mueller (2013), AT&T came up with the aim of universal service in order to persuade government that a (AT&T) monopoly is necessary.

The Federal Communications Commission (FCC) was established in 1934 to regulate the USA's telecommunications sector with, "a mandate to secure broader public interest goals such as universality, fairness and equity" (Iosifidis, 2011:46): an acceptance that the market on its own was not working properly. The idea to regulate telecommunications in the public interest was aimed at providing various telecommunications services, at a fair price and reasonable quality, to as many consumers as possible (Blackman, 2007).

In a similar fashion, the telecommunications reform started first in the USA, in 1948, with Britain joining in the reform also in 1984 (Mayer-Schonberger and Strasser, 1999; Hills, 1986). Although these countries had achieved significant levels of universal service, improved efficiency and industrial development, persistent problems in the telecommunications sector, was the main argument for the reforms.

In contrast, reforms in the developing countries began when their telecoms sector was characterised by low penetration, poor efficiency and poor funding. Most developing countries lack basic telecoms infrastructure, technical/managerial skills and sufficient financial resources required to build full national networks. Their telephone penetration, in most cases, is far below the ITU recommendation of one telephone per 100 inhabitants. According to William Melody (1997), their main concern was building national telecommunications infrastructure almost from scratch. Hence, while in developed countries market liberalisation was introduced in order to improve efficiency and solve the persistent problems in the telecommunications sector, in developing countries liberalisation was introduced to secure funding for infrastructural development. The envisaged socio-economic benefits of liberalisation such as funding for infrastructural development, providing unserved consumers access to networks, at good quality of service and affordable prices were the major consideration and the underlying reason for telecommunications reforms in developing countries (Sanatan and Melody 1997).

Although liberalisation is a necessary step, it does not guarantee the benefits of competition. On its own, liberalisation could become a hindrance to the growth of the telecommunications market if it is hijacked by predatory entities. Armstrong et al. (1994) argued that to entrench effective competition, legislative and pro-competitive policies are needed as well as sound

interconnection conditions, price controls and the pursuit of public interest goals (Petrzzini, 1997).

Several years after the establishment of the Federal Communications Commission (FCC) in 1934, Haring and Weisman (1993:17) urged the USA telecommunications to adopt a new philosophy of regulation, which they referred to as ‘customer necessity’ regulation, with the objective of “maximising societal welfare rather than the welfare of competitors”. The implication of this argument is that universal service is a broader concept than universal access – which the USA and most developed countries of the world have already achieved – and includes other consumer benefits from liberalisation that constitute additional challenges. Essentially universal service covers availability, accessibility, affordability, and quality of service and others such as its funding strategies, which vary between countries. For instance, in Nigeria most Nigerians have a mobile phone. Thus, with a teledensity of 107.87%, there is evidence of significant progress with regard to universal access. However, 207 clusters<sup>4</sup>, with a total population of approximately 36.8 million people, are identified as underserved or unserved areas of Nigeria that lack basic telephony and transport network. Furthermore, in spite of the progress made with respect to universal access in Nigeria, the tariffs are not affordable (Chapter 3). In short, if we define the public interest in telecommunications in terms of universal service, which is multi-faceted, then the need arises to examine all its interrelated aspects. This is one of the objectives of this thesis.

In line with the foregoing, Lunt and Livingstone (2011:36) put forward the nature of the public interest in telecommunications as “the fundamental justification for regulation” and add that it “underpins both citizen and consumer interest in media and communications sector”. In confirmation, Flathman (1966) says that there is no option to applying the concept of public interest, in the telecommunications sector, since the difficulties associated with achieving the public interest in telecommunications are mainly attributed to politics and morals. Therefore, it

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<sup>4</sup> Result of a study carried out in 2013 by the Universal Service Provision Fund (USPF) with an objective to identify clusters of voice gap in Nigeria.

would appear that a vital aspect of economic performance of the telecommunications industry is that it covers the public interest.

Hence, moving forward the relevant query should be: how satisfied are the ordinary consumers, with the services they are receiving in the competitive mobile market and *not* how many active subscribers have the mobile service providers connected, which is the same as how much are the mobile service providers carting away in the competitive struggle. The issue is that, for long, the number of active subscribers' lines has, erroneously become the performance benchmark in the telecommunications sectors, especially in developing countries like Nigeria. The reality is that it is not just number: they are persons (Pope Francis, 2015). Little wonder, then, Prakash and Potoski (2015:4) argue that institutions function well when “they channel private interests toward collective ends”. This study agrees totally with this argument. It implies that the representation of ordinary consumers in the Nigerian mobile telecommunications sector will be assessed in the broader context of public interest.

Based on the above literature review on the public interest in telecommunications and in the context of this study, the public interest is conceived under four considerations: 1) there is availability of, at least, the basic modern mobile service everywhere in Nigeria including the most remote communities. This coheres with the mobile law in Nigeria as the mobile licences issued to the four service providers stipulate national coverage; 2) this basic mobile service should be made accessible, with properly specified take-up, to all ordinary consumer to ensure ordinary consumers enjoy full benefits of socioeconomic inclusion; 3) the study recognises that the possibility of consumers receiving fair deals and value for money may be achieved through the promotion of open and competitive mobile market. It equally recognises that the mobile market currently is not fully competitive and can never be since it relies on a limited natural resource (radio frequencies). It is an oligopoly and hence the need for effective price and quality of service regulation; 4) finally the study argues for functional legal incentives, as safeguard for the public interest.

This study, therefore, defines the public interest, as ordinary consumer ubiquitous access to modern mobile telecommunications service, offered at affordable prices and good quality. The

certainty of this definition will be achieved, when there is influential advocacy for ordinary consumers, empowered by effective independent ordinary consumer representation.

The debate on regulating in the public interest continues in the next section, under Economic theory of regulation.

### **2.3. Economic theories of regulation: Is regulation in the private interest or in the public interest?**

Traditionally there are two broad contending theories of regulation in the academic literature. These are the Public Interest Theory, which explains that regulation pursues the protection and benefit of the public and the Private Interest Theory or the Chicago Theory, also known as the Economic Theory (ET) of regulation, which suggests that regulation protects only the interest of the private groups (business owners) and does not protect the public.

Academic literature has it that Posner (1974) was the first to associate “the traditional rationale for regulation at the time to a theory based on the concept of the public interest” (Hantke-Domas, 2003:165). The Public Interest Theory operates on the basis of two general assumptions: regulators have adequate information and the necessary powers, resources and dispositions to pursue the public interest, implying regulation has zero transaction cost (Hertog, 2010); and that markets have the disposition to fail (Hantke-Domas, 2003).

On the other hand, the Private Interest Theory or Economic Theory (ET) of regulation originated, three years earlier, in 1971, through a conference paper written by George Stigler. The ET stems from different assumptions that the economic agents, such as telecommunications regulators, do not have sufficient market information in terms of: the cost of the product/services; the exact content and quality of the product/service; the size of the suppliers and other important characteristics of the suppliers. Under this condition, the economic agents are not able to promote the public interest while controlling the suppliers. The other assumption of the economic theory is that the economic agents have different objectives and incur different levels of costs and as such, the differences in their various objectives and economic costs may result in some agents pursuing their own interests (Hertog, 2010).

According to Stigler (1971), interest groups tend to influence the outcome of the regulatory process by providing financial and other supports, especially information, to politicians or/and regulators. The theory has been useful in many academic policy studies because it brings to bear the notion that regulatory bodies, if captured by the operators, leave the benefits of the reform with the operators instead of with the consumers. Its main challenge is to explain when one regulatory action tends towards public or private interest and great regulatory scholars like Baldwin and Cave (1994), advocate that the justification for regulation should be considered when a government is acting in the interest of the public. The assumption that regulators act in the interest of consumers has long been questioned based on rent seeking and incentives to regulators (Stigler, 1971; Posner, 1971; Peltzman, 1970).

Rent seeking arises because of government's restrictions on economic activities in market-oriented economies and can sometimes be considered legal; although in many other occasions rent seeking, "takes other forms, such as bribery, corruption, smuggling, and black markets" (Krueger, 1974:291). The common denominator for the different forms of illegal rent seeking is corruption. Corruption is increasingly being recognised, in academic literature, as a dominant factor that impairs growth and development and according to Jain (2001:73): "there is consensus that corruption refers to acts in which the power of public office is used in a manner that contravenes the rules of the game". As many studies have, confirmed corruption is a deep and long stranding feature of Nigeria with adverse impact on the interest of ordinary consumers and the development of the sector (Kayode, Sunday, Adagba, Silas, & Aniyo, 2013; Okonjo-Iweala, 2012).

Jain (2001) claims that corruption requires co-existence of three elements: first, discretionary power which includes power to make and administer regulations; second, economic rents, which must be associated with this power; third, the legal/judicial system that has very low probability of detection of the wrong doing and/or prescribe penalty. A combination of the first two elements forms incentives for corruption while the third element serves as deterrent (Becker, 1968).

It would appear that having discretionary or monopolistic powers to allocate available resources ranks first in promoting corruption (the higher the power the higher the incentive) and

Kaufmann (1998:149) Cited in (Jain, 2001:77) confirms it is “one of the most insidious forms given the huge rents and bribes involved”. The existence of rent seeking certainly affects customer’s perception that economic-market does not operate in the public interest or consumer interest; a situation which tends to increase regulatory interventions, thereby “increasing the amount of economic activities devoted to rent seeking” (Krueger, 1974:302).

For several years, the Economic Theory of regulation ET, as discussed above, provided the framework for developing legislation and regulations in telecommunications markets (Stigler, 1971). It explains the demand side of regulation, which deals with the public interest, implying that the market alone cannot look after it. Its major weaknesses are that it completely omits the supply side of regulation and that it treats institutions as a static/black box (Spiller and Tommasi, 2003), for example, it ignores the incentive dimension (consequences of default) of regulation (Laffront and Tirole, 1993). Furthermore, as the market grew more complex in the years following liberalisation, it became obvious that the traditional Economic Theory could no longer effectively deal with emerging issues that are of interest to the current policy makers, the theorists and market players (Furubotn and Richter, 1991; Bauer, 2010). In response to this challenge, scholars proposed the neo- classical economic theory, which will be discussed in the next section.

#### **2.4 The Fallacies of Neo-classical Economic Theory: Perfect markets, rational consumers and information symmetries**

Neo-classical economic rational consumer behaviour, propounded by Thorstein Veblen in the late nineteenth century, states that consumers are fully armed with their set of preferences and that they are able to maximise their utility by simply exercising their preferences and making rational choices (Screpanti and Zamagni, 2005). The Neo-classical Economic Theory asserts that by ensuring consumers are well informed; the market will work efficiently through increased competition between suppliers, in terms of price, quality and choice of products on offer. It predicts that in the absence of economies of scale, if competition - a direct offshoot of telecommunications liberalisation – is to deliver the envisaged benefits to consumers, they must be able to choose their preferred services and networks (OECD, 2008). It assumes that the consumer is fully armed with all the required information and that the consumer is both an



articulate and rational being. Although neo-classical economics recognises that numerous consumer welfare issues are bound to arise in markets that allow existence of operators with dominant powers, it proposes remedial actions through boosting competition and through consumer informed choices. In short, the assumption is that: “competition, when managed appropriately, benefits consumers’ self-interest and wider consumer welfare” (Stevens, 2009:1).

Many scholars and behavioural economists have challenged the notion that information guarantees market efficiency (Cseres, 2008; Xavier, 2008). They argue that although information is necessary, it is not sufficient, by itself, to guarantee the benefits to the consumer. Moreover, the consumer may be disadvantaged when information is incomplete, excessive, erroneous, or deceitful (Cseres, 2008; Xavier, 2008). The debates focus on the fact that the nature, quality and volume of consumer information provided by the suppliers can limit its effectiveness and that the actual consumer behaviour tends to deviate systematically from the neo-classical assumptions.

The empirical findings of behavioural economics also challenge the assumptions made by neo-classical economics regarding the actual things consumers do with the information they require and how they interpret the information to make informed decisions that facilitate their welfare. Their findings confirm that consumer preferences fluctuate according to the various situations in which they make the decisions (Cseres, 2008). For instance, an individual consumer has challenges when it comes to making informed decisions in the face of loads of information emanating from a rapidly changing technological industry like telecommunications. In such situations, the individual consumer tends to exhibit cognitive related errors such as inability to remember, miscalculations and content evaluation errors (Korobkin & Ulen, 2000).

The neo-classical economics analysis usually involves comparing market outcome with theoretical benchmark of perfect competition (static mode of analysis of regulation). This abstraction has been strongly criticised because it fails to address the real world situation. Thus:

“Contemplation of an optimal system may provide techniques of analysis that would otherwise have been missed and in certain special cases; it may go far to providing a

solution. In general, its influence has been pernicious. It has led economists to derive conclusions for economic policy from the study of an abstract of a market situation” (Coase, quoted in Klein, 1999:457-458).

Hence, drawing insights from behavioural science, scholars have challenged the assumptions of neo-classical economic theory, and have expanded and progressed the traditional theory into the broader framework of the Institutional Economics (IE) which took the primary bold step to open the black box to regulation, in order to analyse the interactions that take place among institutions that supply regulation (Levy and Spiller, 1994; 1996; Spiller, 1995; Spiller and Tommasi, 2003; Spiller, 2012).

## **2.5 Analytical Framework: Adoption of the broader New Institutional Economics (NIE)**

In the previous section, the limitations of the neoclassical economic approach were highlighted, such as acting like a static box- unable to explain the role of institutions in influencing economic phenomena. This section starts by presenting the five analytical approaches, in institutional economics, in a comparative format. It outlines and highlights the considerations that led to the preference of the new institutional economics approach, for this study. It then draws from the literature on the NIE, with focus on the three major analytical tools that underpin this study. They are transaction costs, property rights and agency concept. Thereafter, the chapter discusses the importance of the three dimensions of NIE that are relevant to this study (formal rule, informal constraint and enforcement). The section ends with applying the NIE approach to the study.

### **2.5.1 Stylised comparison of institutional approaches: The weaknesses and strengths of each approach facilitate the adoption of the broader New Institutional Economics (NIE) approach**

An increasing number of researchers explore solutions to problems, in different contexts, using the institutional approach probably due to the ineffectiveness of the neoclassical approach, discussed in the previous section, which assumes a perfect market with zero transaction costs, complete information and rational consumers. In this respect, Williamson (1994:3), made the assertion that: “policy prescriptions, which have moved from ‘getting the prices right’ to

‘getting the property rights right’, now centre on ‘getting institutions right’,” cited in (Saleth and Dinar, 2004:23).

The table below, illustrates five institutional approaches in a comparative overview, in terms of six aspects: 1) generic scope; 2) assumptions; 3) unit of analysis; 4) causal explanations; 5) focus; and 6) limitations<sup>5</sup>.

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<sup>5</sup> The five approaches, despite their differences, attempt to overcome the main limitations of neoclassical economic approach: “especially its inability to explicitly incorporate the institutional aspects within its analytical framework” (Saleth and Dinar, 2004:67).

**TABLE 1. STYLISTED COMPARISON OF INSTITUTIONAL APPROACHES**

ASPECTS	APPROACHES				
<b>Aspects of Comparisons</b>	Old institutionalism	Neo-institutionalism	Meso-corporatism policy community networks	Game theory	Transaction cost theory, agency theory, theory of contract
<b>1. Generic scope</b>	Macro-analysis of complete institutions	Macro-analysis of incomplete institutions	Variations on micro-analysis of incomplete institution	Micro-analysis of complete institutions	Micro-analysis of incomplete institutions
<b>2. Assumptions</b> <b>Interdependence</b> <b>Information</b> <b>Rationality</b>	No Complete Comprehensive	No Incomplete Bounded	Yes Incomplete Bounded	Yes Complete Comprehensive	Yes Incomplete Bounded
<b>3. Unit of analysis</b>	Institutional structures	Institutional structures	Meso-institutional Structures	Institutional structures	Institutional transactions
<b>4. Causal explanations</b>	Institutional structures determine individual behaviour	Incomplete institutions create incentives for opportunist behaviour	Actions of individuals are rendered compatible through efficient and	Rational individuals select equilibrium solutions	Incomplete institutions create incentive for opportunism which induces individuals to

			equitable use of incomplete institutions		invest in institutions that minimise cognitive competence and opportunism
<b>5.Focus</b>	On formulation of classifications of institutional structures	On opportunities and constraints built into institutional structures	On opportunities and constraints built into meso-institutional structures	On the degree of stability of equilibrium solutions	On technical coordination, warranty monitoring, and costs of incentives
<b>6. Limitations</b>	- High level of aggregation - Ad-hoc description - Individuals do not calculate	-High level of aggregation -Ad hoc explanations	-Average level of aggregation -Ad hoc explanations	-Institutions are highly abstract -Institutions are exogenous -.Intuitions are minimal	-Difficult to derive equilibrium solutions

**Source:** Adapted from Landry (1996) cited in Saleth and Dinar (1999:47)

A variety of theories or approaches are used to explain institutions, institutional performances as well as institutional evolutions in various disciplines such as economics, social, anthropology, cultural, political and law. For instance, since the relevance of the approaches vary with the different aspects of institution such as level of analysis, it is crucial to evaluate the strengths and weaknesses of institutional approaches in order to identify the institutional approach (or approaches) that is suitable for study objectives (Saleth and Dinar, 1999). Hence this chapter undertakes an analytical review of five institutional approaches including the fifth approach or the institutional transaction cost, agency and contract approach. The reason for this review, therefore, is facilitate the adoption of the broader New Institutional Economics (NIE) approach for this study as well as situate it in the perspective of the institutional approaches.

Thus, the six aspects of comparison, which highlight the weaknesses and strengths of the five institutional approaches, given in Table 1 above, are used to indicate the study interests as follows:

- 1) The generic scope: study of the complete Nigerian mobile institution to capture issues such as incomplete information (Macro-analysis of incomplete institutions).
- 2) The three assumptions – interdependence, information and rationality- the study has key interest in the assumption of interdependence. This is because institutional linkages that is the internal linkages between the components and aspects of the mobile institution (as we will discuss in the next section) are central to this study. For instance, it facilitates insights to understand the interactions that go on between the key players in competitive mobile markets as well as the impact of institutions on economic performance. Considering the second and third assumptions of information and rationality, the study also has key interest on the limitations on these, i.e. incomplete information and bounded rationality.
- 3) Unit of analysis: This study's interest is on institutional transactions. This has implications to the concepts of transaction cost, agency and contract.
- 4) Causal explanations: The study has interest on incomplete institution such as incomplete information, absence of consumer advocacy, which creates incentive for opportunistic behaviour etc.

5) Focus: This study has crucial interest in compliance monitoring and enforcement.

6) Limitation: The study interests include high level of aggregation.

The study interests, based on the six aspects of comparisons, of the five institutional approaches highlighted in Table 1 above, fall closer to the two shaded institutional approaches namely the Neo-institutionalism (2<sup>nd</sup> approach) and the Institutional transaction cost, agency and contract (5<sup>th</sup> approach).

Consumer representation in competitive mobile markets encompasses a wide range of issues such as consumer advocacy, asymmetry of information, transaction costs to switch service providers, take-up associated with service accessibility, affordability and behavioural biases. Hence, this study critically requires a broad and flexible theoretical framework that ensures effective analysis of these issues. For instance, NIE is a multidisciplinary approach, which operates in the field of economics. NIE consists of analytical tools, from a variety of disciplines: business organisation, history, law, economics, anthropology, political science, psychology, and sociology, that when: “put together properly, form a wheel of analysis capable of addressing a broad variety of issues” (Alston, 2011:1). According to Spiller (2012) the differentiation of the NIE approach, from neo-classical and other approaches to regulation lies in NIE’s interest in institutional interactions, of both the institutional structure and the performance of regulation. NIE analyses the supply side of regulation from the perspectives of transaction costs and regulatory commitment and these are the essential tools in evaluating regulatory performance. Regulatory governance, viewed from the perspective of the new institutional economics, is defined to mean the mechanisms employed, in any setting in societies, to constrain regulatory discretions and to resolve conflicts that may arise in relation to these constraints (Levy & Spiller, 1994).

Drawing from all the above discussions, the preference for the broader New Institutional Economics (NIE) approach to guide this study is clear. In this regard, Saleth and Dinar (2004:48) commented that:

“Although these approaches have differences, they are not alternatives but complements for a comprehensive understanding of institutions and their performance implications at various analytical levels and in different evaluation contexts”.

This comment suggests the adoption of the broader New Institutional Economics (NIE) approach, which in the context of this study combines the Neo-institutionalism (2<sup>nd</sup> approach) and the Institutional transaction cost, agency and contract (5<sup>th</sup> approach) from the five approaches illustrated in Table 1 above, to guide this study.

The next section discusses the New Institutional Economics (NIE).

### **2.5.2 New Institutional Economics (NIE). Emphasis on Institutions and three main analytical tools: transaction costs, agency, and property right**

In the last section, a systemic approach - Stylised Comparison of five Institutional Approaches- facilitated the adoption of NIE as the theoretical framework to guide this study. This section introduces the NIE approach and discusses the three major analytical tools of NIE that have relevance to the study context.

The NIE is a multidisciplinary approach, which operates in the field of economics. Academic literature has it that Williamson (1975), gave the name New Institutional Economics (NIE), to the work, which originated from Coase’s analysis of the firm, in 1937. In the views of Coase (1964) and Williamson (1975, and 1985), the approach is recognised as a powerful framework because it extends and builds on the neoclassical approach with the intention of optimising the gaps in the neoclassical approach. For instance, 1) NIE modified the neoclassical assumption of scarcity and competition by suggesting that competition does not present optimal solution in all economic settings. 2) NIE rejects neoclassical assumptions that individuals have complete information that results in their acting in a rational manner (unbounded rationality) and 3) NIE also rejects the assumption of a frictionless market with transactions that are instantaneous and costless (zero transaction costs). NIE diverges radically from neoclassical economics by making institutions key to economic and policy studies and insists that comparative institutional analysis guides policy analysis.



The three analytical tools of NIE, namely: transaction costs, agency, and property rights, which are useful for this study are discussed in order in the following sections.

### **2.5.2.1 Transaction Costs: The Costliness of Institutions and Information Has Impact on Regulatory Performance**

NIE places importance on transaction costs asserting that transaction costs are involved in the setting up, implementation and evolution of an institution. For instance, North's Theory of Institutions combines the Theory of Transaction costs and the Theory of Human Behaviour. According to North (1990:27): "the costliness of information" is key to transaction costs theory, based on the fact that in an exchange one party has better information and may stand to gain by hiding the information from the other.

The two behaviour assumptions, which involve Transaction Costs Theory, are unbounded rationality and equilibrium. NIE assumes that individuals do not possess sufficient information, at any given time and that, in the real world, they are not fully aware of the realities on the ground because they have limited capability to source, store or process information, without error, and as a result of these limitations, they face uncertainty concerning unforeseen activities and outcomes. Furthermore, their ideas, the prevailing socio-political circumstances and the cost of acquiring information influence their choice making which may not yield the desired result (Furubotn & Richter, 1991:4-5; North, 1993; Menard and Shirley, 2005).

NIE contradicts the assumption of equilibrium of neoclassical theory that has it that in choosing, individuals have to maximise their personal preferences and by so doing, their decisions may result into efficient outcomes (Eggestsson, 1990). In contrast, NIE holds that each individual will seek to take full advantage of a given situation within the "limitations of institutional constraints and transactional costs" (Furubotn & Richter, 1991:4-5). NIE also believes, contrary to the neo-classical economics, in the notion of feasible foresight, which offsets transaction cost by taking into consideration the human primitive ability to generate foresight and think ahead, capitalising on experiences they have gathered over time irrespective of their limited cognitive capabilities. For example, this is manifested in the decision of consumers to switch services providers.

### **2.5.2.2 Agency Concept: Principal-Agent Relationship has Implications for Consumer Welfare**

The Agency Theory involves a contractual relationship between the principal and the agent. It is not certain nor easy to assess if the agent will always act in the best interest of the principal (North, 1990; Jensen and Meckling, 1976): the probability of capture by the industry or the political elites cannot be overlooked. However, the behaviour of the agent can be constrained by the principal's ability to put in place precise rules that will facilitate the monitoring of the activities of the agent (Jain, 2001). In the context of this study, the Legislators elected by the Nigerian voters to create and oversee the legislation - Nigerian Communications Act 2003 (NCA 2003) which governs the Nigerian telecommunications sector - acts as the principal, while the Nigerian Communications Commission, appointed by the Government (politicians) with full autonomy and discretionary power to administer the Nigerian Communications Act 2003 and the Telecommunications Policy 2000, acts as the agent. However, agency problems are likely to occur between the Nigerian legislature, as the principal, and the Commission as the agent, if the Commission is captured by the politicians or acts in a manner that is not transparent or inherently difficult to monitor. On the other hand, the legislature in its oversight role may lack the control mechanisms to achieve effective and direct impact on the Commission's behaviour. The promotion and protection of consumer interest depends, largely, on how these situations play out as will be discussed the next chapter.

In the second scenario, the Nigerian Communications Commission, the Commission, acts as the principal, while, the mobile service providers, act as agents. The discretionary power of the Commission lies in creating the mobile licences and relevant rules including the pro-consumer rules, in line with the NCA 2003 and Telecommunications policy, to govern the behaviour of players in the telecommunications sector. The rules leave some discretion with the service providers since monitoring is expensive, such as the development and administration of the individual consumer code of practice. The two agents, the Commission and the mobile service providers, have "incentives to further their interests at the expense of their principals", the Legislator and the Commission, respectively (Jain, 2001:78). For instance, in the context of this study, the continual presence of information asymmetry which leads to the Commission's

dependence, for information and expertise, on the regulated companies or because of the attraction of career opportunities or other benefits in the regulated company and eventual regulatory capture, tend to, harm competition and the consumers in developing countries and in developed markets like Canada and the USA (Armstrong et. al., 1994; Melody, 1997; Hertog, 2010). The study of information asymmetries is very relevant in the agency theory.

It is noteworthy that the two behavioural assumptions of bounded rationality and opportunistic behaviour that apply in the transaction costs theory also apply in the agency theory.

### **2.5.2.3 Property Right: Property Right defined within the Public Interest will enhance Consumer Welfare**

Property rights are defined as:

“[t]he rights individuals appropriate over their own labour and the goods and services they possess. Appropriation is a function of legal rules, organisational forms, enforcement and norms of behaviour - institutional framework” (North, 1990:33).

From the above definition, the legal framework has direct impact on property rights and consequently on individual contracts. In this regard, North (1990:52) remarks, “Contracts will reflect the incentive-disincentive structure imbedded in the property rights structure (and the enforcement characteristics)”. In addition, property right accommodates the “concept of a representative body reflecting the interests of constituent groups” (North, 1990:49) such as the ordinary consumer groups, to facilitate exchanges between consumers and their mobile service providers.

Thus in the Nigerian telecommunications sector and in the context of this study, mobile infrastructure property rights are framed in the telecommunications mobile-licences, unilaterally issued to the four mobile service providers - MTN, AIRTEL, GLOBACOM and ETISALAT (Ndukwe, 2002; Ukodie, 2006). The property rights, designed by the Nigeria Communications Commission, allow the service providers to deploy their individual networks and provide digital mobile services to both business and ordinary consumers, within and outside Nigeria.

The licences stipulate the operating guidelines such as the roll out obligations as well as several incentives measures such as exclusivity period of five years for mobile services operation in Nigeria, pioneer tax relief status (NCC, 2005). The implication is that if the mobile-licence or the property rights are not well defined with regards to the public interest, or are not sufficiently-enforced, ordinary consumer detriments, associated with issues of accessibility; affordability; and quality of service would abound. For instance, a well-defined and sufficiently enforceable roll out obligations should, specifically, emphasise measurable roll out into the unserved/underserved areas or integrate the underserved areas with the served areas in the roll out plan. In addition, the plan should be backed up with clear rules and sanctions that can be enforced. In the Nigeria case, where there is an extreme disparity in incomes levels (NCC, 2005), a well-defined and sufficiently-enforceable pricing structure may require the implementation of differential tariff, for corporate and individual/ordinary consumer to cater for issues of affordability and quality of service.

#### **2.5.2.4 The Dimensions of NIE - Formal Rules, Informal Constraints and Enforcement: History Matters**

Institutions are conceptualised as humanly devised constraints that shape human interaction and consequently by defining the ‘rules of the game’ structure political, economic and social behaviour of society (North, 1990). North (1990) made two critical claims about institutions: 1) he emphasises a clear distinction between institutions as the ‘rules of the game’ and organisations as the ‘players of the game’; 2) he also emphasises that the real incentive structure that shapes human exchange in a society consists of formal rules, informal constraints and their enforcement characteristics. These two claims are crucial in understanding the influences of institutions and institutional change.

The formal or explicit rules include written rules and agreements that control contractual relations and corporate governance constitutions, the enabling laws and the rules that govern politics, government and society, sanctions and constraints with their enforcement characteristics. North (1990, 1991, 1993 and 2005), maintains that central to NIE is that institutions matter; they are important and influence economic change. In continuation, North (1993) claims that acceptable solutions in the world can be attained through establishment of

institutions, to structure the rules of the game, along with the appropriate enforcement mechanisms, which facilitate to alter pay-offs in order to engender cooperative solutions or compliance. North's (1993) definition includes evidence of economic processes embedded within political and social processes, implying that political and social factors influence economic performance and should therefore be taken into account when evaluating economic performance. In addition, it highlights that successful interaction between institutions and organisational arrangement is necessary for positive economic change to occur.

The informal or implicit rules include unwritten/unregistered codes of conduct/practice; conventions; the norms of behaviour and beliefs (Menard and Shirley, 2005). Both the formal and the informal constraints working together with effective enforcement, determine the way the players interact in social-economic and political environment in which organisations are the players, in their different interest groups with common objectives which may include self-interest (North, 2005). In other words, organisational governance is influenced by the three dimensions of institution: formal rule, informal constraints and enforcement. In the same vein, Menard and Shirley (2005) recognise the importance NIE places on the study of institutions and how institutions (rules) interact with organisational arrangements to shape the behaviour of humans and economic exchanges. The authors confirm that there is increasing concern, among the advocates of NIE over mental models and certain aspects of cognition that define how individuals interpret reality, which in turn, shape the institutional environment they build (North, 1990; Williamson, 2000). In this regard, North (2005:71), specifically states that, "Humans start out with generic features which provide the initial architecture of the mind; the mind interacts with the cultural heritage and the experiences of individuals to shape learning". This interaction between culture and experience may logically explain cases where shared cultural norms embedded within the economic and political processes, which prevail in the telecommunications sector, influence consumers' behaviour: the way they learn things; process information; and make decisions, as discussed in chapter 4. These definitions are appropriate and cover the scope of this study.

The formal and the informal constraints determine the real incentive structure of an economy and together they provide the foundation for continual incremental changes that occur within

every institution (rule of the game). According to North, these changes tend to alter the institutional settings such that it presents a different set of choices than it began with. North (1990) further explains that these institutional changes trace the pattern of path dependence; they are influenced by the course of history. Similarly, Menard and Shirley (2005), reiterate the fact that NIE focuses on how institutions emerge, operate and evolve to shape the various arrangements, which support production and exchange, and how these arrangements act in turn to change the rules of the game. Thus, since changes in the institutional dimensions usually result in institutional changes and since these changes shape the manner societies evolve, they can be of assistance in our understanding of historical changes that occur over time. Path dependency is increasingly becoming important in studies of institutions, because it facilitates the carriage of history. Consequently, path dependency has become a “short hand to indicate that the past shapes the future – in short “history matters” (Ebbinghaus, 2005:5); thus the course and scope of institutional changes cannot be separated from its early course of past history. For example, the non-inclusion of ordinary consumer advocacy in the Nigerian Communications Act 2003 (Act) is traceable to the non-existent/sparse history of civil societies in Nigeria. In addition, the culture of impunity and non-transparent transactions, which prevail in the socio-political environment in Nigeria, are traceable to thirty years of military dictatorship.

However, in the perception of North (1990) the differences between informal and formal institutions (rules of the game) tend to blur over time, becoming more of degree than of kind such that in course of time, some informal institutions gradually transform into formal institutions, in their own rights. Yet there are fundamental differences between the formal and the informal institutions. The way they are sourced, their rates of change and the fact that changes in the informal institution cannot be sufficiently explained from only the economic perspective (Eggertsson, 1990). For instance, whilst formal institutions are premeditated and developed through deliberations of the stakeholders or consultation process, the informal institutions, generally, are outcomes of societal interactions; they are derived from culture that governs societal behaviour (Ayres & Braithwaite, 1992; North, 1990). These cultural traits, according to North, are very important concerning information processing in choice making.

### **2.5.2.5 Applying NIE to this Study**

NIE is useful for this study because it takes into consideration how in the real world, the prevailing economic, political and the extra-institutional factors e.g. culture, level of information, bounded rationality and expertise influence the institutional structure, which in turn, shapes the institutional environment and the outcome of choices in daily human interactions (North, 1990). In the context, this study, the communication institution – “the rule of the game” (North, 2005:59) consists of the formal rule, such as the rule on quality of service, and the informal constraints, such the codes of behaviour. These rules together with the enforcement characteristics shape the nature of the organisation and the governance of the telecommunications sector, consequent upon the full liberalisation of the digital mobile market in 2001. The rules of the game also provide for rule enforcement as well as penalties for rule violation, which provide some measure of incentives to discourage rule violations. Hence, the rules, with the appropriate penalties, facilitate to shape the behaviour of the mobile service providers and offer backup mechanisms set up to ensure resolution of ordinary consumer disputes, which operators are unable to resolve privately. This is crucial in telecommunications and other regulated industries.

Institutions and organisations can be conceptually differentiated since, unilaterally, they provide a structure to human interaction. According to North (1990:4):

“[w]hat must be clearly differentiated are the rules from the players. The purpose of the rules is to define the way the game is played. But the objective of the team within the set of rules is to win the game – by combination of skills, strategy, and coordination; by fair means and sometimes by foul means”.

Thus, the mobile organisation – as defined above are ‘the players’ in the Nigerian mobile market (North, 1990, 2005) – includes the Nigerian Communications Commission (Commission), the mobile services providers, the consumers and the different consumer interest groups who focus on the ordinary mobile consumers. The institutional endowment includes the ministry of communications, the judiciary system, the government, and the legislature who have interests in the outcomes of the Nigerian mobile telecommunications sector. By implementing

or “altering the rules or altering the kind and effectiveness of enforcement” (North, 2005:60) they influence the economic outcomes of the mobile market and the interests of the ordinary consumers. As will be expected, the institutional quality of the regulatory structure is exposed during the interactions between the institutions (rules) and the organisations (players) and this tends to influence the market efficiency and the economic performance of the telecommunications sector as well as the country in general (Spiller, 2012).

The development of effective and appropriate policies and strategies are achieved through negotiation involving mutually dependent organisations. Therefore, it is important to ensure that ordinary consumer interests are accommodated during deliberations and negotiations that go on during the decision-making processes in which industry players make compromises. (Hulsink, 1999). Hence, consumer influential participation in the negotiations is crucial.

Arguably, one wonders why the same rules, which are in most cases imported to developing countries by consultants from developed countries at the beginning of telecommunications reform, did not produce similar performance outcomes. As if attempting to answer, North acknowledges, “Although the rules are the same, the enforcement mechanisms, the way enforcement occurs, the norms of behaviour, and the subjective models of the actors are not, hence, both the real incentive structures and the perceived consequences of policies will differ as well” (North, 1990: 101). In short, best practice examples are sometimes unusable because they ignore country specifics. In other words, different independent sector-specific regulators will demonstrate different behaviours in different institutional environments (Coren, 2005). Hence, the socio-political environment is an important factor in the evaluation of regulatory performance (see chapter 3).

Consequently, this study seeks to evaluate the extent to which the Nigerian mobile communications institution influences the ordinary consumer representation in the Nigerian telecommunications sector. For instance, with reference to mobile consumer codes development the study proposes to confirm from the enabling act and other relevant policy documents if there are adequate provisions in both the law and regulations, to ensure effective participation of the ordinary mobile consumers, during the development or review of the consumer codes of practice; to verify to what extent the service providers, in practice, actually



carried along their ordinary consumers during the development of the consumer codes of practice, as expected if the codes are to address the ordinary consumers' interests; to confirm if the regulatory agency has put in place a provision/ indicator to actually confirm if the ordinary mobile consumers, (through their representative bodies) have effectively participated in the development and review of the consumer codes before attempting to register the new consumer codes of practice; and to verify if there is a sector pre-agreed remedial action, which is also supposed to be time bound, with the application of heavy sanctions attached to it, to encourage industry compliance.

The above discussion portrays NIE as suitable for this study because it takes into consideration the significant influence of both the institution and the prevailing extra-institutional factors e.g. culture, level of information impact on the institutional environment and the outcome of choices in daily human interactions (North, 1990). It identifies NIE as a well-known approach for policy studies because it makes institutions key in policy studies: it broadens the economic analysis of regulatory institutions to include the role of political and administrative institutions as well as procedures for policy governance (Bickenbach, Kumkar and Soltwedel, 1999). The institutional environment as defined by North (1990) is the regulatory framework used to reduce uncertainty, shape the interactions, negotiations and behaviour of the players or stakeholders in the market.

However, it has been suggested that the analysis of specific regulatory rules, apart from being complex, may not yield useful results because of the dynamic nature of the problems for analysis. Hence, Bickenbach, Kumkar, & Soltwedel (1999:50) recommend, "that future analysis should focus on institutional aspects within the process of regulation". Consequently, this strategy is realised in this thesis by seeking to adapt the Saleth and Dinar (1999) analytical framework, in the following sections, to decompose the Nigerian mobile telecommunications institution into its institutional aspects to facilitate this study.

## **2.6. Communications Institution Decomposition framework: How to study institutions**

The previous section attempted to explore the NIE approach to economic analysis of regulatory institutions and its emphasis on the importance of institutions and extra-institutional factors, which differentiates it from the neoclassical approach. Then the three major analytical tools of

NIE that guide this study namely - transaction costs, property rights and agency - were discussed and finally the NIE concepts were applied to this study.

This section seeks to develop an analytical framework for this study; how we can study the mobile institution. Firstly, by developing a conceptual basis for Institution Decomposition Analysis (IDA), and secondly, by presenting the features of the Saleth and Dinar's IDA Model (1999, 2004), which makes it a suitable methodological framework to be adapted for this study, and finally by elucidating the process of evaluation of the mobile institution in the empirical part of the study.

### **2.6.1 Conceptual Basis: Mobile telecommunications sector, Mobile institution and Institution performance**

This section specifies three key elements that facilitate to delineate the scope and context of the analytical framework. These are specifications of how the study conceives: 1) the mobile telecommunications sector, 2) the mobile (telecommunications) institution, and 3) the sector and/or institutional performance. These three entities are discussed individually below.

#### **2.6.1.1 The Mobile Telecommunications Sector**

The mobile sector, in the context of this study, covers the Nigerian telecommunications network consisting of various networks of different technologies, which have been integrated in such a manner to provide seamless interconnections of the entire networks across the thirty-six states of the Federation including the Federal Capital Territory-Abuja. These networks include the analogue fixed and cellular networks, fixed wireless and CDMA networks, packet switched networks, Inmarsat networks, and the GSM networks. All the networks, unilaterally, are licenced for a nationwide deployment of their service infrastructure across Nigeria. The analogue fixed & cellular networks, fixed wireless and CDMA networks were liberalised in the first phase of the telecommunications reform exercise, which occurred in 1992. The second phase of the reform that took place in 2001, involved the opening up of the mobile market only, with the auctioning of four digital mobile licenses, powered by the GSM technology.

These four digital mobile licences – GSM, dated August 2001, were issued to four service providers, namely: MTN, AIRTEL, GLOBACOM and ETISALAT. The four service providers are licensed to provide fully open, fully competitive and integrated networks that enable consumers, to seamlessly, choose between ranges of services and networks. These conditions are crucial because without them the competitive mobile market may be impeded in achieving the necessary innovations as well as ensure that the benefits derived, from the reform are significant and widespread (Tambini, 2012).

However, this study in its context covers only the digital mobile competitive market (GSM market), which was opened up to competition, in 2001. The study interests, therefore, include: 1) the nation-wide telecommunications infrastructure deployment covering the entire country as stipulated in the mobile licences; 2) focus on the regulatory structures and processes existing in the competitive digital mobile market, which have enabled or otherwise the welfare and protection of the ordinary consumer; 3) industry adoption of relevant policies covering the major issues the ordinary consumer face, as a result of their interactions, in this competitive market, such as absence of statutory independent consumer bodies, the presence of incomplete information, quality of service complaints, ordinary consumers' interests protection and security issues.

Thus a microanalysis of the incomplete communications institution is necessary, to capture the details of the major issues ordinary consumers face in the competitive mobile market, such as incomplete information. Henceforth, in the context of this study, the term mobile institution represents Nigerian digital mobile telecommunications institution.

#### **2.6.1.2 The Mobile Institution: Defining it for the Study**

The mobile institution is conceptualised to be uniform across the entire country and it encompasses all the dimensions and characteristics of the complete Nigerian communications institution, with focus on the welfare and protection of the ordinary consumer in the mobile market. Therefore, in line with academic literature, the mobile institution is conceived in a broad sense and covers: the legal framework, organisational (or administrative) framework and enforcement framework. In this study context, it consists of mobile policy, mobile law, mobile

administration and mobile enforcement (or Telecommunications Policy, 2000; the Nigerian Communications Act, 2003; the administrative organs like the Commission and the enforcement structures). This conceptual separation of institution facilitates the study of the interactions between the four components within the institution (North, 1990). Since, in practice, the mobile administration consisting of the Commission and the mobile service providers serve as the executing and the implementing arms, created for the translation, realisation and enforcement of the policy and the legal provisions.

Institutions are humanly devised constraints that shape human interactions in a specific manner. Thus, Nigerian mobile telecommunications is conceived as an institution because it embodies policies, laws, and regulations with penalties and enforcement mechanisms that govern the operations of the different competing mobile networks and their interactions with consumers, to encourage market efficiency. While the Nigerian telecommunications regulatory agency, the Nigerian Communications Commission (Commission), is visualised as an integral part of the institution because the objectives of the Commission working within the mobile institution are to facilitate the adoptions of the provisions of policies, regulations, and enforcement with which to enable and shape the interactions of the different players in the market.

Organisations, on the other hand, are defined as “purposive entities designed by their creators to maximise wealth, income, or other objectives defined by the opportunities afforded by the institutional structure of the society” (North 1990:73). The basic feature that distinguishes institutions from organisations, from the above discussion, is that institutions are the rules that serve to constrain and shape the behaviour and interactions within the organisations (the players); in other words, they provide the structure within which the interactions of humans, in the organisation, take place.

This study, therefore, defines the mobile institution as an integrated system consisting of legal framework (formal rules, informal constraints), organisational framework (or administrative) and enforcement mechanism.

### **2.6.1.3 Institutional Performance: By Themselves, Institutions Cannot Perform**

The institutional framework (defining the rules of the game) usually brings about the setting up and development of an organisation (the players). As soon as the formal organisation is established, it in turn endeavours to influence the development of the institutional framework, which originally was instrumental to setting it up. Hence, the two components, institutions and organisations, are inherently interwoven to create an environment that is suitable for the various interactions that take place in a market environment, as established above. According to North, the key role of the institutional framework, in any societal setting, is to reduce uncertainty by establishing a stable structure to human interactions. This might imply that institutions which serve as rules, norms and roles structure for organisations cannot perform nor by themselves influence performance rather it is the administration of an organisation that implement the rules and effect performance. However, there are linkages between institutions and administrative performance such that “the institutional framework serves as a necessary condition but not as a sufficient condition for management performance” (Bandaragoda, 2000:8). In view of this, North (1990) suggests that the need to separate, conceptually, the rules from the players is inevitable in institutional analysis.

In the context of this study, the Nigerian Communications Commission endeavours to implement the consumer mandate by operating within the communications institution framework to protect the interests of the ordinary mobile consumers and by putting into use a combination of administrative tools and extra-institutional factors such as: strategy, expertise, technical capability, commitment, transparency (or the lack of these) and management of the resources available to the Commission. These extra-institutional factors, which account for effectiveness, influence performance to a greater degree than the institutions (Bandaragoda: 2000). The regulations by themselves are incapable to elicit performance; the desired outcomes would be achieved only when the set rules are effectively enforced.

The next sections discuss the Institution Decomposition Analytical model by Saleth and Dinar (1999). Their model facilitates the decomposition of mobile institution into its major institutional components and institutional aspects. The components and their constituent

aspects, capture the rules or their configurations as well as their features and performance implications.

### **2.6.2 Overview of an Institution Analytical Decomposition Approach**

As noted, in the previous chapter and also in the view of the new institutional economics, institutions do matter and that the institutional matrix consists of formal rules, informal norms and the enforcement characteristics which govern the operations in the market North (1990). The implication is that an institution is conceived in a much broader sense than an organisation and it is based on this argument that the rules of the game are set by institutions, thereby, enabling what individual players can do and at the same time what individuals cannot do by describing constraints in a given setting. Thus, institutions facilitate to shape the actions of individuals as well as the decision-making processes (North, 1990; Saleth and Dinar, 1999). Proceeding with this broader perspective of institutions, Saleth and Dinar (1999:95) say that, “institutions are considered to cover the legal framework, the policy regime and the administrative or organisational arrangement”. They employ this generalised concept in the water sector, to determine the performance of the water management institution using the decomposition approach, in two levels. In the first level water institution is decomposed to water law, water policy and water administration; and in their second level, each of the three institutional components of institution is further decomposed into their constituent institutional aspects identified in literature and policy debates; “as key factors for institutional and sectorial performance” (Saleth and Dinar, 2004:97).

The Saleth and Dinar (1999)’s Institutional Decomposition Model is suitable for evaluating the effectiveness and performance of institutions. Sequel to this, this study seeks to adapt the IDA model by Saleth and Dinar (1999) to evaluate how the Nigerian communications institution has enabled or not enabled the representation of the ordinary mobile consumers. Consequently, the adapted framework is perceived from a micro perspective of a national telecommunications market, consisting of seamlessly interconnected mobile networks and the focus of the study is on consumer representation in the Nigerian telecommunications institution that governs these integrated mobile networks, in the Nigerian telecommunications sector. The advantage of this micro perspective is to facilitate the capture of the performance of the telecommunications

mobile market, which depends largely on the individual and interactive actions of the stakeholders, including intervening influences at the regulatory level (Saleth and Dinar, 1999) with reference to ordinary consumer interests since the regulator is charged with the legal mandate of consumer protection.

Thus, the proposed framework offers necessary insights to assess if the regulatory reform in the sector is supported by appropriate institutional arrangements, such as policy, law, regulations and effective enforcement mechanisms to ensure that the interests of the ordinary consumers are adequately protected in the Nigerian mobile telecommunications sector.

### **2.6.3 Decomposition of the Nigerian communications institution**

In this study, the conceptualisation to decompose the Nigerian communications institution into its first and second levels is in line with the Saleth and Dinar, (1999:104; 2004:104) institutional decomposition analytical approach. In addition, this study, seeks to extend the Saleth and Dinar (1999, 2004)'s conceptual analytical model, by introducing the enforcement component into the first and second decomposition levels. In this way, this study aligns with North (1990; 2005), to emphasise that application of responsive enforcement mechanisms is inevitable for institution decomposition analysis in the telecommunications sector, in contrast to the water institution which Saleth and Dinar (1999, 2004) have broadly decomposed into the three major components of the institution, namely: policy, law, and administration (their level one).

Therefore, situating the above decomposition approach, adapted from Saleth and Dinar (1999) in the context of this study, the analytical decomposition of the mobile institution is performed in two levels. In the first level, the mobile institution is decomposed into four broad components of institution, namely: mobile policy, mobile law, mobile administration and mobile enforcement. In the second level of the institution decomposition approach, each of the four broad components of the mobile institution is further decomposed into its essential institutional aspects; key features, which are relevant to the representation of ordinary mobile telecommunications consumers in the Nigerian context. These two levels will be examined in turn below.

### **2.6.3.1 Decomposition of Mobile Institution: First Level - Policy, Law, Administration, and Enforcement**

In the previous section, it was stated that the aim of separating the mobile institution into its main components is to facilitate the analysis of each component's contribution towards the representation of ordinary mobile telecommunications consumers. In this section, the mobile telecommunications institution has been decomposed into its main four components: mobile Policy, mobile Law, and mobile Enforcement. The attributes of the components are examined below.

#### **Mobile policy**

Policy gives the overall direction and the key objectives of the development of the envisaged telecommunications industry. In the context of this study, the mobile policy consists of the National Telecommunications policy 2000, the ICT Policy 2012, and pro-consumer policies. The mobile policy in reality initiates the process of enacting the mobile law while the mobile law facilitates implementation of the mobile policy. Thus, mobile law and guidelines mirror the mobile policy with respect to the ordinary mobile consumers' representation.

#### **Mobile law**

There exists a strong linkage between the mobile law and the mobile policy at source and implementation levels. The mobile legal framework consists of legislative statements or definitions that relate to the ordinary mobile consumer such as, the provisions in the Act 2003, regulations, guidelines, procedures and rights, norms and practices that directly affect or are related to the promotion of consumer interests in the mobile telecoms sector in Nigeria.

#### **Mobile administration**

Mobile administration is treated as part of the rules of the game as opposed to being part of the industry players. Hence, in the context of this study, administration consists of all the mechanisms, procedures and processes, necessary for the ordinary consumers' representation, which are established to facilitate the implementation of the mobile policy, mobile law, and



mobile enforcement. Examples include complaint-handling procedure of individual service providers, redress mechanisms, public inquiries, research, alternate dispute resolution, application of mobile consumer rights, data collection and processing for compliance monitoring purposes, minimum quality of service standards, accountability, project selection and comparative industry statistics etc. Administration also includes regulatory decision-making process and the internal rules of the services providers' consumer code of practice.

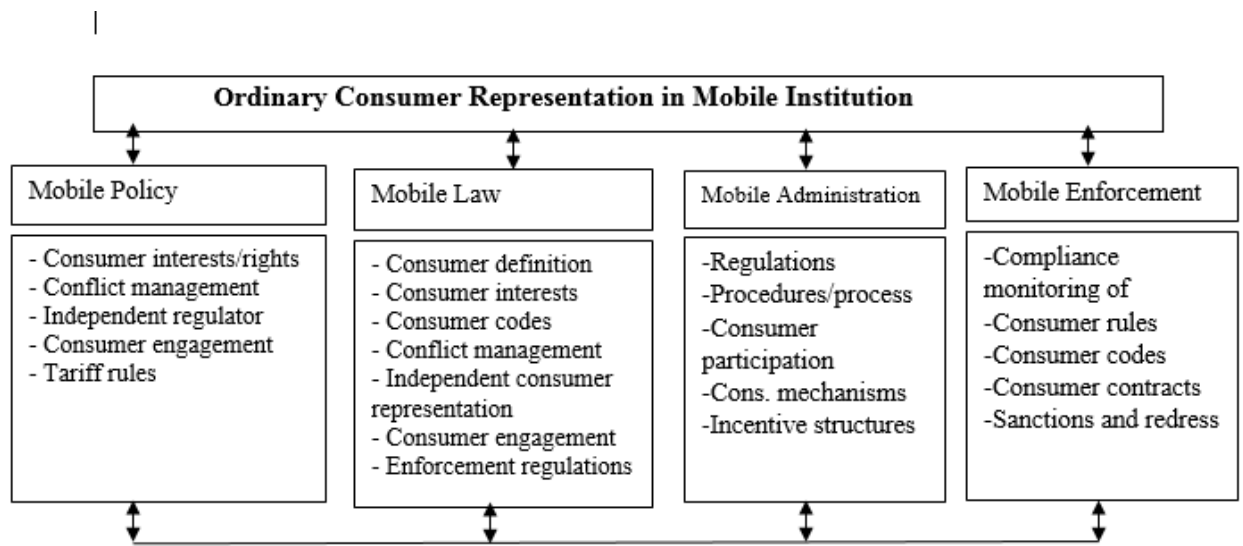
### **Mobile enforcement**

Similarly, as mentioned above, the mobile enforcement component of the institution is linked with the policy, law and administrative components of the institution at source and implementation levels and includes monitoring, information gathering and enforcement procedures/mechanisms. According to North (1990), proper functioning of institutions, with reference to transaction cost theory, depends on the costliness of enforcement. Thus, this study conceptually separates the enforcement component from the mobile communications institution, for analysis purposes. Firstly, to evaluate how the enforcement component of the Nigerian communications institution influenced the representation of ordinary consumer in the telecommunications sector. Secondly, to emphasise the importance of enforcement of existing formal rules in the mobile telecommunications sector in line with the notion of North (2005) which states that the stakeholders' response to the rules depend on the efficiency of the enforcement of the rules.

#### **2.6.3.2 Second Level Decomposition of Mobile Institution – Aspects**

In the second level of the institution decomposition approach, each of the four main components of the mobile telecommunications institution is further decomposed into its essential institutional aspects, which are relevant to the representation of ordinary mobile telecommunications consumers. The constituent aspects, which are derived from literature and topical debates on consumer representation, form the basis for developing the analytical framework presented in Table 2 below.

**TABLE 2. ANALYTICAL FRAMEWORK: LINKAGES BETWEEN INSTITUTIONAL COMPONENTS**



Source: Author (adapted from Saleth and Dinar 1999:102)

The above analytical framework was systematically derived from the four major components of the mobile telecommunications institution, namely, mobile policy, mobile law, mobile administration and mobile enforcement and their constituent aspects. It provides the basis for assessing the extent the ordinary consumer has been represented in the Nigerian telecommunications sector.

The key aspects of Mobile Policy dealing with representation of ordinary consumer include the objective of provisioning of good quality modern telephone service to ordinary consumers at affordable price. Others are affording consumers the opportunity, for instance through conducting consumer research, to submit opinion in support of their interest and to resolve consumer complaints.

Mobile Law in synergy with the mobile policy gives legal effect to the relevant institutional aspects to buttress consumer representation including the establishment of an independent and transparent regulator, legal definition of the consumer and consumer interest, structures and processes for consumer influential representation in regulatory process, complaints management, monitoring and enforcement procedures.

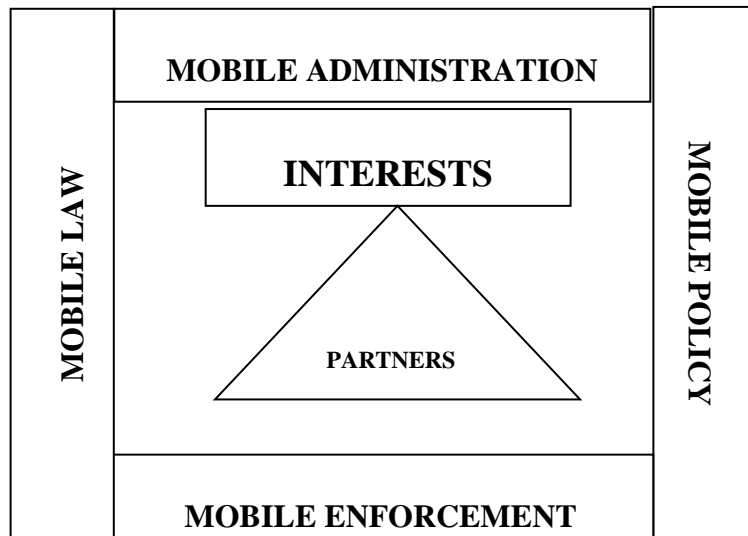
Mobile Administration, as was stated above, includes all the mechanisms, procedures and processes, necessary for the ordinary consumers' representation, which are established to facilitate the implementation of the mobile policy, mobile law, and mobile enforcement such as regulatory interventions, individual consumer codes of practice, provision of information, research and public forums, pricing and accountability mechanism, consumer engagement and complaints management mechanisms. Similarly, Mobile enforcement institutional aspects are the mechanisms for monitoring compliance, performance assessment and enforcement of license conditions, consumer codes of practice and consumer rights and redress.

In line with the discussions of linkages within the mobile institution, the overall effectiveness of the mobile institution depends on the individual as well as the interactive effects of its four institutional components. Similarly, the overall effectiveness of each of the four components of institution depends on the effectiveness of its constituent aspects as well as the strength of their linkages with the other components and their constituent aspects. Thus, the overall performance of the mobile policy, with focus on the ordinary consumer representation is not only linked to both the individual and joint effects of the four institutional components and their underlying institutional aspects but also on the extent of integration among them. In addition, the performance of the mobile institution is also influenced by the exogenous effects, which emanate from the political, economic and general social-cultural and resource related environment in which it is embedded (Saleth and Dinar, 2004; North, 1990).

Figure 1, below, gives firstly a conceptual illustration of the components of the mobile institution, which the author seeks to represent with a frame model of four sides supported by the four components of the mobile institution on which the ordinary consumer representation rests.

**FIGURE 1. FRAME OF MOBILE INSTITUTION**

Source: Author



Secondly, the 'Partnership' in the frame depicts the need for the regulator to enable a conducive environment that facilitates the working together with the ordinary consumers and the service providers to ensure that the collective decisions taken reflect the public interests, as opposed to the service providers' interests hence do not tilt the interest box to the consumer's detriment. It involves the use of institutional incentives such as independent consumer representation and enforcement mechanisms to correct the imbalances prevalent between the services providers and the consumers (Take, 2012).

The frameworks – theoretical and analytical – established in this chapter will serve as guide for conducting the policy document analysis in the empirical part of this study. The analysis, using these essential aspects underlying the four components of the mobile institution as benchmarks, also focuses on institutional change – the possibilities of improvements or otherwise occurring in the mobile institution, since 2001, by comparing them with the actual consumer representation, in practice, in the competitive mobile market (Bandaragoda, 2000).

Finally, these essential institutional aspects create the necessary insights for assessing the extent to which the Mobile institution (rules of the game) and the organisations (the Commission, the

mobile service providers and the legislators) contributed or otherwise, to the representation of the ordinary consumers within the mobile institution. The institutional aspects also facilitate to answer the three overarching research questions.

The next section highlights the key discussions in the various sections above to conclude this chapter.

## **2.7 Conclusion**

The aim of Chapter 2 has been to establish a theoretical basis and an analytical framework to guide this study in its objective to evaluate the ordinary consumer representation in the Nigerian telecommunications sector. The chapter also served to place the study in the broader perspective of public interest.

Consequently, this chapter attempts to come up with a clear definition of the public interest in telecommunications because the notion of the public interest appears ubiquitous, but rarely defined or visible in practice. This chapter therefore defines the public interest, in the context of this study, as ordinary consumer ubiquitous access to modern mobile telecommunications service, offered at affordable prices and good quality. This implies that the extent, to which the ordinary consumers have representation, in the Nigerian telecommunications sector, will also be assessed in the broader framework of public interest. The relevant query is, how satisfied are the ordinary consumers, with the services they are receiving in the competitive mobile market and not how many active subscriber lines have the mobile service providers connected? The chapter argues that the definition of the public interest as conceived by the study holds when consumers' influential participation in policy-implementation is ensured by robust and independent consumer representation.

This chapter further examines the traditional approaches to regulation and the limitations that make them unsuitable as analytical tools for this study. It recognised the usefulness of the Economic Theory (ET) of regulation in communications policy studies, because it brings to fore the notion that regulatory agency, if captured by service providers, leaves the benefits of liberalisation with providers instead of ordinary consumers. However, ET's main challenge is to explain when one regulatory action tends towards public or private interests. In addition, this

study discussed and rejected the fallacies of Neoclassical Economic Theory in the light of the challenges consumers encounter in the mobile market due to their limited capacity and bounded rationality, information asymmetries and imperfect markets.

The comparison of the weaknesses and strengths of the five major institutional approaches to regulatory analysis informed the adoption of the New Institutional Economic (NIE) approach, as a theoretical framework, which provides guidance, for this study. The three major analytical tools of the NIE approach – transaction cost, property rights and agency concept- that influence this study were explored and their usefulness to the study was equally illustrated. Of particular interest is the principal-agent relationship in competitive mobile market with consumers through the legislators acting as the principal and the regulator and the service providers acting as agents. Agency problems like conflict of interest are prevalent in a socio-political environment characterised by corruption and weak institutions and it portends grave implications for consumer welfare. This study argues for a robust and independent statutory ordinary consumer representation to ensure ordinary consumers act as industry watchdogs, in protection of their interests and welfare.

Finally, the study adapts the Saleth and Dinar (1996) Institution Decomposition Analytical framework, and seeks to extend it by separating the enforcement mechanisms as the fourth component of institution to facilitate both institutional analysis and evaluation of how the Nigerian communications institution has enabled or not the representation of the ordinary mobile consumers. Hence, the mobile communications institution was decomposed into its four main components: mobile policy, mobile law, mobile administration and mobile enforcement, which were further, decomposed into key institutional aspects. This conceptual separation is necessary because the enforcement function is vital for the regulatory agency to secure mobile sector compliance to existing regulations and thus enhances protection of consumers' interests. The adapted and extended framework is useful in assessing if the institutional reform, in the Nigerian telecommunications sector, is supported by appropriate institutional arrangements, such as effective administrative mechanisms and responsive enforcement to ensure ordinary consumers influential participation in policy-adoption and thereby safeguard the interests of ordinary mobile consumers.

## **CHAPTER 3 Evolution of Telecommunications in Nigeria**

### **3.1 Introduction**

This chapter provides a brief overview of some of the events that shaped the political and socio-economic environment of Nigeria, which formed the setting for the development and operation of the institutional and organisational structures of the Nigerian telecommunications sector.

First, it flaunts the county's natural and human endowments, which qualified Nigeria as the largest economy in Africa with a vibrant telecommunications industry, which is one of the fastest growing in the world. In a brief overview of the socio-political history it reveals how the three years of civil war (1967-1970) and 30 years of authoritarian rule, left as a legacy a culture of corruption and impunity which in 16 years of democratic rule has become the 'tools of the trade' in the hands of the political elites. This has turned the natural endowments into an albatross and the result is weak institutions, lack of infrastructural development and poverty. It provides an insight on how the social-economic history of the country which is marked by non-transparent transactions and bureaucratic corruption has impacted on the regulatory function as it relates to the promotion of the ordinary consumer interest and representation and why the impressive economic growth in the sector has not translated to equivalent improvement in the realisation of consumer interests.

This chapter argues that the telecommunications regulatory framework cannot be detached from the country's past history – the historic events preceding the liberalisation of the sector. The regulatory framework is not insulated from the socio-political environment but is rather highly susceptible to political interference, clientelism and that the regulatory organisation is imbued with the associated agency problem and conflict of interest, which has led to the subordination of consumer interests to other interests. This explains the regulator's strategy of ignoring the violation of the provisions of the mobile institution (set rules) (Otubu 2013; Ndibe, 2013). Secondly, the principal (legislators) is inherently unable to monitor the agent (Regulator and Licensees) because of the corruption and cronyism prevalent in the socio-political environment in Nigeria. These issues are exposed in the empirical Chapters 5, 6 and 7.

In subsequent sections of this chapter, the study highlights the factors that led to the failures that characterised the evolution of the Nigerian telecommunications through the early years until 2001, the suppressed demand and the subsequent exponential growth in subscribers' numbers in the years following the liberalisation of the sector. It puts the evolution of the Nigeria telecommunications in a comparative context with other countries. It presents an overview of the challenges the socio-political and economic environment presents to businesses and to the telecommunications industry in particular. Finally, it highlights the vulnerability of the ordinary consumers and the different challenges they encounter in the liberalised, complex and fast changing mobile market and advocates for more commitment towards pro-consumer regulatory interventions.

The main argument of this chapter is that the regulator is not entirely independent and consequently it is not consumer focused and that accounts for the reason why the growth in the sector is not reflected in the promotion and protection of consumer interests.

### **3.2. Socio-Economic and Political Overview of Nigeria: From authoritarian rule to non-transparent democracy**

Nigeria, located in the Gulf of Guinea in West Africa is Africa's largest republic with a population of 170 million people and growing at about 3% per annum (GSMA, 2015). Nigeria's GDP stands at US\$568.5 billion (World Bank, 2015) and it is the largest economy in Africa. Nigeria has a relatively young population: the under-15-years accounts for about 42% of the population while 54.6% is between 15 – 65years. Nigeria's population profile is at the same time the target and the driver of a vibrant telecommunication market, which is one of the fastest growing in the world (NCC Annual Report, 2013). Prior to 1970, over 80% of the Nigerian population lived in the rural area while in 2005 the percentage of the population living in rural area decreased to 55% of the population (NCC, 2005). This has grave implication for provision of public services, for example in the telecommunications sector, the concentration of infrastructure in the urban areas leads to the exclusion and marginalisation of a large portion of the population (ordinary consumers).



The discovery of oil in Nigeria and its rise in national importance in the 1970s brought huge revenue to the country. Nigeria is sixth largest exporter of oil in the world and oil contributes about 80% of government revenue. However, the oil revenue had become a political and social albatross for the country. It had a negative effect on good governance because apart from occasioning the neglect of the country's other endowments like solid minerals and agriculture it fuelled corruption and the struggle for political power.

Nigeria obtained her independence from the British government in 1960. Six years later in 1966, the military intervened with a coup d'état that overthrew the civilian government and precipitated a three-year civil war from 1967 to 1970. This marked the beginning and successions of almost 30 years of military governments in Nigerian political history with civil rule interrupting only in the period: 1979-1983. The 30 years of military dictatorship witnessed six military coups and two failed coup attempts. Hence, the political terrain was very unstable with adverse effects on the economy. The period was characterised by arbitrariness, policy inconsistency, uncoordinated developmental plans and lack of transparency, which engendered massive corruption. Civil Society activities were completely suppressed. Although the civil war caused extensive damages to the nation's utilities' infrastructure and undue set back to the nation's telecommunications developmental plans, greater damages was done to the nation's institutions and moral heritage as corruption took the centre stage in the post war era under the military rule.

In 1999, Nigeria returned to a democratically elected civilian government and has been nurturing her democracy in a somewhat stable political atmosphere. Nigeria runs a federal presidential government comprising the federal, 36 states and 774 local government areas. Power is shared between the Executive, the Legislature and the Judiciary. In May 2015, a new government, under President Mohammed Buhari was sworn in after a peaceful and credible general election marking the beginning of the third 8-year successful succession of democratic rule.

The civilian regimes did not only inherit a political system and social order that was thoroughly imbued with corruption, they appear to have raised the art of corruption to a higher level. Since the return of democracy in 1999, corruption has continued to ravage the country and the

resources of the nation have been carted away through embezzlement of public fund. Hence throughout the thirty years of military rule and the sixteen odd years of democracy, corruption in the institutions of government have crippled the development of the country and the delivery of basic services to the people (Kayode, Sunday, Adagba, Silas, & Aniyo, 2013). The developmental failure of the country is evidenced in the fact that in spite of being the sixth largest producer of oil, Nigeria spends billions of dollars each year subsidising imported refined petroleum products because of the country's lack of capacity for refining crude oil. Nigerian power generation capacity, which stands at 4000MW, is 10% of South Africa's output of 42,000MW. Incessant failure of electricity supply is one of the major problems affecting the growth of the industrial sector. Furthermore, the country's dependence on oil and lack of development in other sectors led to the crippling of the informal sector and high level of unemployment (Martini, 2014; Kayode, Sunday, Adagba, Silas, & Aniyo, 2013). The level of unemployment is reflected in the teeming numbers of 'umbrella sellers' and street hawkers all over the country.

Consequently, poverty level is very high in Nigeria; the current minimum monthly wage is N 18, 000 per month, i.e. N600 per day (US\$ 3 per day). This has implications for the affordability of telecommunications services by the ordinary consumer. One major outcome of the level of poverty is that over 90% of consumers are on the pre-paid (pay-as-you-go) platform because they are unable to afford the monetary layout required on the post-paid platform. According to the ITU, people earning N864 to N8640 per day (US\$ 4 to 40) are unlikely to afford regular monthly bills (ITU, 2007). In this poverty, the ordinary Nigerian consumers face intimidating challenges (Transaction costs) in their encounter with services providers with regards to seeking redress, particularly via the existing Alternate Dispute Resolution scheme as discussed in Chapter 7.

The socio-political environment in Nigeria, where those in powerful positions literally buy and maintain the support and loyalty of some individuals by granting those cronies favours from the resources of the state, qualifies Nigeria as a neo-patrimonial state marked by weak public administration and culture of impunity (Martini, 2014). This situation coupled by grand scale

looting of public funds has been the bane of development in Nigeria since the return to democratic rule in 1999.

Numerous literatures assert the high level of corruption in Nigeria. Nigeria was rated the most corrupt country in the world in 1996 and the second most corrupt country in 1999, when the military handed power to a democratically elected government. In the past sixteen years of democratic rule, Nigeria made insignificant progress in the fight to curb corruption. Nigeria was rated second most corrupt country in 2001, seventh in 2005, 13<sup>th</sup> in 2010 and 32<sup>nd</sup> in 2015. In the Sub-Saharan region, Nigeria's position on the corruption table was 31 out of 47 countries in 2014 (Transparency International, 2014, 2015). There are evidences that all forms of corruption abound in Nigeria: embezzlement of public funds, bribery, cronyism, nepotism, rent seeking and conflict of interest, including judicial and electoral corruption (Martini, 2014). Corruption is manifested in all aspects of the economy including the regulatory agencies and the regulated industries (Kayode, Sunday, Adagba, Silas, & Aniyo, 2013).

The frameworks of regulatory agencies in Nigeria are susceptible to political corruption and interference such that the independence and impartiality of the regulatory bodies are compromised from onset with grave implications for the efficiency of the market and the interest of the consumer. According to existing statutes, the leadership and Members of the Board of regulatory bodies, for example the governing board of the Nigerian Telecommunications Commission (Commission) and the Consumer Protection Council (CPC) are appointed by the President and confirmed by the legislature (Act, 2003, section 5(2), 8; CPC Act Sections 2a; 22(1)). In these political appointments, it is common knowledge that political leaders favour their supporters and cronies by appointing them to positions of authority in government agencies (Kayode, Sunday, Adagba, Silas, & Aniyo, 2013). The favoured heads of government agencies routinely abuse the authority and unhindered access to information inherent in their office by creating lucrative opportunities and channelling illicit benefits to their benefactors and cronies. They often bend the rules to favour certain groups or individuals to the detriment of the larger society (Kayode, Sunday, Adagba, Silas, & Aniyo, 2013). In this environment, the Public Interest is thrown overboard and this often led to the subordinating of

the ordinary consumer interest to other interests as will be highlighted in the empirical chapters of this study.

Conflict of interest and corruption arise *ab initio* in instances where an official is appointed to a powerful position in the regulatory agency of the sector in which he/she has financial interest or other significant relationship. For example, in 2012, an Executive Commissioner of the Nigerian Communications Commission blew the whistle on the immediate past Executive Vice Chairman (EVC) of the Commission, who allegedly had shares in, and was an Executive Director of MTS First Wireless, a mobile services provider, prior to his appointment as EVC. The Executive Commissioner also alleged non-transparent deals in frequencies allocations by the leadership of the Commission. Although the EVC admitted that, he was a director and had 'sweat shares' in MTS, nothing more was heard about the issue (Technology.Times, 2012). A similar allegation of conflict of interest was made against the first EVC of the Commission who allegedly was the president of Association of Telecommunications Company of Nigeria (ATCON) before his appointment as EVC (Ogundele, 2010). In Nigeria due to weak and corrupt judiciary, it is unusual that corruption allegations against the powerful elites are brought to a logical conclusion (Martini, 2014).

Further allegations of conflict of interest and non-transparent transaction is trailing the recent acquisition of VISAFONE Communications, the only surviving CDMA network operator by MTN the dominant operator in Nigeria. ETISALAT, a mobile operator, has sued MTN over the acquisition, alleging that MTN is been accorded preferential treatment and that the process was not open (Adepetun, 2015).

When the prevailing socio-political environment infiltrates the regulatory organisations (human actors) through their institutional frameworks as discussed above it spreads through the organisation because the favoured agents creates their own internal clientele network by extending similar favours, like job positions, to cronies. This has far-reaching negative impact on the regulatory institutions and the commitment of the regulator towards the attainment of policy objectives. The telecommunications sector is also affected. In practice, the Commission is not consumer focused because it suffers from acute agency problem and conflict of interest. The services providers in turn exploit the compromised regulatory institution and organisation

to violate consumer interests with impunity. The implications of all these on promotion of consumer interests, the representation of the ordinary consumer and the handling of ordinary consumers' complaints are the focus of Chapters 5, 6, and 7 respectively.

**FIGURE 2. POLITICAL MAP OF WEST AFRICA**



**Source:** Nations Online Project (2016)

### **3.2.1 Business in Nigeria: Opportunities masked by harsh environment**

The business landscape in Nigeria presents peculiar challenges. It is characterised by weak institutional capacity, acute infrastructural deficiency and a bureaucracy marked by non-transparent transactions, which are part of the legacy from decades of military dictatorship and a nascent democracy run by opportunistic politicians as was discussed earlier. The discovery of oil in the 1970s and the subsequent boom led to the neglect of the huge untapped potential

in other natural endowment in the agricultural and solid mineral sectors. Oil revenue fuelled corruption and the struggle for political power for the control of the national wealth. In this unwholesome struggle infrastructural development stagnated. For example, inadequate energy and electric power supply is a major challenge for businesses both in the formal and informal sector. All businesses including public organisation like hospitals, schools, airports and telecommunications base stations run on generators for several hours daily or are shut down awaiting the erratic electricity supply from the national grid. This challenge has adverse implication for the provision of telecommunication services and other basic services.

Companies whose businesses span over a number of states face the additional challenge of multiple taxations by the Ministries, Department and Agencies (MDA) of the three tiers of government: Federal, State, and local governments. Associated with the issue of multiple taxations is the issue of 'Right of way. Businesses whose operations involve the laying of pipes and cable are required to obtain approval and pay stipulated fees and levies to the government. The charges are repeated across various MDAs in the federal, state and local government levels without due regards to the Taxes and Levies (Approved rates for collection) Act 1998 (NCC Annual Report, 2013).

The insurgency and terrorist activities in the North East and militant groups in the Delta regions pose severe challenges to businesses as these groups often resort to vandalising existing infrastructural facilities, like oil and gas pipelines and telecommunications masts and base stations.

These challenges affect all sectors of the economy and inflate the cost of doing business in Nigeria. The result is lost opportunities for a diversified and robust economy, high level of unemployment and higher prices for consumers. In the telecommunications sector it militates against consumers' interest in the availability and affordability of services.

### **3.3. Evolution of the Nigerian Telecommunications Network**

#### **3.3.1. The Colonial and P&T era (1886 – 1985): 100 years of an inert telecommunications network**

The development of telecoms infrastructure started in Nigeria in 1886 with the installation of the first telegraphic submarine cable by a British firm known as Cable and Wireless Ltd, to link Lagos through Accra in Ghana, Freetown in Sierra Leone, and the Gambia to London for the purposes of connecting the British colonial administrators with the Home office and in some friendly locations in Nigeria where trade has begun (Ukodie, 2006). Thus, the telecommunications' needs during the colonial era were triggered by the British colonial exigencies rather than to provide access to telecommunications for ordinary citizens. However, it established the foundation for the development of present mobile telecommunications in Nigeria.

When Nigeria gained her independence from the British administration in 1960, the telephone network had 116 manual exchanges and only 5 automatic exchanges (NTP, 2000), with 18, 724 telephone lines, for a population of about 40 million people. This represented a telephone penetration of 0.04 telephones per 100 inhabitants (about one telephone line per 2,500 people) which is well below the International Telecommunication Union (ITU) minimum standard of one telephone line to 100 inhabitants for developing countries.

The Nigerian telecommunications network, between 1960 and 1985 (nicknamed the P&T era) under the indigenous government consisted of: the internal network managed by the Department of the Post and Telecommunications and the international network managed by the Nigerian External Telecommunications (NET). NET was a limited liability company also 100% owned by Government.

From 1962 to 1985, the indigenous Government conceived and implemented five National Telecommunications Development Plans (NTDPs). The overall objective of the plans was to expand, modernise and provide reliable and efficient telecommunications services (Ukadie, 2006). The first development plan spanned from 1962 to 1968 during which expansion of some existing exchanges resulted into 10, 000 additional lines and only 2% of projections made for

Subscriber Trunk Dialling (STD) facility in major cities were realised. The Nigerian civil war (1967-1970) had its toll on this plan period and the second plan period, 1970-1974 which was partially devoted to the completion of the first plan targets and the rehabilitation and reconstruction of the damages caused to the telecommunications infrastructure because of the civil war.

These plan periods were not successful for various reasons including: political instability; which resulted in three years of civil war leading to 30 years of military government and government bureaucracy characterised by lack of transparency, corruption and weak institutional capacity as discussed in 3.2 above. This was compounded by the dearth of indigenous technology and technical expertise in that period. It is significant to note that in this era, telephone service was a public interest obligation and was subsidised by the government. Hence, telecommunications projects during this P&T era were exclusively funded from the Nigerian government's subventions much of which was diverted to political loyalist as personal favours under the prevailing neo-patrimonial environment discussed above. In this scenario, "what was available for telecommunications was what the political class were willing to give out." (Ukadie, 2006:12). The political elite and their cronies focussed more on personal gains rather than the development of viable telecommunications industry. This explains why some telephone exchanges were sited in unviable locations or viable locations with no External Line Plant (ELP) for example poles and cables required for the connection of subscribers to the exchanges, merely to serve a political elites' clientele and close circle to the exclusion of the potential ordinary consumers. In addition, poor urban planning and inadequate infrastructural development particularly in the transport and power sectors also constituted a challenge to proper network development.

At the end of 1985, after one century of telephony business, Nigeria could only boast of achieving a switching capacity of about 200,000 lines out of planned target of about 460,000 lines resulting into a telephone penetration of 0.22 telephones per 100 inhabitants which was still well far below the African average telephone penetration of 0.66 telephones line to 100 inhabitants in the 80s (Aloo, 1998).



Because of inadequate infrastructure, the telephone service was characterised by serious system congestion resulting into unusual dial tone delay for consumers trying to make calls. Sometimes it was impossible to get dial tones when offices were open. It was common for the telephone operators to advise the callers to try again the following day after making several abortive trails. Consequently, *'All trunks are busy, please try again later'*- one of the feedbacks from the telecommunications' announcement machine became a recognised/prevalent jingle in this era.

### **3.3.2 The Nigerian Telecoms Reform Era (1985-1998): Monopoly dies hard**

In line with the global trend in digitalisation and privatisation and enabled by the companies' decree of 1968, the Federal government in 1984 approved the merger of the telecommunications arm of the Department of the Post and Telecommunications (P&T) and the Nigerian External Telecommunications (NET) to form a new limited company – the Nigerian Telecommunications Limited (NITEL). This merger was achieved in January 1985. The main objective of creating NITEL then was: to harmonise the management of the internal and external telecommunications services; rationalise telecommunications development investments as well as provide services that are accessible, efficient and affordable (NTP, 2000). NITEL also had the objective to achieve the ITU recommendation of a minimum of one telephone to 100 inhabitants.

In the plan period 1986-1991, efforts were made towards infrastructural development and improvement in managerial capacity. For example, NITEL upgraded the national network by the addition of modern automatic telephone exchanges, digital satellite communication facilities, digital radio and optical fibre optic cable system in order to increase the network capacity and improve quality of service. NITEL also introduced some management strategies to address consumer complaints and billing issues. In spite of these initiatives, NITEL's transition from a government monopoly that lived on government largesse to a vibrant commercial entity fell far short of the mark. Thus, the National Telecommunications Policy (2000) comments that:

“Telecommunications development during this period was characterised by serious short falls between planned targets and their realisation, principally because of poor

management, lack of accountability and transparency and low level of executive capacity’’ (National Telecommunications Policy, 2000:12; Okonjo – Iweala, 2012).

The lack of accountability and transparency was a reflection of the prevailing socio-political environment.

Experiences from developed countries especially the USA and UK have proved that the best way to run a telecommunications network is to privatise it and thus operate it as an independent entity free from interferences by the Government. Thus in 1992 NITEL was commercialised by the Federal Government Technical Committee on Privatisation and Commercialisation (TCPC) as the initial step towards its privatisation. This process required NITEL new Board to sign a performance bond to achieve the goals of commercialisation in May 1992, with the Federal government. The implication of this was that NITEL had to fend for itself and no longer received subvention from government. After a tariff rebalancing exercise, a proper tariff regime was put in place for NITEL to make her viable and financially autonomous. Tariff rebalancing, one of key outcome of the reforms, involves the process of bringing down the above-cost long distance /international tariffs and raising the subsidised local tariffs. The policy translated into the generation of huge new revenue but did not translate into proportional increase in network expansion.

NITEL also embarked on joint ventures with other foreign companies to facilitate the deployment of new technologies. For instance, in June 1992 NITEL entered into a joint venture with Digital Telecommunications of the USA to form Mobile Telecommunications Services (MTS), which provided mobile voice services and paging from three analogue E-TACS switches installed in Lagos, Enugu and Abuja. The maximum number of connected lines realised from this venture was 25,000. The lines were unduly expensive and beyond the reach of an ordinary consumer; the cost of a mobile set and connection from MTS was about N100,000 (over US\$2,000).

Subsequently, in line with the global trends in deregulations and privatisation and backed up with the British example in deregulation (DTI, 2001) the government enacted Decree 75 of

1992 which partially liberalised the telecoms sector and opened it up to competition in the following eight areas:

1. Installation of terminal and other equipment and provision and operation of:
2. Public pay phones;
3. Private network links;
4. Public mobile communications;
5. Community telecommunications;
6. Value added network services (VANS);
7. Repair and maintenance of equipment;
8. Cabling.

Although the Nigerian Communications Commission [Commission] was established in 1992 and the Commission's Board inaugurated in 1993, it took until 1996 for Decree 75 to become active and for the Commission to license the first set of National Fixed and Fixed Wireless Private Telecommunications Operators (PTOs). Furthermore, Decree 75 did not revoke NITEL's monopoly in the provision of public voice telephony services and international traffic. Monopoly dies hard. Consequently, several interconnection issues were encountered between NITEL and the licensed PTOs (Wellenius, 1993). These difficulties confirmed the weaknesses in the provisions of the Decree 75 of 1992. According to Melody (1997), interconnection is a cornerstone of competition, essential to network development and to the achievement of telecoms policy objectives. The most fundamental regulatory objective is the provision of equal access to telecoms services at affordable prices to all consumers. This point was completely missed by Decree 75 of 1992. Showing that the political elites were reluctant to let go of what had been a money-spinning resource for granting benefits to their loyalists and cronies. However, the political elites will eventually recapture the sector through the regulatory framework provision for the appointment of the Governing Board as discussed in Section 3.2 above.

Hence, the impact of opening up the Nigerian telecoms market in 1992 was minimal due to insufficient infrastructure, inefficient operations and lack of visible competition in the market. The Commission assesses the situation as follows:

“In spite of its long history, the telecommunications sector in Nigeria until the late 1990s was one of the most undeveloped in Africa and indeed, in the world. Several factors accounted for the low development of telecommunications infrastructure in Nigeria. The most prominent factor being the dominance of the sector, by the state-run monopoly, the Nigerian Telecommunications Limited (NITEL)” (NCCSMP, 2014:5).

The frustrating experiences of the ordinary consumer at this period of the telecommunications development in Nigeria were duly captured by the National Telecommunications Policy: “The quality of service was largely unsatisfactory. The telephone was unreliable, congested, expensive and customer unfriendly” (NTP, 2000:12).

Therefore, in spite of commercialisation, NITEL’s network remained congested with low call completion rates due to inadequate capacity, uneconomic investment pattern and poor maintenance culture and management. Its operations were grossly inefficient with a very long list of unmet consumer demand for basic telephone services and a penetration rate of about four telephone lines for 100 inhabitants. The suppressed demand was estimated at 90%, (Okonjo-Iweala, 2012). Ironically, this bottled up demand was to become the driver of the exponential growth in subscribers’ numbers in the liberalised telecommunications market.

### **3.3.3 Full liberalisation and the digital mobile services (1999-2015): We are connected**

The new democratic Government elected in 1999 under President Obasanjo was cognisant of the ITU’s 1994 declaration which accords telecommunications a priority role in member state’s development programme (ITU, 1994) and the need to reposition the sector as one of vital economic importance (Michalis, 2007).

Hence based on the outcome of a four-day public hearing on policy directions organised by the House of Representative Committee on Communications, the government amended the Decree 75 of 1992. Thus the full liberalisation of the Telecommunications sector was achieved in 1999 when the government: “first opened the sector for licensing of new mobile network providers” (Okonji-Iweala, 2012:37). In a quick follow up in April 2000, subsequent upon the Ministry of Communications’ wide consultation of local and international bodies the existing National Telecoms Policy was revised and published in October 2000.

In January 2001, the Commission offered digital mobile licenses to the four winners of the auction: Mobile Telephone Networks Communications Nigeria (MTN), M-Tel (the mobile arm of NITEL), Econet Wireless (now Airtel), and Communications Investments Nigeria Limited (CIL). Three of the service providers met the 14-day deadline for the payment of the US\$285 million licence fee. The failure of CIL to meet the time limit and subsequent forfeiture the fourth mobile licence generated a lot of controversy. The Nigerian businessman Mike Adenuga, who had won a slot in the auction via CIL, contested the alleged failure to meet the deadline. Mike Adenuga wholly owned Global Communications Limited (GLO) was later issued a license in 2003 for the same fee and became the second wholly Nigerian Operator. There is very little information about the ownership of these GSM companies; their ownership is mask by nominee companies and proxies. For example, Communication Investment own 4% holdings in MTN. It has been reported that Communication Investment is owned by some six top Nigerian bankers and politicians (Sutherland, 2016).

These four mobile service providers were granted a five-year exclusivity period (2001 to 2006) to deploy a national network to provide the second-generation GSM digital mobile Radiotelephony in the frequency bands of 900MHZ and 1800MHZ. Although the GSM licence includes potential to upgrade to the General Packet Radio Switching (GPRS) it excludes the Third Generation (3G) networks. In addition, each of the issued GSM license includes the establishment and operation of an international gateway. M-Tel rolling out a GSM network was unsuccessful largely due to the aborted planned attempts to privatise M-Tel's mother company NITEL (Okonji-Iweala, 2012). Subsequently, Etisalat joined the mobile market in 2008 bringing the total number of active mobile operators to four.

The Commission established the Universal Service Fund [USO], which is funded from a 40% of 2.5% levy on the turnover of both the fixed and mobile dominant industry players. The universal service obligation in a regulated competitive telecoms market is a regulatory intervention scheme aimed at achieving a specific public service goal, which would have been neglected by the market operators. In the UK, OFTEL described universal service in 1984 as “affordable access to basic voice telephony or its equivalent for all those reasonably requesting it, regardless of where they live” (Garnham, 1997:207). The notion of universal service covers

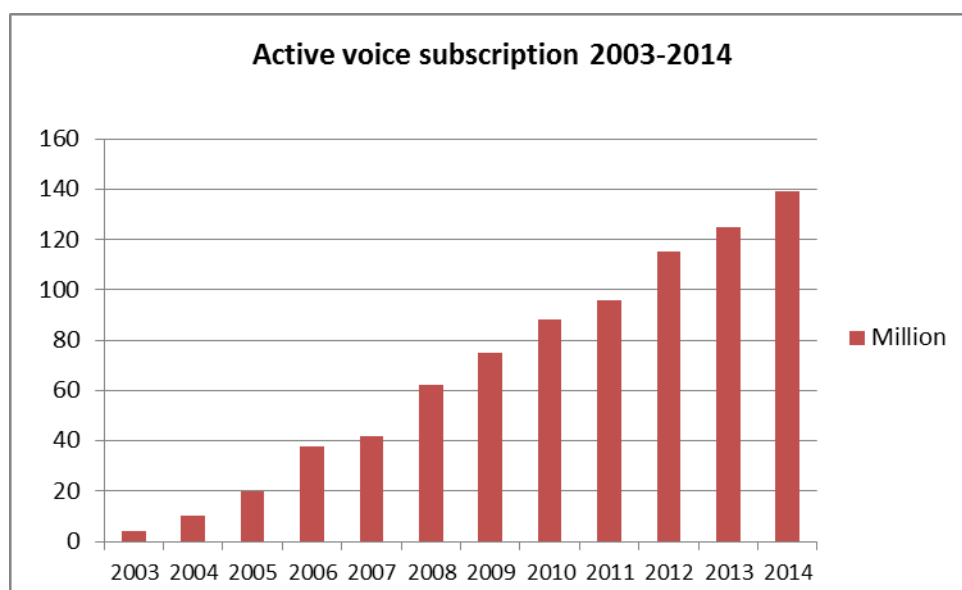
both availability and affordability of the service to the ordinary consumer. In Nigeria a substantial part of the country approximately 20% is not covered by the roll out of mobile networks and therefore do not have access to even basic telephone services [ICT Policy, 2012]. This issue highlights the need of the Universal services obligation.

It was envisaged, that investment in the GSM mobile segment would contribute 95% of the total investment made in the telecommunications industry in the period 2001-2003, which was estimated at US\$1.2bn. The Commission further estimates: “investments of about US\$37.5 billion in the years 2003-2007, creating about 100,000 direct jobs and about 5 million indirect jobs” (NCC, 2005). Although these figure were not realised, the actual volume of investment remained impressive at US\$ 32 billion in 2014 (NCC.Communicator, 2014).

The growth in investment has been stimulated by several incentives put in place by the government for the qualified GSM investors. For instance, government granted each mobile operator ‘pioneer status’ with the following benefits: Tax holiday with respect to income and education taxes; Capital expenditure on qualifying assets and losses incurred during the tax relief period are treated as having been incurred on the first day following the tax relief period; and is available for carrying forward subject to the 4-year limitation period (NCC, 2005:12). In addition, the government gave the investors some non-fiscal incentives such as simplification of procedures and requirements for the importation of telecommunications equipment.

The Nigerian telecommunication sector has come a long way. Through a 15-years period of reformation and 15years of post-liberalisation and roll out of mobile telecommunications services, it has become the largest mobile network in Africa and one of the fastest growing in the world with a subscriber’s base of over 149 million in 2015 (NCC.Communicator, 2015). However, the Commission reflects the characteristics of the prevailing socio-political environment. It is highly susceptible to regulatory capture by the political elites and the regulated industries. In practice, it is not entirely independent and is plagued by acute agency problem. Consequently, the Commission is not attentive to issues affecting the interest and representation of the ordinary consumer. As a result, the impressive growth of the sector (see Figure 3) has not produced equivalent improvement in the realisation of consumer interests as

**FIGURE 3. TREND OF ACTIVE VOICE SUBSCRIPTIONS 2003-2014**



**Source:** Adapted from 2014 Yearend Subscriber/Network Data Report for operating Telecommunications Companies in Nigeria (NCCStat, 2014)

the mobile networks have consistently failed to meet pre-set key performance indicators and the criteria of reliable and affordable telecommunication services. This issues form the high points in the empirical Chapters 6, and 7 of this study.

### **3.3.4 Regulatory framework 2000-2015: Independent or politicised regulator?**

The Cable and Wireless Act of 1962 positioned the Ministry of Communications as the Nigerian telecommunications regulator. Hence, the Ministry supervised NITEL, the incumbent, from 1985 until 1992. In 1992, Decree 75 established the Nigerian Communications Commission (Commission), thereby removing the regulatory responsibility from the Ministry and transferred the responsibility to the Commission (Ukadie, 2006). Finally, the Nigerian Communications Act of July 2003 gave full organisational and financial autonomy to the Nigerian Communications Commission as an independent regulator with exclusive powers for all matters as it relates to the Nigerian communications market (Act, section 90). The Commission has a Governing Board and an annual operating budget of N 40 billion (US\$ 200 million) in 2013. The key provisions of the Act include the separation of the functions of the

Commission vis-à-vis that of the Ministry, the establishment of the National Frequency Management Council (NFMC) and the establishment of the Universal Service Fund to promote the widespread availability and usage of network services throughout Nigeria (NCC, 2005).

The Governing Board of the Commission consists of nine Commissioners including a chief executive, the Executive Vice-Chairman (EVC), all of whom are to be appointed by the President of the Federal Republic of Nigeria subject to the confirmation by the Senate (Act, section 8).

The existing regulatory regime is a major contributor to the impressive growth of the telecoms sector, which has placed Nigeria in leadership position in regional and international organisations, including the Commonwealth Telecommunication Organisation (CTO) (Adepetun, 2015). However, the institutional framework is vulnerable to political manipulation as regards the appointment of the Governing Board. This exposes the Commission to conflict of interest and increases the prospect of regulatory capture by the industry, which distracts the Commission from effectively executing its mandate concerning the promotion of consumer interests.

### **3.3.5 Market structure: GSM takes the lead**

The Nigerian telecoms industry, for the purpose of this study, can be segmented into two broad categories: the digital mobile segment consisting of the mobile GSM and the mobile CDMA, and the fixed telephony segment consisting of the fixed wired and fixed wireless.

The Nigerian telecommunications market has recorded an unprecedented growth in both the overall volume of business and contribution to the national GDP (0.62% in 2001, 6.9% in 2012 and 8.9% in 2014). The number of total active telephone lines at the end of August 2015, fourteen years after full liberalisation has risen to 149.14 million lines and teledensity of 108 from about 400,000 lines and teledensity of 0.04 in 2001. The Commission has issued many licenses as indicated in Table 3. The number of licenses is an indication of the level of investors' interest in that segment.



**TABLE 3. CURRENT ACTIVE LICENCES ISSUED BY THE COMMISSION**

<b>S/N</b>	<b>Category</b>	<b>Number</b>
1	Internet service	195
2	Unified Access Service licence	16
3	Mobile GSM	4
	CDMA <sup>6</sup>	No data on NCC website
4	National Long Distance operators	10
5	International Data Access	22
6	Interconnect Exchange	9
7	National Carrier	2
8	International Gateway	3
9	Metropolitan Fibre Cable Network	11

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<sup>6</sup> Interviewee-CAB 2, in response to the researcher's question, said: "the CDMA operators except VISAFONE are virtually no longer operational. There was an attempt by a particular Consortium to buy all of them up, and set up one consolidated service provider unit with the acquisitions, but that has not materialised meaningfully. Therefore, the above adverse development on the CDMA operators may have been the reason for their non-listing on our web site. This scenario has played out. VISAFONE has been bought by MTN and AIRTEL is challenging the acquisition in court.

10	Value Added Service	187
11	Electronic Directory Information service	2
12	International Submarine cable infrastructure and landing stations services	3
13	Infrastructure Sharing and Collocation Services	37

**Source:** Nigerian Communications Commission (NCC, n.d.-a))

**a) The Mobile (GSM) Segment: the ‘GSM Revolution’**

The telecoms industry is primarily driven by the mobile (GSM) market segment as seen in Table: 4, and Table 5. In 2014 this segment accounts for 98.30% of active voice subscription lines of the entire telecoms market while the mobile (CDMA) and the Fixed wired/wireless segments account for 1.57% and 0.31% respectively. The penetration rate grew from about 0.04% in 2001 to 99.39% in 2014 (NCCStat, 2015:5). This exponential growth referred to in Nigeria as the ‘GSM Revolution’ has been facilitated and sustained by progressive opening up of the mobile sector to competition. It is indeed a direct indication that liberalisation reform that took place in the Nigerian telecoms mobile sector despite its attendant competition problems did positively influence higher network penetration (Petrazzini, 1996). This is similar to the experience of other developing countries like Ghana. Frempong and Atubra (2001: 209) report that, “Liberalisation has facilitated telecoms penetration and has given the subscribers the ability to choose between operators”. Mobile telephony remains the dominant and preferred means of communication in Nigeria (refer to Tables 3 and 5 above).

**TABLE 4. SUBSCRIBER STATISTICS: TOTAL ACTIVE SUBSCRIPTIONS (2010 – 2015)**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Total active subscription	88,348,026	95,886,714	113,195,951	127,606,629	139,143,610	151,017,244
Teledensity	63.11	68.49	80.85	91.15	99.39	107.87

**Source:** Adapted from Total Voice Subscriptions 2009 – 2013 (NCCStat, 2014:5) and Total Active Voice Subscriptions 2010 – 2015 (NCCStat, 2015:5)

**b) Fixed and Fixed Wireless Telephony Segment: Going down with the Incumbent**

The fixed telephony segment comprises of all licensees operating a Private Network Link (Microwave Radio) licence or a Fixed Wireless Access (FWA) licence. The licensees called Private Telecoms Operators (PTOs) use fixed wireless technology (as opposed to mobile wireless technology and traditional fixed wireline technology) to deploy their services because of the inherent advantages of wireless technology over the wired in terms of flexibility, rapid deployment and lower cost. Although the Commission had anticipated that increase in fixed lines from the PTOs, FWAs and NITEL will have positive impact on competition, Table 4 above shows that on the contrary growth in the fixed wired/wireless telephony segment has been on the decline from 4000 lines in 2001 to 182,395 in June 2015. The Commission confirmed that: “Fixed wired/wireless are disappointingly sliding to extinction, a scenario compelling intervention by the Commission to safeguard this sector” (NCC Annual Report, 2012:4). The reason is perhaps due more to regulatory and market failures rather than inadequate infrastructure and insufficient number of licenced service providers. For instance, Government has made four fruitless attempts to privatise NITEL (Okonjo-Iweala, 2012). Finally, the privatisation of NITEL and its mobile arm M-Tel was completed in December 2014 through the guided liquidation strategy following a single financial bid, which was opened in

October 2014 by the Administration of the immediate past government (Andrew, 2014; Okeke & Isaac, 2015).

NITEL, the incumbent owned the fixed wired segment and the demise of NITEL meant the demise of the fixed wired segment. The collapse of NITEL, six years after the liberalisation of the sector has also been attributed to regulatory failure (Ogudele, 2010). However, this study did not find further literature on this issue. Similarly, the acquisition of VISAFONE Communications, the only surviving CDMA, by MTN is being challenged in court by Etisalat alleging complicity and non-transparent transaction by the Commission (Adepetun, 2016).

**TABLE 5. PERCENTAGE MARKET SHARE OF SERVICE DEPLOYMENT BY TECHNOLOGY (2013- 2016)**

<b>Year</b>	<b>Mobile (GSM)</b>	<b>Mobile (CDMA)</b>	<b>Fixed Wired/Wireless</b>
<b>2013</b>	97.83%	1.88%	0.29%
<b>2014</b>	98.30%	1.57%	0.13%
<b>Jan 2016</b>	98.47%	1.41%	0.12% (NCC website)

**Source:** 2014 Year-end Subscriber/Network Data Report for Telecommunications Services Providers in Nigeria (NCCStat, 2014; NCCStat, 2015:7)

The liberalisation of the telecommunications sector has engendered an exponential growth of the mobile segment. This impressive growth is counter balanced by the demise of NITEL, the incumbent, the Fixed Wired/Wireless and CDMA segments. The recent sale of these segments is not without controversies.

### **3.4. Trends in Consumer Benefits and Challenges in the Mobile Market**

The liberalised telecoms industry has benefited from rapidly changing technological developments and innovative products and services resulting in impressive growth of the sector. It was also envisaged that liberalising the telecoms market will lead to easier access to basic telephony for all and wider choice at affordable prices for the consumers (OFCOM, 2010). The trend in the last two decades in Nigeria and many countries has shown bright prospects of achieving these goals. However, the telecommunications market is complex and loaded with innovative and fast changing options. Consumers face daunting challenges while operating in this market.

In this section, the study reviews the trend in the mobile telecommunication sector concerning the benefits and challenges to the ordinary consumer.

#### **3.4.1 Consumer Benefits: Now we are talking due to mobile technology**

In 2008, global mobile subscription reached 4.6 billion, approximately 63% of the world population, and in 2012, global mobile penetration stood at 96%: 128% in developed countries (indicating that there are more mobile phones than are people) and 89% in developing countries (ITU 2009; ITU, 2013). Since the first mobile phone call in the UK in 1985, the penetration of mobile telephone in UK households has grown to about 92%, contributing 40% of total voice minutes and 51% of the UK telecoms sector in 2007 and its share is growing around 10% per year (OFCOM, 2009). In Australia mobile penetration is approximately 95%, ranging from 100% for those aged 18 – 24 to 83% for the 65 and above (ACMA, 2015). In Nigeria, household ownership of mobile telephones in 2009 was 59% (representing 70.6% of those with access) and individual access to mobile telephone was 63% (ITC Policy, 2012). The country achieved a teledensity of 99.39 in 2014.

The impressive growth in mobile telephone penetration is attributable mainly to the extremely low penetration of the pre-existing fixed infrastructure and the consequent huge unmet demand, as well as to liberalisation and the techno-economic characteristics of mobile networks, which has driven the extension of networks to rural and underserved areas. The result is that consumers globally have benefited from increased access to telephone facilities.

Given the poor state of fixed-line infrastructure, in most developing countries and in Africa in particular, mobiles are often the preferred (or only) means of communication. For example, Nigeria and other developing countries started from a significantly low fixed line penetration rates of 4% (Pyramid Research, 2010). Over the past 10 years, the number of mobile connections in Africa has grown on an average of 30% per year and is forecast to reach 735 million by the end of 2012 (GSMA, 2013). Africa has overtaken Latin America to become the second largest mobile market in the world, after Asia. In 2012, nearly 76% of the Sub-Saharan African population is covered by mobile services, up from 65% in 2009. In Nigeria mobile GSM share of the telecoms market increased from 94% in 2001 to 97% in 2012 and to 98.30% in 2014 (NCCStat, 2014; NCCStat, 2015).

Nigeria recorded the fastest growth rate of 10 million mobile telephone lines per annum between 2000 and 2010, becoming the fastest growing and largest telecommunications market in Africa with over 135 million connected telephone lines and a population of 160 million. This growth has continued unabated in 2012 with a growth rate of 18%. Nigeria is still the leading telecommunication market in Africa and one of the fastest growing in the world. Since the liberalisation of the industry in 2001, it has attracted USD37.5 billion in capital investment (Pyramid Research, 2010; NCC Annual report, 2012).

Mobile operators' contribution to global GDP stands at 1.4% and it is expected to grow at 2.3% per annum. Africa's mobile connection was over 620 million lines in 2011, contributing USD 56 billion to the regional economy, equivalent to 3.5% of total GDP. In Nigeria telecommunications services contribute USD 44.3 billion (8.6%) of the USD 510.1 billion GDP (Arowolo & Folarin, 2014).

One of the key growth drivers for mobile penetration in Africa has been the increasing availability of low-cost pre-paid services. Pre-paid pricing offers ordinary consumers cost effective options, to access mobile telephone and other innovative services by purchasing low value mobile credits as and when they can afford to and without the commitment to strenuous regular monthly payments. The pre-paid option is very popular in Africa accounting for 96% of all connections compared to 52% in Europe and 82% in Latin America (GSMA, 2012). In Nigeria prepaid accounts for 97% of total mobile subscription (NCC.CSS, 2012).

Mobile telecom is becoming increasingly more affordable as prices keep dropping every year and consumers globally are enjoying falling prices. Between 2009 and 2010, price per minute fell, on average, by 10% in countries such as Kenya, Nigeria, Namibia, Ghana, Niger, Senegal and South Africa, with the largest decreases occurring in Kenya, (GSMA, 2012). Consumers in Africa witnessed an average of 18% reduction in prices between 2010 and 2011 (GSMA, 2013) and in Europe consumers are enjoying significantly lower prices with mobile charges falling by 50% over the last five years (OFCOM, 2010). The rapid decrease in prices resulting from innovative technology and the economy of scales combined with the broad availability of pre-paid services means that mobile services are accessible to all income groups except those who are geographically handicapped like those rural communities living far from the urban areas where mobile services are yet to be rolled out.

Consumers all over the world are increasingly using the mobile phone to access the internet. For example, in Zimbabwe 58.1% of web traffic is mobile-based, and is 57.9% in Nigeria and 44% in Zambia, compared to a global average of 10%. Mobile networks are leading the expansion of broadband internet access across Africa, although faster broadband access is largely confined to a small minority of the more developed African countries (GSMA, 2013). In the UK, mobile networks offer a very viable option for achieving universal access to broadband (OFCOM, 2009). In 2013, the result of OFCOM (2013) survey showed that 53% of participants use their mobile phones to access the internet, up from 42% in 2012.

### **3.4.2 The Positive Impact of Mobile Telecommunications: Bridging the urban-rural divide**

In the last decade, mobile telecom has changed the ordinary consumers' way of life in a profound way. In the UK, "mobile has become central to UK citizens and consumers" (OFCOM, 2009:2) and it has engendered closer ties between peoples (Tambini, 2011) as it is also providing fast link to all corners of the world. It now serves as a primary tool for communication and information dissemination between persons across the globe. Across Africa, mobile telephony has not only changed the way consumers relate to each other and their communities, it has also influenced the way they work by rapidly changing their knowledge base and culture. In Africa, where the rural population is about 61% (52% in Nigeria) mobile

telecoms services is bridging the gap between the urban and rural dwellers particularly in the area of communications, banking, information dissemination and entertainment. With mobile phones rural dwellers can access information about commodities prices and availability of agricultural inputs; receive and transfer money; enjoy their favourite music while at work or on the go. Mobile telecommunications create new opportunities for economic and social engagements and has a positive impact on the consumer lifestyle and quality of life. The global mobile industry supports 8.5 million jobs and an additional 1.3 million jobs is expected in emerging markets by 2017. In Nigeria, the mobile telecoms services provide about 8,000 direct employments and 3 million indirectly. The indirect employment includes, street vendors (umbrella people), those engaged in equipment sales and servicing, infrastructure deployment and maintenance, advertising and security related jobs (Pyramid Research, 2010).

With mobile telephony, consumers access the internet engage in mobile-commerce; m-learning and a host of other internet- enabled activities. Across Africa mobile value- added services support banking, education, farming, healthcare and gender equality (GSMA, 2013). In Nigeria, the mobile phone is a major instrument for the government's cashless policy and the innovative 'mobile money' and on-line retail platforms. 'Mobile Money' – a regulated financial and payment services performed with the use of mobile phone and without the need of a bank account – has proved very effective in achieving financial inclusion for the unbanked population in developing countries particularly in sub-Saharan Africa where 16% of adult population use their mobile phones to pay bills, send or receive money (ITU-T, 2013).

In the UK, mobile services have become “a tremendous success story for consumers and citizens” as it continues to play a central role in consumers' use of communication services (OFCOM, 2009:12). Moreover, the positive impact on consumers' knowledge base is triggering consumers' demand for improved access to information and services that cater for public interest such as education and research, health, environment and transport, culture and religion (OECD, 2008).

Mobile telephony has also been found useful in enhancing security by facilitating early warning. In Nigeria, the mobile phone is used in traffic monitoring and reporting of accidents. Consumers using their mobile phones report traffic situation in their location to their favourite



radio stations' live broadcast. Similarly, in the UK, the introduction of 'Emergency 999/112 mobile roaming' in 2009 has proved useful in mitigating emergencies and support for the handicapped. This service enables mobile phones to switch automatically to alternative networks enabling users to make emergency calls when they are outside their service area (OFCOM, 2010).

In some African countries including Nigeria and South Africa, mobile operators are providing "Please Call Me" text messages free of charge after they noticed that the networks were being inundated by millions of beeps/ashes a day. These are calls made only to attract the attention of the called party by a caller who do not have sufficient funds to place a full call; hence, the caller aborts the call after a few rings. Studies estimate that 20 to 30 per cent of all calls made each day in Africa are beeps/ashes. The "Please Call Me" service is a free alternative method for the low-incomes to reach out to their contacts when they are low on airtime. This has been found very useful in emergencies and social relations. In Ghana and Nigeria, systems have also been deployed to allow users to check the authenticity of pharmaceuticals. Counterfeit drugs are a major issue in Africa and the scheme, endorsed by the West Africa Health Organisation, is being promoted by a number of drug companies. GlaxoSmithKline and other pharmaceutical firms have signed up to the initiative; which enable users to send a code printed on the drug packet via SMS and receive a reply, either verifying the authenticity of the drugs or giving a warning that the product may be fake and providing a helpline number to call for advice (GSMA, 2013).

The liberalisation of the telecommunications sector has engendered increase in access to Mobile telecommunications services, thereby creating new opportunity for economic and social engagements and has affected positively on the ordinary consumer lifestyle and quality of life in Nigeria. However, these benefits have a price tag. Access to mobile telephone is useful in enhancing national security but in the hands of terrorists, it has had a devastating impact on the citizens. The challenges ordinary consumers encounter in the mobile market, which is the subject of the next section highlights the need for pro-consumer interventions to protect the interest of the ordinary consumers.

### **3.4.3 The Challenges of the Telecommunications Market: New harm emerge every day**

In spite of the laudable benefits accruing from the liberalisation of mobile telecommunications, consumers encounter numerous challenges in the market that stress their capacity to act in their best interest and “new forms of harm continue to develop” (OFCOM, 2010:2). The challenges consumers encounter in the liberalised market includes industry related issues, information asymmetry and complex marketing (often-deceitful) strategies of services providers. Industry related issues include fast changing and complex innovative services and products options. Information in telecommunications by its nature tends to be complex, and its form – content, context, framing, quantity and quality - stretches the ordinary consumer’s cognitive capacity and ability to assess, correctly the benefits and risks of what is on offer. This reality confirms the NIE notion of bounded rationality (North, 1993). In Nigeria, the structure of the regulator and the subsequent conflict of interest the emanated at the inception of the liberalisation of the mobile sector created additional challenges for the consumers.

This section reviews the various challenges consumers encounter in the telecommunications market and argues that consumer protection policies and regulatory intervention are essential in ensuring that the market works well and the envisaged benefits are fully realised.

#### **3.4.3.1 Dearth of Experts: Consumers are on their own as The Regulatory Institution is Compromised**

Since the full liberalisation of the Nigerian telecommunications industry in 2001, one of the challenges, which have persistent adverse impact on the operation of the market, is the dearth of experts in the liberalised mobile sector (Okonjo-Iweala, 2012). At the inception of liberalisation, the only pool of professionals (top, middle and bottom cadre) in the industry was with NITEL, the incumbent operator. The telecommunications industry witnessed poaching of staff from the incumbent network and from one mobile network to the other. Re-poaching of the same staff back to the previous/original network was common as the networks hustle for the available expertise. The Commission was not spared. Technical and legal staffs of the Commission were poached to the detriment of the Commission’s functions; for example, the current Managing Director of MTN and head of the Legal Department in AIRTEL were

poached from the Commission. Thus, highly placed staffs in the GSM mobile networks have their colleagues in the Commission most of who are also in highly placed positions. Consequently, the four mobile networks and the Commission have in each of their work force: friends, senior/junior colleagues and former bosses from the previous places of work.

The situation had implications for the newly liberalised industry. On the positive side, it engendered the redistribution/transfer of expertise, information and facilitated corporation in the industry. On the other hand, it had the potential to lead to conflict of interests and facilitate the networks to work in a cartel-like manner (Ubochioma, 2013). More important, it had adverse smothering effects on the monitoring and enforcement institution (Otubu, 2013). For instance, the Commission has sometimes been criticised for reacting indifferently to consumer issues: for example, not regulating tariff after the liberalisation when competition has not been fully developed and for not enforcing the Quality of Services Regulations in the face of persistent failure of services providers to meeting the Key Performance Indicators (KIP) (Ndibe, 2013). These lapses in the Mobile Administration resulting from conflict of interest were to set the stage for the prevailing routine contravention of consumer interest rules by licensees discussed in chapters 5 and 6 of this study.

There was also an acute shortage of adequately trained and experienced middle level and front desk staff at the services providers' customer service centres to attend to the complaints of the large numbers of consumers who visited the centres. Often consumer after waiting for hours leave the customer care centres without any solution to their complaints. These frustrating experiences at the inception of the mobile networks contributed to the growth of consumers' apathy towards complaints procedures.

#### **3.4.3.2 Inadequate Geographical Coverage: Are Rural Areas Being Excluded?**

The GSM licence which the Commission offered the four winners of the auction in 2001 set obligations for a minimum roll out target of 2.35million telephone lines to be achieved by all the four service providers by August 2004. The service providers achieved 8.3m telephone lines by December 2004, which exceeded their roll out obligations in terms of number of lines by 253% but all failed to meet the geographical coverage obligation. The requirement on

geographical spread, enjoined the services providers to ensure that at least 5% of their customers shall be domiciled in each of the six geopolitical zones. The Commission however lacked the capability to measure compliance with this provision (NCC, 2005:13).

The licenced fixed and mobile service providers concentrated their roll out in the urban and wealthy Lagos zone/Abuja while using NITEL long distance infrastructure to access the other zones in Nigeria instead of rolling out to the zones as stipulated in their licence obligations. The implication was that some areas of the country remain uncovered and existing consumers lose contact and are unable to make or receive calls when they travel to those areas.

The Commission usually rates the performance of the mobile telecommunications industry by the number of active subscriber lines and the teledensity. This is evident in all annual reports and other publications. Thus, it would appear that the Commission is continuously placing undue emphasis on rate of growth of subscriber lines, while losing sight of vast rural areas of the nation that are neglected and consequently the ordinary citizens in these areas do not have access to basic telephone service; situation which tends to favour the service providers as it translates into higher Average Revenue earning Per User (ARPU) for the services providers. The failure of the Commission to monitor and enforce compliance of the geographical spread obligation was also a fall out of the conflict of interest discussed earlier.

#### **3.4.3.3 Tariff Issues: Regulations are not Focussed to Protect Lower-Spending Consumers**

Nigerians who were initially enthusiastic about the mobile services perhaps because of deficiency in the provision of telecommunications services under the monopoly regime soon discovered that they had to pay a high tariff for the services. In 2001 average tariff was N50 (\$0.5) per minute and N4, 000 (\$35.96) for a SIM card. Although prices have dropped in recent times (US\$ 0.2 per minute and US\$ 1 per SIM card in 2015) the cost of running a mobile in Nigeria is still high at about 5% of personal income, which is significantly above the threshold of 2-3% of personal income (GSMA, 2015).

This level of tariff is clearly more than what the low income consumer could afford with a national minimum monthly wage of N 18,000 (US\$ 83.33 p.m. i.e. less than US\$ 3 per day).

One minute of international call at the current rate of N 60 per minute (US\$ 0.3 per minute) is 10% of the daily minimum wage. According to GSMA (2015), a large proportion of the unconnected people in Nigeria fall within the low-income bracket, classified by World Bank as the poverty line for developing countries. Hence, it was common for ordinary consumers to resort to ‘beeping/flushing’ because they could not afford airtime. Besides the exploitative pricing, the other contentious issues in the mobile market were the per-minute-billing strategy and billing of silent calls – when one party cannot be heard. GLO mobile introduced per second billing in 2003 with its entry into the market but billing for silent calls persisted. The consumers bemoaned the predatory pricing by the mobile services providers who appeared to be colluding to set tariffs. Government and the regulator on the one hand argued that tariffs would be addressed by market forces while the service providers advanced reasons for the need to recoup the high cost of the license fee and cost to supplement the existing inadequate telecoms infrastructure. Nigeria does not have a competition regulator rather the Commission have exclusive competence with competition laws and regulations in all matters relating to telecommunications (NCA, 2003, Section 90).

The Commission employed asymmetric Price Cap Regulation (PCR) pricing strategy in her mobile regulation. The PCR was loosely fixed at the commencement of roll out in 1991. In 2009, the Commission adopted the Glide Path Asymmetric Interconnection Rates, which specified different rates for new entrants and small operators. A review in 2013 was aimed at ending the Asymmetric Interconnection Rates by 2015 (NCC Annual Report 2012). This form of regulation is seen to be problematic and does not promote efficient market operations. Baldwin and Cave (1999) confirm that price cap allows a company make extra profits by degrading service quality. PCR has further been criticised for, its inability to tackle price leadership, limit entry pricing and tie-in sales and most other strategies employed by oligopolistic rivals (Trebing, 1997).

**TABLE 6. TARIFF COMPARISON ACROSS LEADING AFRICAN MARKETS**

	<b>Nigeria</b>	<b>Algeria</b>	<b>S. Africa</b>	<b>Egypt</b>	<b>Africa Average</b>
<b>Prepaid Tariff–Mobile Voice (US\$)</b>					
<b>- Peak</b>	0.41	0.25	0.27	0.33	<b>0.25</b>
<b>-Off Peak</b>	0.33	0.25	0.15	0.33	<b>0.2</b>
<b>-Connection fee</b>	49.76	62.74	14.14	87.78	<b>28.32</b>
<b>Mobile SMS (US\$)</b>	0.12	0.13	0.08	0.11	<b>0.07</b>
<b>Average Mobile Tariff Voice Tariff*</b>	<b>0.39</b>	<b>0.25</b>	<b>0.23</b>	<b>0.33</b>	<b>0.24</b>

**Source:** ITU-BDT (2004: A8 – A10) (cited in NCC, 2005:40)

\*Average tariff computed based on assumption that peak period calls constitute 70% of calls while off-peak account for 30%.

Table 6 shows that tariffs in the Nigerian mobile market are significantly higher than the tariffs in the other leading markets in Africa and much higher than the African average (US\$0.24) which is about 62% of the Nigeria’s average mobile tariff (US\$ 0.39).

#### **3.4.3.4 Quality Issues: ‘I Can’t Hear You’ - Poor Quality Persists in The Four Mobile Networks**

Besides the exploitative pricing, the other contentious issue in the mobile market was poor quality service delivery. Poor quality of service delivery with excessive network congestion peaked in 2003 as operators embarked on massive campaign to enrol additional consumers into

their network. Concerning this situation, the Commission agreed that, “the technical quality has been a major source of concern for customers. Since inception, complaints have risen steadily on the quality of calls. Most cited complaint was dropped calls, inability to load credit as at when due” (NCC, 2005:17).

The implication of this might be that effective competition is yet to be achieved in the fully liberalised Nigerian telecoms market. The GSM digital mobile operators have an oligopolistic market structure, due to limited availability of radio spectrum for mobile communications (Michalis, 2007). They appear to exhibit cartel-like behaviour and have little or no differentiation amongst them in terms of the pricing and quality of services they offer their consumers. The consumers, who appear to be in a locked up state, resort to having more than one mobile phone or dual SIM cards enabled phones. In 2003, 2008 and 2012 the industry witnessed extreme poor network performance as it continued to grapple with the hydra-headed challenge of poor quality of service (NCC Annual Report, 2012:12). The Press was bombarded with so much consumer lamentations that both the Senate and the House of Representatives jointly called for Public hearing on the poor telecoms network performance. In 2008, NCC had to impose sanctions on the culpable mobile networks and operators made token refunds to consumers for the period of extreme service degradation. In addition, in 2012 the commission imposed a fine of N1.17 billion on telecoms operators for failure to meet key performance indicators. These fines were below the amounts specified in the schedule of fines, and consequently failed to serve as deterrents to the operators as will be discussed in Chapter 5.

#### **3.4.3.5 Coping with The Tools of the Trade**

In consumer purchase decisions the most important factors are, the prices of the product or services, the quality of the products or services and the terms and conditions of the trade. The consumer’s limited capacity to access, correctly assess and promptly act on the information concerning these three factors determine largely the level of harm the consumer may incur. The likelihood of harm increases significantly when suppliers provide misleading information or employ high-pressure sales tactics, which negatively affects the outcome of the information accessing and processing effort. Network and services providers may exploit the ordinary consumer by indulging in unfair trade practices. These challenges are often compounded by

consumers' sparse knowledge level and behavioural constraints (Cseres, 2008; OFCOM, 2010). There is abundant evidence from research that these difficulties acting separately or in combination result in consumer stress and frustration, confusion, anxiety, and poor decisions, and detriment (OFCCOM, 2009; Xavier, 2008; Cseres, 2008). North, 1993 asserts that consumers' decisions are often not rational, but are forced on them by necessity and other constraints. Consequently, consumers are not only unable to derive the full benefit of the liberalised telecoms market; they are also exposed to financial and emotional harm due to their limited capacity to access and assess information and the asymmetric relationship between the ordinary consumer and services providers which competition alone is unable to address.

#### **a. Mis-selling**

One of the main sources of harm for consumers in the mobile telecoms market is the issue of mis-selling. Mis-selling is one of the ways service providers exploit the state of information asymmetry that exists in the mobile market. Mis-selling is a generic term that includes a range of unfair and dishonest marketing and selling activities that harm the consumer and undermine both competition and consumers' confidence in the industry.

Slamming is a very dubious form of mis-selling where a new contract for a service is imposed on a consumer without their consent or knowledge. For example, a consumer may be assigned a caller tune, without her/his consent and the charges included in his/her bill or deducted whenever his/her account is recharged. A caller tune is a special ringing tone, to be heard by the called party (e.g. music, greetings); that identifies a caller. Caller tunes are very popular among the youths. Illegal charging of consumers for value added services (VAS) like health tips and news clips, without their consent or authorisation is also prevalent in Nigeria as was reported in the commission's Monitoring and Enforcement Activities 2013/2014 (refer Chapter 6). This situation has prompted the Commission to engage VAS providers/stakeholders to develop a framework for VAS operation. Another form of slamming is the automatic renewal of contract/subscription when the provider has set the opt-in option as the default option. In such a situation, if the consumers fail to opt-out – for whatever reason – their contract is renewed without their explicit consent or knowledge. This type of slamming involving automatic renewal of 'caller ring tones', 'information tips' are also prevalent in Nigeria.



## **b. Misleading advertising and promotions**

Consumers are also challenged by the various ways information is presented to them. Advertising and promotions are major sources of misleading/inaccurate information to consumers. Nigerian Telecommunications services providers often employ the use of vague and misleading terms (such as absolutely free, best deal ever, unlimited, no hidden charges, no exclusion) to lure consumers into unfair transactions. In addition, these attractive claims are often shrouded with the slogan “terms and conditions apply” even when these are not immediately visible to the consumers.

Data download speed and duration of bonus airtime are some examples of inaccurate and misleading claim. Apart from the fact that data download speed is incomprehensible to many consumers, stating a theoretical/average speed, which is dependent on several factors beyond the control of consumer, is mischievous. For instance, the mobile service providers (MTN, AIRTEL and GLO) have been sanctioned for breach of Advertising and Promotion Guidelines as reported in the Commission’s 2013/2014 monitoring and enforcement activities (refer Chapter 6).

## **c. Pricing and Billing: The iceberg strategy**

The mobile phone has become an essential tool not only for voice communication but also for a host of internet-enabled activities, thus making mobile telecommunications a significant expense factor. This partly explains why pricing and billing complaints account for over 30% of telecoms complaints (ITU, 2009). Due to the adoption of complex pricing and billing strategies by the providers, consumers have trouble assessing the total cost of the services, understanding their bills or comparing different pricing and billing plans. Network providers exploit this weakness by obfuscating their prices (Xavier, 2008). Various pricing strategies, which work against consumers, include cap plans, excess charges, discrimination (differing) rates, bundling and packages. In addition, certain price promotions and misleading price-framing strategies distract consumers and induce faulty decision-making. One of the commonly applied strategies by the Nigerian mobile service providers is the ‘Time-limited offers’ which usually involves special prices and are available for a limited time period usually one week or

at midnight of same day. The promotion runs continuously for the period without stating the start or end time. Consumers who may be conscious of this fact are put under tremendous pressure to use up their credits in a hurry as they are not sure when the time limit of the deal runs out.

#### **d. Unfair billing practices.**

In 2012, the ITU-D Study Group 1, survey among its 193 member states, on consumer protection policies, showed that one of the most commonly cited type of complaints, which all the respondents reported, was about pricing and billing. Consumer pricing and billing complaints include: inaccurate charges complaints arising from overcharging consumers for instance where a service operator has programmed one minute to be equivalent to 40 seconds instead of 60 seconds; service charges complaints arise due to amount/type of charges levied on consumers for services; billing complaints arise when no charging information or insufficient charging information are revealed to the consumer and when consumers are billed for services they have not subscribed to, this is also known as cramming. Other examples include, consumers are surcharged monthly rental fees, even when the telecoms infrastructure serving the consumer has been out of service for the billing period and every so often, consumers are billed for silent call - when there was no both way conversation (ITU, 2013). The ordinary consumer complaints appear to cut across these unfair billing practices.

### **3.5 Consumer Protection and Advocacy in Nigeria: Many laws but little action**

There are numerous laws on consumer protection in Nigeria. The Research Report on the State of Consumer Protection in Nigeria, 2014, included an impressive list of thirty-seven (37) laws relating to consumer protection. These laws are listed in Appendix 3. Most of the laws were enacted following the liberalisation of the various sectors of the economy. In addition, in 2004, the Federal Government launched SERVICOM, a service contract with the citizens. This initiative, which is aimed at improving the quality of services delivery by all government ministries and agencies to consumers, also includes complaints redress mechanisms.

The Consumer Protection Council (CPC), established by the Federal Government decree 66 of 1992, is the apex statutory consumer body in Nigeria. In the exercise of its function to “encourage the formation of voluntary consumer groups or associations for consumer wellbeing” (CPC Act, Section 2h), the CPC has registered twenty-eight consumer organisations which are listed in Appendix 5. In contrast, there is no provision in the Nigerian Communications Act (NCA, 2003), for the recognition or support for voluntary consumer bodies.

In spite of the numerous laws and consumer bodies, consumerism remains at a low level in Nigeria (Ijewere & Obeki, 2011). This is traceable to the country’s little history of civil societies and voluntary consumer advocacy groups. During the period 1967- 1999, there was very little Civil Society activities due to the 3 years of civil war and the almost 30 years of military rule. Available literature indicates that consumer advocacy began in the early 1970s, with the introduction of consumer rights and complaints section in some local Newspapers and magazines and a few radio programmes on consumer related issues (Ogechukwu, 2013: 51). These initiatives spurred the formation of a few consumer bodies in the 1970s including the Consumer Protection Organisation of Nigeria (CPON) in 1970 whose aims included consumer education and advocacy. CPON represents consumers in the Standard Organisation of Nigeria (SON) and the Advertising Practitioners council of Nigeria (APCON) and publishes *The Consumer*, a quarterly magazine devoted to consumer issues. Other consumer bodies include National Consumers of Nigeria (NCON) formed in 1971; Consumer Organisation of Nigeria (CON), 1992; Consumer Rights association of Nigeria (CRAN), 1993; Public Interest Law Organisation (PILO), 1996; Consumer Awareness organisation (CAO), 1999. CAO engages in the review of consumer protection laws, research on consumer issues and creation of consumer awareness (Monye, 2003).

Voluntary consumer bodies in Nigeria are not actively engaged in consumer advocacy and their impact is yet to be felt by consumers. Their activities “have remained rudimentary ... they are yet to make any appreciable impact on the country.” (Monye, 2003:10). The regulators do not take them into reckoning, neither are they consulted nor informed of regulatory decisions. This is because they are perceived not to have any significant level of expertise in any specific sector.

Apart from not being effectively engaged in consumer advocacy in any specific sector, their area of operations is localised and “they have not embarked on or received adequate publicity” (Ijewere & Obeki, 2011:190). This is confirmed by the data on consumer awareness of consumer associations, which showed that 86% of consumers are unaware of the existence of consumer associations (Nkamnebe, Idoko & Kalu, 2009). Most of the consumer groups are further disadvantaged because they do not benefit from public funding and consequently are characterised by poor staffing (in numbers and expertise), inadequate resources and uncoordinated activities. The little attention accorded civil societies traces the pattern of path dependency to the military era when civil society’s activities were suppressed.

### **3.6 Conclusion**

Nigeria is Africa’s largest republic and economy with a population of 160million and a GDP of USD 568.5 billion in 2015. Nigeria’s socio-political environment has been adversely impacted by civil war, 30 years of military dictatorship and sixteen years of democratic rule characterised by non-transparent transactions. Nigeria has been described as neo-patrimonial state imbued with clientelism, and culture of impunity (Transparency International, 2014; Martini, 2014). This situation coupled by grand scale looting of public funds has been the bane of development in Nigeria since the return to democratic rule in 1999. The economy is undermined by endemic corruption which has led to weak institutions (North, 2005), severe underdevelopment, unemployment and poverty. For example, Nigeria is the sixth largest exporter of oil but depends on imported refined petroleum products, and generates only 4000MW of electricity (10% of South Africa’s output). Corruption is manifested in all aspects of the economy including the regulatory agencies and the regulated companies.

As at 1999, the 50-year-old Nigerian government monopoly of telecommunications was able to provide the entire Nigerian population of over 100 million people only 450,000 landlines and 25,000 analogue mobile phone lines, resulting in a teledensity of about 0.47 lines per 100 inhabitants, which was among the lowest in the world. In contrast, the full liberalisation of the Nigerian telecoms sector in 1999 and the roll out of GSM service in 2001 have progressively led to an exponential growth of the sector. At the end of December 2015, fourteen years after the liberalisation, active subscriptions stood at over 151 million lines with a teledensity of over

99.39 (NCCStat, 2015:3); an average of about ten million lines per year. Mobile GSM accounts for 98.3% of total telecommunications and contributed 8.6% (USD 44.3billion) of the national GDP in 2014 (Arowolo & Folarin, 2014). However, in Nigeria, the benefits of liberalisation are not evenly distributed: a substantial part of the country, approximately 20%, is not covered, therefore do not have access to even basic telephone services [ICT Policy, 2012]. This notwithstanding, Nigeria is still the leading telecommunications market in Africa and one of the fastest growing in the world.

The Nigerian telecommunications regulatory framework is highly susceptible to political interference, conflict of interest and regulatory capture. The appointment of the governing Board of the Commission by the President of Nigeria creates room for political interference and clientelism. Furthermore, in the early years of liberalisation, the dearth of expertise and the resultant poaching of personnel from the Commission to the regulated companies gave room to agency problems and spurred further conflict of interest and cronyism.

This study has argued that the Commission is not entirely independent and consequently it is not fully consumer focused. It looks the other way as ordinary consumer interest rules are violated with impunity. This situation, which is still prevailing, creates a compromising effect on the enforcement institution, which is exploited by the services providers to the detriment of consumer interest (Ubochioma, 2013).

The review of empirical literature reveals that liberalisation of the mobile telecommunications has resulted in significant benefits to the consumer. Global mobile penetration stands at 97% as at 2013, indicating that access to basic telephone has been achieved largely. Consumers are also enjoying lower prices as prices have dropped by about 50% in the past two decades following liberalisation. Nigeria shares in this success story. Mobile telecommunications have had a positive impact on the life of ordinary Nigerian consumers in the areas of social relations, work, employment, banking, education and security. It is now considered, as a utility and an extension of the consumers feel incomplete with it. The story is the same in many African countries and all over the world.

In spite of the laudable benefits of mobile telecoms, academic literature further reveals that the ordinary consumer is paying too high a price for these benefits as they contend with various challenges harm in the market (OFCOM, 2009; Xavier, 2008). In the neo-patrimonial environment prevailing in Nigeria, ordinary consumers are also grappling with the ineptness of the politicised regulator, high tariff, poor quality services and inadequate geographical coverage. The mobile telephone network “is unreliable and congested, expensive and customer unfriendly” (NTP, 2000:12).

The asymmetric relationship that prevails in the telecoms industry is exploited by the mobile services providers through unfair trade practices including mis-selling, deceitful promotion, advertisement and complex pricing strategies that compromise the interest of consumers and competition. As a result, ordinary consumers’ decision-making in the market is a difficult task that calls their rationality into question, as it does not often lead to their best interest (North, 1993; Menard and Shirley, 2005). This is further compounded by the low literacy level prevalent in a developing country like Nigeria. Consequently, consumers are unable to derive the full benefit of the liberalised telecoms market; they are also exposed to financial and emotional harm including confusion and frustration.

Addressing the challenges consumers encounter in the liberalised telecoms market place through regulatory initiative or intervention is crucial for the protection of consumer interest. The next chapter explores the role of consumer representation in influencing the regulatory decision process in the pursuit of consumer interests.

## **CHAPTER 4 Representing the Ordinary Consumer: Trends in institutional arrangements and processes**

### **4.1 Introduction**

The structure of the liberalised telecommunication market is characterised by competition in markets regulated by agencies independent from government. This structure makes it expedient for the regulator and services providers to engage with the ordinary consumers frequently. The nature of these engagements is usually defined by the Communications Act and regulation. However, due to consumer heterogeneity, different institutional arrangements have been deployed in various countries to achieve effective engagement of the ordinary consumer.

The aim of this chapter is to explore the current trend in ordinary consumer representation and complaints management. These issues, in the Nigerian context, are the focus of the empirical Chapters 6 and 7 of this study. The chapter starts by discussing the inevitable need for regulation in liberalised competitive markets. It asserts that the ultimate goal of regulation is the attainment of policy objectives, which include the promotion of consumer interest. It reviews and affirms the crucial role of consumer representation bodies in facilitating consumers' influential participation in the regulatory process, which also tend towards the achievement of policy objectives. In assessing the current trend in institutional arrangements for consumer representation and the dimensions of consumer representation, the chapter argues that the effectiveness of the various options depends on the prevailing socio-political environment and advocates a mixed approach for developing countries. Finally, the chapter looked at consumer complaints management processes, which are, at the same time, a potential cause of consumer complaints and an important dimension of consumer representation.

The considerations in this chapter will form part of the benchmark to be used in the empirical chapters 6 and 7 of this study in evaluating the representation of the ordinary consumer and the management of ordinary consumer complaints respectively.

### **4.2 The Role of Regulation: Achieving Policy Objective**

Prior to the telecommunications reform, in most countries, State ownership, as prevalent then in developing countries, for example, Nigeria and monopoly by powerful investors, for

example, AT&T in the United States of America, determined the structure of the sector and safeguarded public and consumer interests (Majone, 1990). However, in the last two decades of telecommunications liberalisation the sector has witnessed two major structural changes. The first major change was the transformation of the traditional “monopoly structures into competitive ones” with multiple networks and service providers deploying various technologies (Blackman and Srivastava, 2011:3). On the consumer level, the rapid changes in technologies (like GSM and WiMAX/Wi-Fi) and subsequent innovations have resulted in astronomical increase in global access not only to basic mobile telephone but also to the internet and growing adoption of broadband. The impact of these developments on the ordinary consumer is discussed in Chapters 3. As these developments unfold, they raise new concerns about consumer interest, protection and privacy; pricing, content and copyrights issues; market entry requirement, spectrum utilisation, mergers, anti-trust competition and security. These concerns create the need for institutions that are adequately empowered to regulate the activity of the sector and to ensure that the new telecoms landscape is working properly and that the ordinary consumers and other stakeholders’ interests are catered for equitably (Blackman and Srivastava, 2011). Governments’ reaction to the above situation has engendered the *second* major fallout of the liberalisation of the telecoms sector: the transition from the traditional mode of regulation via public ownership and government intervention to “statutory regulation administered by expert agencies which are in theory independent of direct political control” (Majone, 2003:2). Hence, the new telecommunications industry structure is characterised by competition in liberalised markets regulated by agencies independent from government.

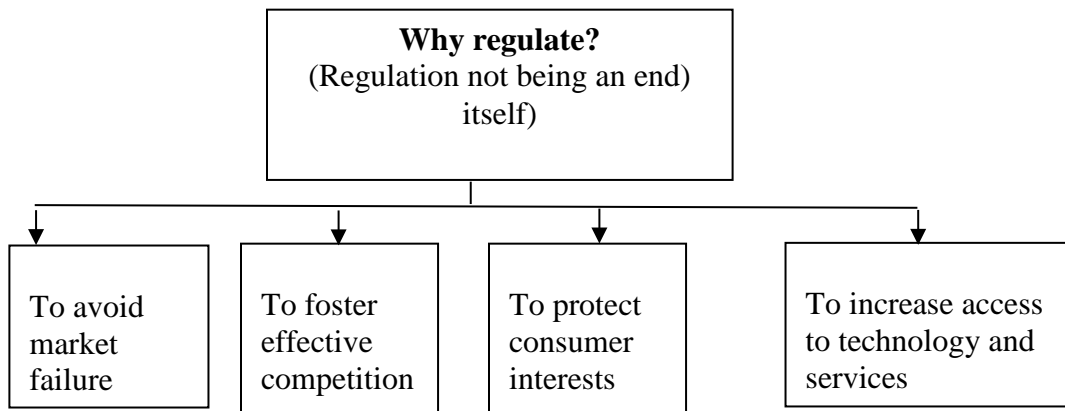
To regulate is to lay down rules aimed at directing the activities of private and public enterprises. It is the use of legal instruments for the achievement of socio-economic policy objectives (Majone, 2003; Hertog, 2010). In addition, Blackman and Srivastava (2011:30) affirm that: “regulation attempts to prevent socially undesirable outcomes and to direct market activity towards desirable outcomes” by intervening to remedy shortfalls in competition and ensuring compliance by enforcing the rules of the game. This is because in the absence of effective regulation, anti-competitive tactics will abound. Hence, as depicted in Table 7, the goals of regulation stated in the ICT Regulation Toolkit, cited in (Blackman and Srivastava,



2011:10) are, and that businesses are directed towards achieving those outcomes through regulatory intervention.

- To promote and protect consumer interest by facilitating universal, affordable and innovative telecommunications services.
- To mitigate the challenges and harm consumers encounter in the market.
- To further and sustain competition by tackling anti-competition practices and through the control and management of scarce resources (for example spectrum) in a non-discriminating manner.
- To increase access to technology/services.

**TABLE 7. GOALS OF REGULATION**



**Source:** ITU-ICT Regulation Toolkit, (2010) cited in Blackman and Srivastava (2011:10)

According to the International Telecommunication Union (ITU), in conditions of perfect competition there is no need for regulation [ITU, 2009]. However, in practice regulation is always needed because competition is present only to a limited degree due to ‘economies of scale’<sup>7</sup> and ‘market failure’<sup>8</sup> (Baldwin and Cave, 1999). Moreover, even under perfect

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<sup>7</sup> Economy of scale gives rise to natural monopoly, which occurs when one service provider most cheaply served the (Baldwin and Cave, 2012).

<sup>8</sup> Market failure can serve to justify the rationale for regulating such as provision of asymmetrical information to the consumers, which affect their switching service providers or natural monopoly that hinders competition in the market.

competition there may be need for ex-post regulation if only to set technical standards and address infringements in the ever changing telecoms market landscape. It is therefore implied that regulation is always necessary to sustain competition at a high level and thereby improve market efficiency (Gaffikin, 2005; Michalis, 2007). Markets are not judged efficient based on the quantum of transactions (volume of sales); rather markets are efficient to the extent to which they tend towards the pre-set objectives of the stakeholders who set up the market. Hence, the fundamental justification for regulation is to ensure that the market is moving towards the achievement of policy objectives.

An effective regulatory framework facilitates higher telecommunications penetration, improved quality and innovative services, lower prices for the ordinary consumer and economic growth (Blackman and Srivastava, 2011). Optimum regulation exists where the regulator, consumers and operators are adequately informed and the regulator acts in the public interest and protection of the consumers. In practice, however, consumers are often disadvantaged and unable to seize the benefits made possible by effective competition as a result of “information asymmetries, unfair trade practices, unfair standard contract terms, search and switching costs or imperfect decision-making processes” (Cseres, 2008: 78). In this regard, both the developed and developing countries face similar policy and regulatory issues. The difference lies in the circumstances some of which are unique to the developing countries (Melody, 1997), for example, inadequately resourced consumer groups, low level consumer education/awareness and a non-transparent socio-political environment. In spite of the varying circumstances, these issues, which have socio-economic dimensions, highlight the need for regulatory intervention.

#### **4.3 Rationale for Consumer Representation: Complementary efforts towards the achievement of policy objectives**

As the issue of the promotion of the interest of consumers is receiving increasing attention globally due to governments’ concern that market forces alone may not achieve policy goals particularly about the promotion of consumer interest and welfare, the need for a strong consumer voice is also being highlighted (DTI, 2004) as a means of achieving inclusiveness. It can be argued that as a matter of ‘natural justice’ and in line with democratic principles, it is fitting that consumers should have input into decisions that affect their welfare. This is because

effective development and implementation of policies and strategies are “the outcome of bargaining within and in between mutually dependent organisations” (Hulsink, 1999: 22; North, 1993). However, because of the diverse nature of consumers, direct involvement of individual consumers in the decision making process is not feasible. To achieve influential consumer participation necessarily involves consumer representation (Cannock, 2002). Representation is an established mechanism for enlisting the participation of a discrete and diverse population and in telecommunication, the one avenue through which consumers may participate in the decision-making process and hold regulators and service providers accountable for exercising their mandate with fairness. It is only well resourced consumer representative bodies that will have the capacity to contribute in the decision making process and effectively pursue the interest of the consumer (Simmonds, 2003; ITU, 2006). This in turn presupposes an active and vibrant civil society to form the enabling social setting. For example, the prevailing social environment in Nigeria, which lacks these basic requirements as was highlighted in Chapter 3, portends grave implication for consumer representation. Consumer representation has as its main objective the provision of a wide range of views to decision makers from across the spectrum of consumers in support of the interest of consumers. On their own, consumers’ voices are weak due to their limited knowledge and resources and disparate nature. Consumer representation bodies collect and amplify the discrete and therefore naturally weak voice of the ordinary consumer, so that it is heard loud and clear in the decision making process to balance the strong voice of the services providers in the telecommunications market. This guarantees that the regulators decisions will be “more robust and more likely to be accepted by all stakeholders” (CCAAC, 2005: ix; BIS, 2011).

The restructuring of the telecommunications market and the rapid deployment of innovative services and products have resulted in enormous challenges for both the operator and the consumer (EU, 2007) and is stretching the consumer’s limited capacity to deal with contemporary economic problems. There is abundant evidence in literature that consumers in general inclusive of the disadvantaged and vulnerable are not always able to make the right choices (BIS, 2011; Muzzini, 2005; Xavier, 2008). This situation, which grows in direct proportion to the complexities of telecommunications services on offer, reinforces the necessity of a consumer representative body. Even the industry, its more robust capacity notwithstanding,

still: “lobbies the regulators hard in pursuit of their interest. That is to be expected but it should be balanced by proper and full representation of consumers” to achieve balance of interest (DTI, 2000: para.7.5.3 cited in Harker, Mathieu & Price, 2006: 218).

Promoting consumers interest implies taking consumer issues into policy and regulatory decisions. However: “without independent well informed and properly resourced consumer input into complex regulatory policy and decision making, regulators will find it difficult to achieve this in the face of vigorous and well-resourced industry representations” (Consumer focus, 2011: 3). Moreover, designing a policy framework that will adequately provide for the interest of consumers requires that the real interest of consumers is properly articulated and understood. The consumer representation body, by virtue of being close to the consumer and able to feel the pulse of the consumer, is in a better position to understand the interest of the consumer and focus more on promoting it than the regulator who is separated from the consumer by official barriers and other duties. Therefore, although it is part of the mandate of the regulators to anticipate and protect the interest of the consumer, anticipating the interest of the consumer is a task that is best handled by a dedicated consumer body who understands the consumer and who can persuasively present the consumer’s views to balance the views of the services providers.

Many developed countries, for example USA, UK and Australia, have highly advanced regulatory frameworks and considerable experience in consumer affairs. In the UK for instance, its specialist consumer organisation, like the Advisory Committees on Telecommunications (ACT), established during the privatisation of the utility sectors, has well over 35 years’ experience in representing and promoting the consumer interest. In addition, in the EU there is in every member state at least one ministerial department responsible for consumer protection (Harker, Mathieu and Price, 2006). In these countries the governments and regulators “find it easier to notice and respond to the interest of highly organised interest groups rather than those which are diverse and disparate and this may well be the justification for government intervention in the form of statutory bodies charged with representing such consumer interest” (Howell, 2000:298 cited in Harker, Mathieu and Price, 2006:219). This strategy is also noticeable in Africa. For instance, the Kenya Consumer Protection Bill, (2011), provides that:

“An accredited consumer interest group may direct a general stated concern or complaint to the advisory committee in respect of any matter within the purpose of this Act” (KCC, 2011: 66(b)).

This confirms government and regulators’ preference dealing with organised consumer interest groups and that a separate consumer ‘voice’ was compatible with regulation and could engender useful cooperation (Harker, Mathieu and Price, 2006). It is also a confirmation of the consumer representative groups’ invaluable role in the promotion of consumers’ interest and welfare.

Consumer representative body play a complementary role to the regulatory body in assuaging the negative effect of unchecked market force on the realisation of policy objectives as it relates to the promotion and protection of consumer interest. Moreover, the inclusion of consumers requires a vibrant and knowledgeable consumer representative body to engage formally with the regulator and to advocate for consumers’ interests. The implication is that without a well-resourced consumer body the promotion and protection of consumer interest will be jeopardised and regulatory performance will fall far short of achieving the policy objectives. This, it would appear is a major factor in the Nigerian setting.

#### **4.4 Institutional Requirements for Promoting Consumers Interest**

In a liberalised telecommunications industry where the essence of regulation is the protection of citizens and consumers, the primary duty of the regulator is to proactively promote and protect the interest of consumers. The extent to which the regulator is able to execute this mandate depends proportionately on two factors: independence of the regulator and an effective institutional framework for consumer representation (Muzzini, 2005; CI, 2011). The structural and financial independence of the regulator has significant impact on the regulators accountability, transparency and predictability and subsequently on consumer outcomes (Blackman and Srivastava, 2011). The susceptibility of the Nigerian regulatory framework to political influence was discussed in Chapter 3. Its implication on the procedural definition of consumer interest will be discussed in chapter 5.

#### **4.4.1 Institutional Framework for Consumer Representation: Conflict of interest is a major threat**

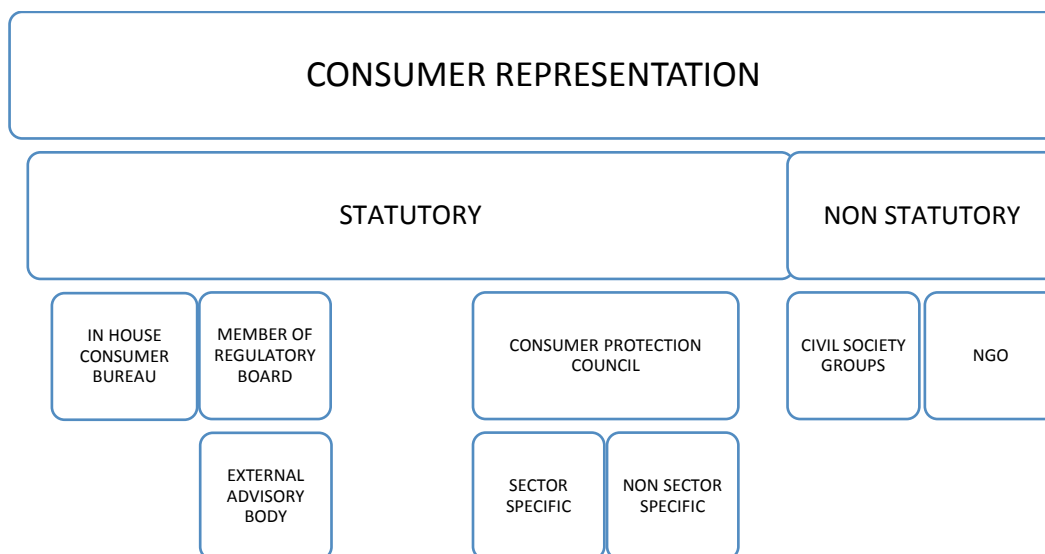
In recent times, a growing number of civil society groups, non-governmental organisations (NGOs) and consumer associations have had cause to make input and intervene in consumer related issues that it has become necessary to distinguish between these groups by defining what constitutes a consumer representation group. For the purpose of this study and in the context of authentic promotion and protection of consumer interest, I adopt the definition set down by the Commonwealth Consumer Affairs Advisory Council (CCAAC), which states that a group qualifies as a consumer body if:

- “The group’s main objective is to genuinely advance the interest of consumers; Is independent of industry and government in its decision making; Due to its activities, membership and other relevant factors is publicly recognised as playing a legitimate role in advancing the interest of the consumer and; It is registered under the relevant corporation law” (CCAAC, 2005:6).

This classification is important for consumers because it is only authentic (responsible and without a hidden agenda) consumer agencies that can distil their interest and pursue it with vigour.

The institutional framework is a key determinant of the effectiveness of consumer representation. Consumer representation agencies are broadly classified as statutory and non-statutory agencies, as depicted in Figure 4. Statutory consumer representation structures comprise the integrated model and independent model. The integrated model includes in-house consumer department in the regulator’s office and regulatory board membership, while the independent model comprises the external advisory agencies and consumer councils (Southwood, 2006; Simmonds, 2003). Non-statutory agencies are made up of Civil Society Groups (CSG) and non-governmental organisations (NGO). Many countries have a combination of both types, with varying degrees of influence.

**FIGURE 4. CONSUMER REPRESENTATION FRAMEWORK**



**Source:** Author

These different types of consumer representation framework will be examined in turn in the following sections to highlight their strengths and weaknesses.

#### **4.4.2 In-house Consumer Affairs Bureau**

Many regulatory agencies establish a department or section within the regulator’s establishment, which looks after consumer interest. These bureaus also serve as interface between consumer groups and the regulator. The in-house bureaus benefit from direct access to consumer information and are able to advocate on behalf of the consumer on a continuous basis. Although the in-house consumer department can make useful input on behalf of consumers to influence decisions, they lack the power to challenge regulatory decisions. In-house consumer representation is a viable option in countries with little history of civil society action, like Nigeria, but in playing the double role of regulator and advocate there could arise, not only, conflicts of interest but also the risk of capture by the more powerful service providers (CI, 2011).

In 2001, the Nigerian regulator (Commission) established an in-house Consumer Affairs Bureau (CAB) a department of the Commission, barely one month after the GSM licensing

auction that ushered in the second-generation GSM service providers. CAB is staffed by regular employees in Commission and headed by an executive director who is also an employee of the Commission. The CAB is charged with what the Commission termed the ‘PIE’ mandate, which is to:

- Protect consumer against unfair practices,
- Inform the consumer through multi-channel means of communication and advocacy, and
- Empower the consumer by educating on rights and obligations.

The main activities of CAB are the organising of consumer outreach programmes and the monitoring of service providers’ customer contact centres. The personnel of CAB being regular employees of the Commission carry out only the duties assigned to them. They do not have the capacity to challenge the decision of the Commission. Apart from being individually susceptible to conflict of interest and subsequent capture by the services providers, the department CAB is also at risk of capture by the industry.

#### **4.4.3 Consumer representative as member of regulatory board**

This structure is adopted in some African countries including Ghana, Burundi, Senegal and Kenya, and Papua New Guinea and Latin America. The ITU asserts, “Membership on regulatory board is not inconsistent with independence if there is full access to information and no duty of confidentiality about matters discussed” (Southwood, 2006:19). The main advantage of this model is that the consumer input is fed directly into the decision-making process. It gives the consumer representative access to information on services providers which can be used to push the consumer case. This structure is effective when the consumer board member is a committed pro-consumer advocate and has the authority to 1) initiate independent research so a well-resourced regulator is important and 2) consult with consumer advocacy groups and able to make independent input into the board’s decisions. Otherwise, the scheme will be equivalent to admitting an in-house consumer department into the boardroom. The big challenge of this arrangement is that it is also prone to conflict of interest, where the consumer representative board member is torn between serving two masters: the regulator and the consumer. Further difficulty may arise from the method of appointing the consumer representative board member.



She/he may be loyal to the appointing body, which usually is the case rather than the consumer. In either case, the interest of the consumer will be marginalised. This structure is also highly susceptible to capture by the industry (Muzzini, 2005).

In considering the merits of the two institutional frameworks discussed above, it has been stated that the framework that integrates the job of protecting the consumer and regulating the industry would benefit from “stronger public support” and “deliver significant synergies and economy of scale” (Muzzini, 2005:9.) Opposed to this view are those who hold that for consumer advocates, a separate voice distinct from the regulatory agency will be more focused in representing the consumer because the regulator’s attention may be diverted by other statutory duties (DTI, 2004). In support of this view the Consumer International<sup>9</sup> (CI) cautions, “entrusting one entity with the dual mandate could cause confusion and possible conflict of interest” (CI, 2011:20) and further argues that it is expedient to ensure the integrity and independence of the consumer protection agency. This view is generally accepted in the EU. Although the above two frameworks are adopted in a number of countries like Ghana and India, the review of literature did not reveal any particular success story. It would appear that their effectiveness is largely influenced by the broader regulatory environment and socio-political characteristics of the country concerned for instance, the presence of an active and vibrant civil society.

In the appointment of consumer representative to the board of the regulatory body or the advisory council, it is of utmost importance the consumer representative is independent of the government and the industry. This can be achieved if the appointment is based on merit through an open and transparent process. This is critical for consumer confidence and for elimination of the threat of conflict of interest. Basing the appointment on merit guarantees that the consumer representative has expert knowledge of consumer affairs and a strong link with active consumer groups. It is also important that the consumer representative have the authority for

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<sup>9</sup> Consumer International (CI) is the world federation of 220 consumer groups that serve as an independent and authoritative global voice for consumers. It is based in the United Kingdom (UK).

independent consultation and research in order to effectively represent diverse consumer groups, (CCAAC, 2005).

#### **4.4.4 Independent Consumer Council and Advisory Body**

In the EU and in particular in the UK statutory sector specific consumer councils, after undergoing a number of reforms, have proved very successful in championing the consumer interest (e.g. Energy Watch, Communication consumer panel). They benefit from a long tradition of effective civil society organisation. The councils are independent and wield a wide range of statutory powers that enable the challenge of regulatory decisions. Through research and consultation, the councils endeavour to influence regulation and policy and to promote consumer interest effectively in close collaboration with the regulator and other general consumer agencies.

In Nigeria, the eighteen-member Industry Consumer Advisory Forum (ICAF) is appointed by the Executive Vice Chairman of the Nigeria Communications Commission (Commission): three members (16%) from consumer/NGO bodies; two members (11%) from telecoms industry associations; nine members (50%) from professional bodies; and four members (23%) from governmental organisations. It would appear that very few slots are allotted to consumer bodies. The implication is that they will be easily be overshadowed by members of the forum. They are also susceptible to the influence of the regulator who appointed them. The effectiveness of ICAF is limited because it has no statutory powers to challenge regulatory decisions.

ICAF is mandated to hold at least one meeting per every quarter of the year, one of which shall be an open forum. The meetings are coordinated by the in-house Consumer Affairs Bureau (CAB) and all activities of the Forum are funded by the Commission.

The Kenya model is notably different from the Nigeria model particularly in the appointment of the members of the Advisory Committee. In Kenya the Consumers Protection Advisory Committee has four (31%) of its members nominated by the consumer representation groups, three (23%) from professional associations and one member from civil society organisation.

The input from these members, from accredited consumer representation groups, has had significant impact on policy and regulation (KCC, 2011).

#### **4.4.5 Non - statutory Consumer Bodies**

Consumer interest is also being promoted by public interest groups and NGOs. These consumer interest groups, however, are usually non-sector specific. Their activities are more noticeable in goods rather than in services. Of the over 120 consumer groups in Africa, only few are involved in telecoms issues. These are found in Cote d'Ivoire, Nigeria, Senegal and South Africa, (Southwood, 2006). Non-statutory consumer agencies are active in many developed countries of the EU, USA and Australia complementing the activities of the statutory agencies like Ofcom, FCC and ACCA. In these developed countries, consumer bodies have the opportunity to actively participate and make significant input to policy issues. In the UK is found the best international practice in the collaboration of statutory consumer agencies with non – statutory consumer agencies to deliver excellent consumer protection. In Belgium, Austria and Denmark, some non – statutory consumer organisations are incorporated within the regulatory system and are active in market monitoring and other consumer related activities (Harker, Mathieu and Price, 2006:221).

Non-Statutory consumer bodies by virtue of their diverse structure and special areas of interest are well suited to pursue the interest of particular groups of consumers: the poor, the elderly, the geographically marginalised and other disadvantaged groups. Having no statutory mandate to challenge regulatory decisions they rely mainly on making representations and submissions at public forum and lobbying the regulators and legislators. They occasionally resort to legal action to protect the interest of aggrieved consumers by providing evidence of infringement, negotiating redress and generally being there for and on behalf of the consumers. For example, in Nigeria, two consumer bodies – Consumer Empowerment Organisation of Nigeria (CEON) and United Consumer Association of Nigeria (UCAN) in January 2014 resorted to legal action to obtain compensation for telecom consumers for poor quality of service. After the initial report of this move by these consumer bodies, nothing else has been reported on the progress or outcome of the litigations. There is no evidence of any other action in telecommunications by any other consumer body. Consumerism in Nigeria is discussed in chapter 3 of this study.

**TABLE 8. MECHANISMS FOR CONSUMER REPRESENTATION: STRENGTHS AND WEAKNESSES**

<b>Pros</b>	<b>Cons</b>
<p><b>In-house Consumer Bureau</b></p> <p>-Easy access to reliable consumer information on the regulatory process that can be used to inform the representative function.</p>	<p>-Inability to challenge regulatory decisions due to lack of independence from the regulatory agency itself;</p> <p>-Risk of capture by powerful interest groups.</p>
<p><b>Representative as Member of Regulatory Board</b></p> <p>-Powerful channel of information for consumer groups (if there is no duty of confidentiality).</p>	<p>-Inadequacy of representation if representative is captured by special interest groups and/or they are not fully accountable to the consumer constituency;</p> <p>-Conflicting interests within the regulatory body may result in stalemate of the regulatory process.</p>
<p><b>Consumer Panel/Advisory Committee</b></p> <p>-Provides independent and expert advice;</p> <p>-Repeated interaction with regulator makes for deep understanding of complex sector issues;</p> <p>-Possibility of sharing sensitive data with panel than external group;</p>	<p>-There may be difficulty recruiting non-remunerated panel, require secretarial resources;</p> <p>-Inadequacy of representation if the advisory body is captured by the most influential consumer groups;</p>

<p>-Capacity to challenge regulatory decisions due to the body's independence from the regulatory agency itself.</p>	<p>-Panel may not be truly representative in its make-up of consumer population.</p>
<p><b>Non statutory Consumer Bodies</b></p> <p>-Consumer bodies have developed and coherent policy stance;</p> <p>-Often proactively engage regulator on issue important to them;</p> <p>-Sometimes conduct their own research at no cost to regulator;</p> <p>-They provide access to consumers and assist in market research.</p>	<p>-Consumer bodies may not have adequate policy resource and expertise;</p> <p>-Require regulators support e.g. specialist staff and free resource such as seconded staff;</p> <p>-Any data provided is likely to be skewed to bodies client base rather than consumer population as a whole;</p> <p>-Inviting consumer groups to roundtables is resource intensive for such bodies.</p>

**Source:** Adapted from Muzzini (2005:10) and Coppack, Jacson & Tallack (2014)

Consumerism in the EU, USA and Australia have a long history, unlike in Africa where most consumer bodies are relatively young, having been established in the 1980s. However, in the last couple of decades there has been a significant growth in the number of consumer associations in Africa. ITU reports that by 2000 there were 120 consumer groups in 45 out of 53 countries in Africa. Most of these consumer groups do not benefit from public funding and consequently are characterised by poor staffing (in numbers and expertise), inadequate resources and uncoordinated activities. They are further disadvantaged by not being taken into reckoning by their national regulatory agencies, neither are they consulted nor informed of the regulators' decisions. This is because they are perceived not to have any significant level of expertise in any specific sector. Their voices are heard mainly in minor consumer complaints issues. It is only in five African countries – Senegal, Kenya, Botswana, South Africa and

Nigeria – that consumer bodies are involved in consultation on policy issues. Even in these countries, Southwood, (2006) remarks that it is not evident that their input has any impact on policy or regulation.

From the review of literature, it would appear that the various options for consumer representation that has been implemented in different countries in spite of their merits and shortcomings have achieved reasonable degree of success. The level of success achieved is largely influenced by the broader regulatory environment and socio-political characteristics of the country concerned for instance, the presence of an active and vibrant civil society and the level of transparency in the regulatory framework. In this regards, it has been suggested that greater benefits could be derived by adopting an inclusive framework for consumer representation by combining the statutory and non-statutory models, as in the UK, “while ensuring that the weaknesses of each of these forms of engagement do not distort the decision making process” (Coppack, Jacson & Tallack, 2014:15). This arrangement may be of great benefit to Nigeria and other developing countries with little history of civil society/advocacy groups.

#### **4.5. Process of Representation**

In carrying out their mandate to protect the interest of consumers, regulators and consumer advocacy groups seek to engage consumers in three main areas: provision of information, consultation and compliant resolution (Muzzini, 2005). The ITU (2006) extends the coverage to include provision of choice and efficient framework for consumer representation. Often consumers are engaged simultaneously in more than one area, in the effort to achieve maximum encounter with the consumer. In all these five areas (summarise them in brackets, as they are not clearly numbered) the consumer representation agencies working in close collaboration with the regulator can reach out to various consumer groups particularly the disadvantaged.

##### **4.5.1 Provision of Choice**

The regulator is obliged to provide the consumer with multiple affordable choices to cater for the diversity of consumer needs. This is achieved through the mechanism of pro-competition laws and regulations that prevent market dominance and anti-competitive practices. Engaging

consumers may also be facilitated through research and workshops to find out what the consumers really need. Along with the provision of choices, the consumer agencies are obliged to make consumers aware that their choices are not static but should be reviewed to take advantage of improvement in service quality and tariff structure.

#### **4.5.2 Provision of Information**

Providing consumers with the relevant information they require in order to make informed choices is a critical and invaluable service to consumers. Without information, consumers cannot implement their preferences neither can they effectively contribute to the decision-making process. The market is unlikely to function efficiently if a major player - the consumer - is unaware or ill-informed about the benefits to be derived and the role he is expected to play. Hence “understanding the information needs of the consumer is an essential part of making the market work” (Tambini, 2012:12). For instance, providing the consumer with independently verified networks’ comparable performance statistics and tariff structure of various providers will enable the consumer to choose and switch service providers. Other relevant information required by consumers includes consumer rights as usually provided in consumer codes and complaint resolution procedures. In Nigeria, and other developing countries, a significant volume of information for consumers comes from the network and services providers, in form of articles and promotional advertisements in the print and electronic media. This type of information is advertisement and therefore it offers little or no information to empower the consumer and facilitate informed choices is discussed in Chapters 6 and 7.

#### **4.5.3 Improving Awareness**

Consumer awareness is defined, as “consumer’s understanding of the role of the regulating entity as well as their rights and obligations under the regulatory regime” (Muzzini, 2005:16). The researcher thinks there is need to expand this definition of consumer awareness to include understanding of consumer role vis-à-vis the role and obligations of the telecoms service providers. This knowledge about the goings-on in the telecoms market is the key to prompting consumers to exercise their right to choose and switch providers; right to complain and seek redress; right to participate and influence policy and right to be informed. Hence, the level of

awareness of consumers determines the extent the consumer is willing and able to work in partnership with the regulator and service providers to prevent market failures.

Raising the awareness of consumers requires strategies designed to target the various groups of consumers including the poor and the disadvantaged consumers for example those with little education and the rural dwellers. The methods include but are not limited to public forums, consultation, workshops, consumer research and interactive sessions like the Nigerian acclaimed Telecommunication Consumer Parliament – an interactive complaint resolution forum, which is part of the Commissions outreach programme (see chapter 6). The transparent complaint resolution procedure and feedback into the regulatory process is a very effective way to raise consumer awareness because it exposes the extent and limit of the rights of both the consumer and service providers. Regulatory bodies in developed countries make extensive use of their web sites to reach out to consumers. This medium is popular with the Federal Communications Commission (FCC), the USA regulator, UK's OFCOM and Hong Kong's OFTA. In Africa, town hall forums are more suited to the resources and literacy level of consumers in the rural areas. The television and radio are also more accessible and hence popular than the internet and are useful in raising consumers' awareness. Furthermore these media have good impact on less literate consumers.

#### **4.6. Regional Organisations and Consumer Protection: Reinforcing consumer protection**

In 2005, the ITU conducted a survey of 132 member countries, and the findings revealed that: 55, mostly transition and developing countries, (41%) have no consumer protection regulation/legislation; about half of the countries in the Americas (13 out of 27) and in the Asia Pacific region (12 out of 22) have no consumer legislation (Southwood, 2006). Since then, a growing number of countries in Africa have been establishing consumer protection legislation and by 2009, 13 countries in Africa have developed specific regulation/legislation in telecoms (Stevens, 2009).

The telecommunications regulators of most countries in West Africa, with the exception of Equatorial Guinea, have direct responsibilities for the protection of consumer rights. In 2008, the Economic Community of West African States (ECOWAS) integrated consumer rights, at



its regional level with a regulation named - the ECOWAS Conflict Prevention Framework, (ECOWA, 2008). So far, ECOWAS has enacted competition law, which by itself is considered insufficient for consumer protection, notwithstanding ECOWAS still encourages her 16 member states to set up similar laws with redress mechanisms to check anti-competitive practices of operators and to protect their consumers. ECOWAS works, hand in hand, with the West African Telecommunications Regulators Assembly, (WATRA) for the regionalisation of consumer polices and regulation. Nigeria is a member of both organisations.

Similarly, according to Southwood (2006), the Common Market for Eastern and Southern Africa (COMESA) has operational regional competition law that covers the interest and welfare of consumers. Some of the COMESA 19 member countries, example Kenya and Malawi, have established their competition laws with strong public interest and consumer protection bills. The Southern African Development Community (SADC) through its Telecommunications Regulatory Association of South Africa (TRASA) also creates regional integration in the telecommunications area. In 2004, TRASA released her guidelines, on consumer protection, to her members. Some of the TRASA members including Botswana and South Africa also have competition Acts with strong public interest and consumer protection. However, even in some of these countries, the consumer laws may not be operative or are yet to be tested out for several reasons, including scant resources, weak legal systems, social and environmental circumstances.

The most important and noticeable factor in all this is the absence of a well-defined and resourced consumer representation mechanism to initiate and drive the process. In line with this, Southwood (2006:10) says, “unlike the European Union, none of these regional bodies has in place the means for enforcing community-wide standards or indeed mounting an individual challenge to a country on an issue”. The OECD, the EU and in particular the United Kingdom, have robust competition laws and consumer policies. Strong judiciary backs these, well-resourced and active statutory and non-statutory consumer representation bodies to protect the interest of citizens and consumers, on national and regional levels. The advantage of harmonisation of policies and regional integration is best observed in the EU where regulatory resources are pooled to the benefit of less resourced countries. The situation is different in

developing countries particularly in Africa, where regional development and implementation of competition laws and consumer protection policies are yet in their infancy. The foundation however has been laid. These regional bodies will eventually develop the expertise and wherewithal to impose the rules that will engender efficient consumer representation in their regions.

#### **4.7 Ordinary Consumer Complaint Management: A potential cause of complaints**

In many countries, the telecommunications sector records the highest number on complaints when compared to other sectors (Cannock, 2002). Consequently, every telecommunications authority has its fair share of different types of consumer complaints that have a bearing on the authority's consumer protection framework. The ITU confirms that: "consumer complaints have an important role to play in regulation as they provide a useful barometer on consumer detriment and unfair practice" (Stevens, 2009:16).

The ITU lays prominence to complaint handling, categorically stating that: "access to a fair and transparent complaint process is an essential part of an effective consumer protection framework" (ITU, 2013:15). Hence, complaints filing and resolution procedure is usually listed in the consumer codes of practice. Most telecommunications regulatory frameworks include some requirement for operators to establish and publish procedures to handle complaints. Regulators, sometimes, prescribe the minimum requirements for consumer complaints handling which may include, but not limited to, the establishment of a mechanism that enables consumers to track, in real time, the status of their complaint and the time limits, for processing of consumer complaints.

A common approach of regulators for complaint handling is to impose the responsibility of resolving the complaint on both the service operator and the consumer. The parties can seek regulatory intervention, only after they have exhausted all possible options to resolve the complaint without success (Cannock, 2002). In Nigeria, the telecoms regulator, enjoins consumers to first initiate formal complaints with their service providers and wait for the providers to exhaust all possible means of resolving the complaints, before presenting the complaints to the Commission for redress. On the other hand, the Federal Communication

Commission (FCC), the US telecommunications regulator employs a different strategic dispute resolution. The FCC operates an informal process, which allows the consumer to report the complaint informally to the FCC. In follow up, the FCC, requests the service providers for written response. The FCC reviews this response to verify that the service provider does not breach FCC laws before taking decisions on appropriate actions, sanctions and compensations to resolve the complaint (Bruce & Macmillan, 2004). It is notable that the licenses issued to the South African mobile services providers require them to develop, publish and enforce guidelines that prepare and motivate their personnel to handle consumer complaints. Furthermore, each consumer is to receive a copy of the guidelines when signing onto services while the service providers are mandated to provide biannual complaints statistics, to the post master general (Bruce & Macmillan, 2004).

Imposing consumer code of conducts on telecommunications operators does not guarantee that consumers' complaints will be resolved, not only because of the difficulties associated with enforcing the code but also because consumer codes usually designate the regulator as the last 'port of call', after all other avenues for resolution have been exhausted. In spite of whatever merits it may have, it "limits the effectiveness of any code of conduct as it 'raises the bar' in terms of the resources and capacity required by the individual complainant" (Southwood, 2006:11).

#### **4.7.1. Dispute Resolution: Needs strong Judiciary for protection of the ordinary consumer**

Resolving consumer complaints and disputes arising with service providers in a timely manner is another important aspect of the fulfilment of the mandate to promote consumer protection (ITU, 2013). It has been highlighted in previous section that consumer complaints serve useful purpose for regulators to identify areas of concerns and gaps in existing legislation/regulation that may require regulatory intervention. This implies that dispute resolution can be viewed as central to consumer protection. Consequently, the mechanisms regulators put in place to achieve consumer redress can be used to assess the level of regulatory commitment to her consumer policy objectives (CI, 2011).

In line with this, Southwood (2006:9) asserts, “there are four elements that safeguard consumer rights in the telecommunication/ICT sector: consumer rights law, competition law, telecoms and internet law, and self-regulatory frameworks”. Telecoms law usually enables the setting up of a separate regulatory authority and self-regulatory frameworks within the industry. The consumer rights law or consumer protection bill and competition law are the products of legislation and regulation while self-regulation can either be part of the licence conditions for an operator or are self-imposed. Without these four elements, dealing with consumer complaints or disputes with operators would have no legal basis and consumers would be left at the mercy of operators when they encounter any harm in the competitive market. However, it is necessary to add that these four elements are not sufficient, by themselves, to safeguard the rights of the consumer because there is always a difference between how things ought to work and how they actually work (Southwood, 2006). Without a strong judiciary, the commitment of an independent consumer representation body to champion the interests and welfare of the consumers, the transparency of the actors in observing set rules and the resolve of the regulator to enforce rules, dispute resolution and by implication consumer protection, will not yield the desired outcome for consumers. An example is the case in Nigeria cited in Section 4.3.5 above, in which legal action by two consumer bodies disappeared into thin air.

#### **4.7.2 Dispute Resolution Procedures**

Redress mechanisms are usually based on a country’s licensing regime, which may provide for regulatory enforcement with sanctions and Alternate Dispute Resolution (ADR). ADR usually involves “recourse of the injured party against the responsible party in front of a tribunal” (CI, 2011:17). Hence, when the operator fails to resolve the complaint, consumer and consumer representation bodies may have recourse to the three accessible options: mediation, arbitration and litigation. Mediation provides consumers with a viable alternative way to resolve consumer complaints. It involves negotiation and reconciliation without applying rules and setting up procedures that impose costs on the consumer. Mediation is a useful low cost but non-binding way of resolving consumer complaints with an operator. Its major shortcoming is “even if the consumer wins its case, a satisfactory outcome may still depend on the goodwill of the operator” (Stevens, 2009:17). Individual ordinary consumers are unlikely to proceed to litigation not only

because of the delay they may encounter but also more importantly because of the substantial cost (are usually high) usually associated with courts cases and the small value of the claims involved. According to Stevens (2009), arbitration is binding like litigation but involves a quicker procedure and it is regulator's first choice of ADR. However, it presents daunting challenges for the consumer. Arbitration, apart from the cost implications, requires the consumers to present their evidence and state their cases – something that not all consumers may be able or willing to do.

In some countries, depending on their national policies, certain types of consumer complaints may activate other governmental consumer protection agencies to intervene in the telecoms consumer complaint handling process. For instance, if the dispute concerns a matter under competition or consumer protection legislation, the agency responsible for the enforcement of such legislation may become directly involved at an early stage in the dispute.

For example: “the Federal Privacy Commissioner of Canada held a number of hearings in 2002 on complaints he received about the misuse of personal information by telecoms service providers. In a number of cases, the Privacy Commissioner held that consumer complaints were well-founded, and he recommended measures that service providers should take to come into compliance with the Canadian Personal Information Protection and Electronic Disclosure Act” (Bruce & Macmillan, 2004: 42).

On the contrary, in Nigeria, the Communications Act (section 90) states: "Notwithstanding the provisions of any other written law" the Commission has exclusive powers with regards to all issues pertaining to telecommunication. Hence, intervention by any other agency is to no avail.

In 2004, the Nigerian Communications Commission issued guidelines for arbitration in disputes involving small claims. The objective is to provide a forum for consumers to resolve disputes with their service provider in an inexpensive, fair, impartial and effective arbitration. The short form arbitration procedure is for claims not exceeding N 1,000,000 (GBP 3850) and which does not involve complicated issues of law. It also requires that the consumer has exhausted all dispute resolution procedures established by the service provider without resolution of the complaint. The guideline provides for a sixty days' limit for the arbitration proceeding. The

Nigerian arbitration guidelines make no distinction between ordinary consumer and corporate consumers. The practical implication of this strategy is discussed in Chapter 7.

In Saudi Arabia, the regulator, the Communication and Information Technology Commission (CITC), requires service providers to establish a separate division to handle consumer complaints and approves the procedures that are put in place. If the consumer and provider are unable to resolve their dispute amicably, the customer may refer the dispute to CITC in writing, for resolution. The CITC has a period of 10 days to consider the complaint and to dismiss it if it decides it is vexatious or frivolous (Stevens, 2009). If it decides the complaint merits investigation, a copy is sent to the service provider who has five days to respond, after which the complainant has a further five days in which to reply. The CITC then has a period of 30 days to consider the complaint and reach its conclusions. During this time, the provider is not allowed to disconnect the customer's service without the prior permission of the CITC. If the CITC concludes that the provider has breached the Telecommunications Act, it will refer the provider to the Violation Committee that can impose financial sanctions on the operator. The Committee may impose a penalty (subject to a minimum threshold) which it considers appropriate for the gravity of the violation (Stevens, 2009).

EU member states are governed by a package of directives revised in 2009. The dispute resolution mechanism for consumers is highlighted in Article 34 of the EC Universal Service and User Rights Directive and Article 8 (4) of the Framework Directive which provide that: "transparent, simple and inexpensive out-of-court procedure" must be available for reaching a broad range of consumer (i.e. non-business user) dispute" (Brisby, 2005:5).

The UK communications providers, subject to the terms of general authorisation implemented by the regulator OFCOM, are mandated to set up complaint handling and dispute resolution procedures. The procedures, as established by OFCOM, require that all communications providers that provide services to individual consumers and small businesses with not more than 10 employees must belong to one of the two OFCOM approved ADR schemes, the Office of the Telecoms Ombudsman (OTELO) and the Communications and Internet Services Adjudication Scheme (CISAS). Both OTELO and CISAS require that a complainant must first exhaust its communications provider's internal dispute mechanism before turning to either of

the two disputes mechanism schemes. OTELO members include fixed telephony companies and two of the four mobile operators while CISAS members include ISP companies and two of the four major mobile operators. OTELO was established by industry working group, originally sponsored by the UK telecommunications regulator - Oftel and currently industry funded. For the OTELO scheme, the member companies do not have rights to appeal and have no veto over the ombudsman decisions while a complainant can take up the dispute with the court, if unsatisfied with the decision of the ombudsman. On the other hand, CISAS is run by the Chartered Institute of Arbitrators (Brisby, 2005).

#### **4.8. Conclusion**

This chapter in assessing the new telecommunications industry structure, which is characterised by competition in liberalised markets regulated by agencies independent from government, attributes the need for regulation to imperfect competition. The ultimate aim of regulation is the attainment of national telecommunication policy objectives, which includes the promotion and protection of interest of consumers. It is therefore expedient that regulators should facilitate effective consumer participation in the regulatory process, which will complement the regulatory effort towards engendering a competitive structure that leads to improved market efficiency while promoting the interest of consumers. However, the discrete and diverse nature of consumers pose a difficult challenge, but this researcher holds that that in itself underscores the critical role of consumer representation in regulatory decision-making.

Effective representation of the ordinary consumers involves engaging the consumers through the mechanism of consultation and provision of information. Another important aspect of the fulfilment of the mandate to protect ordinary consumer interest involves maintaining an effective and timely mechanism for resolution of consumer complaints and disputes arising with the operators (ITU, 2013) because delay in the resolution of complaints lead to consumers' frustration and dissatisfaction. One option, that proves to be both optimistic and viable particularly in the UK, is the use of ADR and Consumer Representation (CR) bodies to vigilantly oversee and ensure that consumer disputes are properly investigated and that adequate compensations are awarded to consumers. Consumer representation bodies, independent of government and regulators, are also useful in monitoring the regulator and

services providers with regard to how they discharge their duties towards consumer interest and protection and their license conditions respectively.

To achieve the goal of ordinary consumer influential participation in the regulatory process, various institutional arrangements have been implemented in different countries. The effectiveness of each model is largely determined by the socio-political characteristics the regulatory environment. It has therefore been suggested that greater benefits could be derived by adopting an inclusive framework for consumer representation by combining the statutory and non-statutory models, as in the UK, by harnessing the strengths of the models and safeguarding against their weaknesses so that the ordinary consumer influential participation in the regulatory process is enhanced. This arrangement may be of great benefit to Nigeria and other developing countries with little history of civil society/advocacy groups.

In the first part of this thesis, having established 1) The NIE approach' as a theoretical basis and Institutional Decomposition Analysis as the framework to guide this thesis 2) that the prevailing socio-political setting in Nigeria which is characterised by non-transparent transactions and weak institutions and which forms the background of the telecommunications market, and regulatory environment has implications for regulatory activities 3) that the ultimate aim of regulation is to implement policy objectives which include promoting the interest of the ordinary consumer, and that the global trend in institutional arrangements for consumer representation favours mixed models in Part One, the empirical part that now follows will look into how the industry key players defined the ordinary consumers' interests and rights; examine the structures and processes that have been deployed to engage the ordinary Nigerian mobile consumers to effectively participate in regulatory decision-making process; and evaluate the adequacy or otherwise of the ordinary consumer complaints management processes of the market players and the regulator.



## **CHAPTER 5 Institutional Definition of Ordinary Mobile Consumer Interest in Nigeria**

### **5.1 Introduction**

This chapter undertakes an analysis of policy, legal documents and other secondary sources, which specifically deal with the study's first research question: if and how have the legislators, regulator and market players in Nigeria defined the ordinary consumer interest in the field of mobile communications.

To address the above question, this study will apply the extended Institutional Decomposition Model in analysing the relevant documents in an attempt to answer the research question. First, the Nigerian communications institution is decomposed into its four main components– mobile policy, mobile law, mobile administration and mobile enforcement. The analysis will be based on these four main components and their aspects and internal linkages. The study will also take notice of the extra-institutional factors like the prevailing regulatory environment in drawing conclusions.

With regards to the first research question stated above, this study will seek to find if the mobile policy, National Telecommunications Policy of 2000, in setting out the strategic policy direction for the development of telecommunications in Nigeria, has defined the consumer and consumer interest; what kind of regulatory framework, regulator and market structure was envisioned by the policy and how do these relate to consumer interests. In addition, are there provisions for economic regulation (e.g. tariff rules) to protect ordinary consumer from predatory licensees?

In the second section, this study will focus on mobile law (The Act) to ascertain how the provisions of the mobile law aligns with the mobile policy and if the mobile law has explicit definition of who the consumer is and what constitutes the consumer interest. Still focusing on the research question, this section will look at corporate values, powers and functions assigned to the regulator to facilitate its mandate to promote consumer interest. It will determine if there are legal provisions for the establishment or support of independent consumer representation bodies. Specifically, it will ascertain if there are adequate provisions for ordinary consumer to

participate in the development or review of industry codes that define how the services providers engage with ordinary consumers.

Mobile administration encompasses mechanisms, processes, procedures and quality of service standards, research and public forums, pricing and accountability mechanisms established to facilitate the implementation of the mobile policy, mobile law, and mobile enforcement. The third section will investigate how these provisions have been deployed for the realisation of the ordinary consumer interest. It will also ascertain if the definition of consumer interest is consistent across the mobile organisation (Commission– the actors) and if the industry players in the mobile market are consistent in their practice to uphold the consumer interest at a level consistent with the policy and law.

The Institutional Decomposition Model of Saleth and Dinar (1999) was extended by conceptualising mobile enforcement as the fourth component of the mobile institution. In this way, this study emphasises the importance of the application of responsive enforcement mechanisms towards the realisation of policy objectives because how the operators' response to the rules depend on the efficiency of the enforcement of the rules North (2005). Therefore, the fourth section will examine the adequacy and effectiveness of the mechanisms for monitoring, assessment and enforcement of mobile law and consumer codes of practice. In addition, it assesses the level of industry compliance with the provisions of the Act and if the level of sanctions and fines are adequate to deter errant operators.

Finally, the findings and main argument resulting from this investigation will be presented in the concluding section.

## **5.2 Mobile Policy: National Telecommunication Policy 2000**

In 2000, the Ministry of Communications launched the National Telecommunication Policy. The NTP was developed by a 22-member Telecommunications Sector Reform Implementation Committee (TSRIC) under the leadership of the Minister of Communications, Alhaji Mohammed Arzika and was approved by Olusegun Obasanjo, the then President of the Federal Republic of Nigeria. TSRIC membership included all stakeholders in the sector, organised Labour, the Consumer Protection Council and the Nigeria Communications Commission.

The National Telecommunications Policy (NTP) 2000 recognised the challenges of setting long time objectives in the face of rapidly changing technology and evolving market and thus restricted its objectives only to short term (3 years) and medium term (5 years) use. However, despite the expressed time limits the NTP is still in use fifteen years after its publication thus raising the question of its relevance in the current state of the market.

### **5.2.1 National Telecommunications Policy (NTP) on Consumer Interest and Corporate Values**

The National Telecommunications Policy, (NTP), in setting out the policy direction for the development of telecommunications did not define who the telecommunications consumer is, nor did it make any categorical statement about the interest of consumers. However, consumers' interest issues could be discerned under the interest of the public, the objectives of NTP, the powers, functions and corporate values assigned to the Nigerian Communications Commission (Commission) and the provisions for economic regulation. The overriding objective of the NTP is "to achieve the modernisation and rapid expansion of the telecommunications network and services, with the ultimate aim of making it efficient, affordable, reliable and available to the general public" (NTP, 2000: section 2.0). These issues have strong bearing on consumer interests as will be discussed in the next section. Hence, the NTP in its principal objectives identifies with the interest of consumers.

One medium term objective, which is particularly important in enhancing consumer interest, is to ensure that public telecommunications facilities are accessible to all communities in the country (NTP, Section 2.2). The Universal Service Provision (USP) catered for under Sections 112 and 113 of the Act addresses this objective. Other objectives of the NTP are expanded in the functions it assigns to the Commission. The policy specifies nine functions for the Commission; five of these functions allude to the interest of consumers, which are also deducible from similar provisions of the Act signifying a strong synergy between the mobile policy and the mobile law.

From the provisions in the NTP, the following characteristic of the envisioned communication services, which relate to the interest of consumers, can be deduced: affordable, efficient and

reliable communications services, easy and universal access to communication services, availability of services, approved technical and operational standards, fair trade practices, and safety/security of citizens (NTP, Sections 2.0, 2.2 and 3.1.4.2).

The NTP also deals with the independence and corporate values of the Nigerian Communications Commission (Commission). It directs that the Commission in making its decisions should be guided by the overriding objectives of the NTP in an impartial and independent manner and considerations of fairness, equity and transparency and “such rulings shall not be directly influenced by Government or private industry” (NTP, 2000: section 3.1.4.1).

Thus, the NTP established the framework for an independent regulator with full legal mandate to regulate the telecommunications industry. The implication of this provision for the promotion and protection of the ordinary consumer is discussed in the section on mobile law.

### **5.2.2 Policy on Economic Regulation: Focusing on the consumer**

In its directive on economic regulation of the telecoms industry, the NTP upheld that competitive market forces would be the best determinant for appropriate and sustainable levels of prices in the telecommunications market. In other words, the NTP did not recommend any form of direct price control by the regulator. However, it recognised that in some interim period, before active competition is fully developed, the market might be inefficient due to the emergence of one or more dominant operators with power to control pricing. In such circumstances, the NTP enjoins the Commission to establish “tariff regulation requirements for such dominant operators, which will ensure that service prices are cost-oriented, that customers and competitors’ interests are protected and that the industry develops in the most efficient manner possible” (NTP, 2000: Section 6.0). This anticipated situation was manifested in 2012 with the emergence of MTN as a dominant operator and subsequent imposition of regulatory obligations by the Commission. However, there is tension between ordinary consumers’ interest and competitors’ interest with regards to tariff levels as will be discussed in Section 5.3.4.1.

Nigeria does not have a Competition Authority therefore; the mandate to the Commission to establish tariff regulation requirements serves the interest of consumers because it protects consumers from the harm associated with abuse of market power and unfair trade practices and consequently ensures that communications services are affordable. Hence, the NTP in defining the policy direction for the telecommunications sector had the interest of the consumer in view. These provisions are also amplified in the Act, Sections 1(e), 90-93, and 97 and in the Competition Practice Regulations 2007: Regulation 7, 8, 13, 18(d).

### **5.3 Mobile Law: Legal definition of consumer interest**

This section looks at provisions in the Mobile Law, one of the main components from the decomposition of the Communications institution, concerning the definition of consumer interest. The concept of the consumer allows for wide variations in definition (CI, 2014). Therefore, in order to highlight the significant difference and thrust of the definition of the consumer in the Act, a comparison is made with the definition of the consumer in the Consumer Protection Council Act, 1992 (CPC Act, 1992), the definition by the Consumer Affairs Bureau, and the Nigerian Communications Act 2003.

The CPC Act defines the consumer as:

“An individual, who purchases, uses, maintains or disposes of products or services”  
(CPC Act, 1992: Part V, Section 32).

The Consumer Affairs Bureau (CAB), a department of the Nigerian Communications Commission in its ‘Consumer Web Portal’ has defined a telecommunication consumer as

‘A person who subscribes to the services of telecommunications service provider’

The Nigerian Communications Act 2003 in its definition of a consumer makes no distinction between the ‘consumer’, ‘customer’ and ‘subscriber’, all of which it defines as:

“Any person who subscribes to and uses a communications service”: (NCA, 2003: section157).

The terms ‘subscribes’ and ‘uses’ are significant. The Registration of Telephone Subscribers Regulation, 2011, defines a subscriber as, “a person who subscribes to mobile telecommunications services by purchasing a subscription medium or entering into a subscription contract with a licensee” (Section 1(2)). The Regulations also interprets subscription medium to mean a Subscriber Identity Module (SIM) smart card or any other phone subscriber medium, containing the telephone number of a subscriber, encoded network identification details, the personal identification number and other user data normally provided by a licensee for the provision of network services. This implies that the ordinary consumers on the prepaid platform (pay-as-you-go) also enjoy the full status of ‘subscriber’ even if they had not entered into any other formal subscription contract with a licensee. This is very important but it is often overlooked by services providers and will be referred to in section 5.2.4.2 when discussing consumers’ right at the point of purchase of SIM pack.

It is significant that in the CPC Act the purchase or use of, say, a mobile device is a sufficient condition for qualification as a consumer. Similarly, the CAB’s definition would imply that the purchase of a SIM card qualifies one as a consumer. Both definitions are incomplete; they differ significantly from the definition of consumer in the Communications Act. In the Act, the dual condition – ‘subscribes to’ and ‘uses communications service’ – is necessary for qualification as a consumer. First, this implies that non-subscribers are excluded from the definition in the Act. In other words, with regard to the definition in the Act, it would appear that an individual who uses the mobile phone of another is not a ‘consumer’. For example, a child who uses the phone of the parent is not a ‘consumer’. Secondly and more importantly, the Act’s definition of consumer implies a contractual relationship between a user and the service provider and the term ‘and uses a communications service’ is part of that contract. The significance of the term ‘and uses’ becomes clear in the rule for the disconnection and withdrawal of a pre-paid subscriber number.

The Registration of Telephone Subscribers Regulation, section 14(2) stipulates that a SIM card that is not used for a revenue-generating event within 48 hours of registration will be disconnected. Thereafter a subscriber’s line “if it has not been used” within six months or twelve months for a revenue generating event, may be disconnected or withdrawn (Quality of

Services Regulations 2007, schedule 1, section 36). These conditions have grave implications for both consumers and network operators. For a network operator failure to abide by the first rule attracts a fine of N 200,000 (US\$ 1000) per SIM card. For example, in 2015, the failure by MTN, (a network operator) to abide by the first rule has led to the imposition by the regulator, of what appears to be the heftiest fine in global telecommunications history (See Section 5). For the ordinary consumer, violating the first and second conditions would result in inability to use his/her number until he/she completes the reregistration procedures and the second condition implies forfeiture of the number.

As stated above, the definition of the consumer by CAB does not align with the Act because it excludes the term ‘uses’ which is a necessary condition. This is an example of the lack of consistency in the definition of consumer and consumer interest, which prevails across the mobile organisation – the personnel (players) of the Commission. In this instance, it has led millions of subscribers to violate the SIM card registration rules with dire consequences. Later in Chapter 6, CAB’s misconception of consumer ‘right to be heard’ which portends grave implications for consumer representation will be highlighted.

Therefore, in the context of this study, ordinary consumer is defined as a person – as distinct from a corporate body or partnership – who subscribes to and uses a mobile communications service. As was noted earlier, the Nigerian Communications Act 2003 is the primary source for the definition of consumer interest. Keeping in view the reasons for government delegation of power to regulators and that the nature of the regulator has implications for the interest of the ordinary consumers the next section reviews the regulatory framework instituted by the Act.

### **5.3.1. Independent and Impartial Regulator: Consumers’ ally?**

The Nigerian Communications Act 2003 (Act) states as its primary object the creation and provision of a regulatory framework for the Nigerian communications industry and Section 1 (b) extends this by specifying the creation of an effective, impartial and independent regulatory authority. This objective is realised with the establishment of the Nigerian Communications Commission (Commission) as an independent regulatory body for the communications sector with full legal mandate. The Act also established for the Commission a Governing Board, with

a completely independent organisational structure distinct from the civil service structure of the Ministry of Communications (Act, sections 1, 2, 3, 5, 12). This distinction is further emphasised by stating the Commission's operational independence from the Ministry of Communications as follows:

“In the execution of his function and relationship with the Commission the Minister shall at all times ensure that the independence of the Commission in regards to the discharge of its function and operations under this Act, is protected and not compromised in any matter whatsoever” (NCA, 2003: section 25 (1-2)).

The financial independence of the Commission is equally provided for as the Act empowers the Commission to establish and maintain a fund from which to defray all expenditures incurred by the Commission. The main sources of funds include fees charged by the Commission under the Act or its regulation like Annual Operating Fees or under any license issued in pursuant to the Act (Act, Sections 17(1b-c), 18, 19). In 2013, the Commission's fund amounted to ₦ 39.6 billion (USD 200 million) (Commission Annual Report, 2013).

The Act confers expansive powers on the Commission for the economic regulation of the communications sector which state that the Commission shall have power to:

“Do all such things as are necessary for or incidental to the carrying out of its functions and duties under this Act” (See section 5.3.4) and

"Notwithstanding the provisions of any other written law, the Commission shall have exclusive competence to determine, pronounce upon, administer, monitor and enforce compliance of all persons with competition laws and regulations, whether of a general nature or specific nature, as it relates to the Nigerian communications market" (NCA, 2003: Section 3(2c), 90).

Hence, in the telecommunication sector the Act has precedent over other competition laws and therefore exclusive jurisdiction over all issues relating to the interest of the consumer in the telecommunications sector. Thus, the promotion and protection of the interests of the telecommunications consumer are safeguarded under the regulatory independence and



expansive powers of the Commission. However, in practice the Commission is burdened with acute agency problem and conflict of interest, which distract it from focusing on the ordinary consumer. Examples of the manifestation of these issues are discussed in Section 5.5.2 of this chapter.

### **5.3.2. Organisational values are essential for effective consumer representation**

To complement its independence, the corporate values of the Commission, which the Act envisages in Section 1(b), are further expanded in Section 4(2). It states that the Commission shall always carry out its functions and duties in an efficient, effective, non-discriminatory and transparent manner. This is necessary for the Commission's credibility, which is required to engender consumers and other stakeholders' trust and confidence in the Commission.

Two evident mechanisms established by the Act to foster the realisation of these corporate values and accountability are: 1) the power of the Commission to conduct public enquiry on any matter of a general nature which serves the objects of the Act and in all instances that mandatorily require that public inquiry be held under the Act or its regulation. This is to ensure transparency in the activities of the Commission while creating room for consumers' influential participation in regulatory decision process; 2) the submission of the Commission's annual report of activities to the National Assembly through the President not later than six months after the end of its financial year, including the Commission's audited accounts and the auditor's report for the year under review. The detailed guidelines for the preparation of this report are specified in section 89. These provisions facilitate the oversight function of the legislators (NCA, 2003: Sections 4(2), 21(1), 57(1-3)). These are important provisions. The implications of the Commission's inability to abide by these provisions are discussed in later section of this chapter.

The Act is wide-ranging in its provisions and amply meets the requirement of an independent regulatory framework. This is important and has implications for consumer interests. An effective regulatory framework, rooted in a firm legal base is essential for the creation of institutions, organisations and structures, for the administration of pro-consumer laws; institutions are crucial (North, 1993). Under the Act, the Commission's legal mandate ensures

its organisational, financial and operational autonomy. These factors are fundamental for a sustained campaign for the promotion and protection of consumer interest because, as noted in Chapter 2, the performance of the mobile telecommunications market depends not only on the individual and interactive actions of stakeholders, but also on the intervening influences at the regulatory level (Saleth and Dinar, 1999).

In practice, the regulatory framework of the Commission, like those of other regulatory agencies in Nigeria is susceptible to political corruption and interference such that the independence and impartiality of the regulatory are compromised from the onset with grave implications for the efficiency of the market and the interest of the consumer. The prevailing socio-political environment, which is heavily weighed down by cronyism and non-transparent transactions finds its way into the Commission through its institutional framework: the politicians appoint the leadership. It spreads through the organisation because the favoured agents create their own internal clientele network. This has far-reaching negative impact on the commitment of the regulator towards the attainment of policy objectives.

### **5.3.3. How is ‘Consumer Interest’ Defined?**

The concept of consumer interest, like the term ‘consumer’, is open to various definitions because it embodies a wide range of variable concepts. In Britain, Ofcom’s Consumer Panel, in its Consumer Toolkit, upholds that “the consumer interest is implicitly the inverse of the consumer detriment” (Consumer.Panel, 2006:74). Therefore, in determining what constitutes ordinary consumer interest, this study considered the provisions in the Act that would ordinarily enhance or promote consumers’ quality of experience and serve the consumers welfare by eliminating or reducing the factors that are capable of giving rise to consumer detriment. Hence, two basic criteria were considered:

1. Factors that enhance/promote the quality of experience of the consumer or reduce/eliminate consumer detriment.
2. Factors that are specifically provided for in the Act and regulations.

### **5.3.4 Consumers Interest is Part of the Law**

The interests of the consumer which the Act undertakes to promote and protect are not explicitly defined and listed in the Act but are subsumed in, and are deducible from the objectives of the Act; the functions of the Commission; Consumer Affairs; General Consumer Code of Practice, 2007; Registration of Telephone Subscribers Regulations, 2011; Quality of Service Regulations, 2012; Number Portability Regulations, 2014; and other regulations/guidelines.

Apart from its primary objective of creating a regulatory framework for the Nigerian communications sector, the Act in delineating the scope of activities of the Commission, defines nine objectives and twenty-three functions for the Commission. Five of these objectives and eight of the functions, have direct bearing on the promotion and protection of the interest of ordinary consumers and consequently define how the legislators, the regulator (Commission) and the market players construe the interest of the ordinary consumer. The main objectives include promoting the provision of affordable and easy to access communication services, ensuring fair competition and the protection of the interest of consumers and services providers.

#### **Box 2. NIGERIAN COMMUNICATIONS ACT 2003 (NCA, SECTION 1(1))**

##### **Pro-consumer objectives of the Act**

- 1(b) Establish a regulatory framework for the Nigerian communications industry and for this purpose to create an effective, impartial and independent regulatory authority.
- 1(c) Promote the provision of modern, efficient, reliable, affordable and easily accessible communications services and the widest range thereof throughout Nigeria.
- 1(e) Ensure fair competition in all sectors of the Nigerian communications industry.
- 1(g) Protect the right and interest of service providers and consumers within Nigeria.

1(h) Ensure the needs of the disabled and elderly persons  
are taken into consideration in the provision of communications services

**Source:** Nigerian Communication Act (NCA, 2003: A239)

The pro-consumer objectives of the Act given in Box 2 are further reinforced in some of the functions of the Commission. Those functions stated in section 4(1) of the Act, designed to facilitate the realisation of the pro – consumer objectives through the promotion and protection of consumer interest are listed in Box 3 and include, promotion and protection of consumers’ interest against unfair practices, developing and monitoring quality of service and resolution of consumer complaints.

**BOX 3. PRO–CONSUMER FUNCTIONS OF THE COMMISSION ACT SECTION 4(1)**

- 1) The protection and promotion of the interest of consumers against unfair practices including but not limited to matters relating to tariff and charges for and the availability and quality of communications services, equipment and facilities;
- 2) Ensuring that licensees implement and operate at all times the most efficient and accurate billing system;
- 3) The promotion of fair competition ...and protection of providers from misuse of market power or anti-competitive and unfair practices
- 4) The development and monitoring of performance standards and indices relating to the quality of telephone and other communications services and facilities supplied to consumers in Nigeria having regards to the best international performance indicators;
- 5) Proposing, adopting, publishing and enforcing technical specifications for the importation and use of communications equipment;

- 6) Carrying out type approval tests on communications equipment and issuing certificates thereof on the basis of technical specifications and standards prescribed from time to time by the Commission;
- 7) Examining and resolving complaints and objection filed by and disputes between licensed operators, subscribers or any other person involved in the communications industry, using such dispute-resolution methods as the commission may determine and arbitration;
- 8) Designing, managing and implementing Universal Access strategy and programme in accordance with federal government's general policy and objectives thereon.

**Source:** Nigerian Communications Act (NCA, 2003: Section 4(1))

The provisions in section 4(1) above are of particular interest to the consumer; they have direct impact on their everyday experience and expectations. In practice, the Quality of Experience (QoE) of the ordinary consumer is predicated on how well the Commission performs these functions and on how well it monitors and enforces compliance with those provisions.

The consumer interests deducible from the objectives of the Act and functions of the Commission also include all those in Section 5.3.1, deduced from the NTP and they are listed in Table 9.

Also relevant to consumer interest are the national interest provisions in the Act. These provisions obligate licensees to endeavour to prevent the use of the network facilities and services, in the execution of any offence under any law in operation in Nigeria. The violation of this provision was also cited in the recent imposition of fine on MTN a network provider. MTN was indicted for allowing the use of unregistered phone numbers on its network by the Boko-Haram terrorist group.

**TABLE 9. MOBILE LAW: DEFINITION OF CONSUMER INTEREST**

<b>S/N</b>	<b>Consumer Interest</b>	<b>Legislation/Regulation</b>
<b>1</b>	Independent, Efficient, and Effective, Regulator	Act: Sections 4(2), 7(3); Chapter II Part II, III, IV.
<b>2</b>	Easy access to modern communications services	Act: Sections 1(c), 3(e), 33, 112(1), 114 Universal access & Universal service Regulations 2007
<b>3</b>	Fair and cost oriented tariff and charges	Act: Sections 108 (1-3), 109, 110(1), (2a-c)
<b>4</b>	Affordable communications services	Act: section 1(c)
<b>5</b>	Needs of vulnerable consumer	Act: 1(h), 107 (2)(d) General Code 15(1 - 2); 40(1 - 2)
<b>6</b>	Complete, accurate and easy to understand information	General Code: Sections 6(1) (2a-d), 8(1-5), 9 ,10, 11 ,17, 18 Quality of Service Regulations 2012: Section 2(d)
<b>7</b>	Efficient & reliable telecoms services	Quality of Service Regulations 2012: Schedule 1, Table 2 ( 2.1, 2.2, 2.3, 3.1, 3.2)
<b>8</b>	Fair competition	Act: 1(e), 90, 91, 93, 97 Competition Practice Regulations 2007: Regulation 7, 8, 13, 18(d)
<b>9</b>	Complaints resolution and redress	Act: Sections 4(p), 61 – 63, 73 – 76, Dispute Resolution Guide Lines 2004 General Code: Sections 8(3), 13, 39 -49, Quality of service Regulations 2012: Sections 8(1- 3) Complaints adjudication Guidelines

<b>10</b>	Security of consumer information	General code : Sections 34 -38
<b>11</b>	National security and consumer/public safety	Act: sections 97(3), 146(1 -2), 148, 149
<b>12</b>	Safe communication equipment	Act: sections 130, 132(1 – 3)
<b>13</b>	Consumer education/ engagement	Act: sections 57(1 -3) General Code: Sections 4(1), 5

**Source:** Compiled from the Act and regulations

#### **5.3.4.1 Tariff Rate Regulation: Investment Versus Affordable Services**

In the list of consumer interests listed in Table 9 there is an inherent tension between the provision of fair and cost oriented tariffs/charges and affordable communications services (Items 3 and 4). Tariff rate is always a matter of concern for the ordinary consumer hence the Act and the NTP stipulates that tariff rate shall be fair, non-discriminatory and cost oriented.

However, the provisions set out elsewhere in the Act appear to be pitched against both the affordability of communication services, and fair, non-discriminatory, cost-oriented tariff. For example, the Act in sections 108 (4d-e) enjoins the structuring and setting of tariff rates and levels to attract investments into the communications industry and to align with the recommendations of the international organisations of which Nigeria is a member (NCA, 2003).

Structuring and setting tariff rates and levels solely to attract investment, without taking into consideration the impact on the ordinary consumer, or the overall economic situation of the ordinary consumer is not in accord with the spirit of the National Telecommunications Policy (NTP) and definitely not in the best interest of the consumer. As was noted earlier in section (5.2.3) the NTP foresaw that before full-blown competition is achieved, it is appropriate to consider consumers' interest in regulating prices.

There is no evidence that the Commission has given effect to this provision in order to resolve the tension between affordability and accessibility of telecoms services. Hence, regarding the existing provisions on tariff rate, ordinary consumers have cause for concern; their interest in

affordable prices is not assured and they would inevitably be paying high prices, which will adversely affect the accessibility of basic telecoms services particularly for those in the low-income group.

#### **5.4 Mobile Administration: Numerous secondary legislations but not effectively utilised**

In order to facilitate the realisation of her objectives, the Commission had also enacted a total of thirteen regulations and fourteen guidelines. These secondary legislations include three guidelines and six regulations with direct bearing on the mandate to promote and protect consumer interests.

These are:

Guidelines on consultations, 2007;

Guidelines on dispute resolution, 2004;

Guidelines on advertisements and promotions (Commission in collaboration with the advertisements and promotions' regulatory agency);

Quality of service regulations, 2012;

Regulations on the registration of telecoms subscribers, 2011;

Regulations on Universal access and Universal service, 2007;

Consumer code of practice regulations, 2007;

Regulations on enforcement processes, 2005; and

Regulations for number portability, 2014

.



**TABLE 10 POLICY GUIDELINES AND REGULATION**

	<b>Total Number</b>	<b>Pro-consumer</b>	<b>General/Pro-service provider</b>
<b>Policy Guidelines</b>	14	3	11
<b>Regulations</b>	13	6	7
<b>Total</b>	<b>27</b>	<b>9</b>	<b>18</b>

**Source:** Nigerian Communications Commission website (NCC, n.d.-c)

It is noteworthy that the Consumer code of practice regulations, 2007 (General Code) was enacted in 2007, six years after the liberalisation of the sector. During this period, the ordinary consumer was exposed to the activities of the services providers without any law defining how the services providers should engage with the ordinary consumers and without the support of any consumer body to advocate for the ordinary consumer. The result was that neglecting ordinary mobile consumer interest with impunity became the norm. The late introduction of the General Code has been unable to reverse the trend. This evidence also shows that the Commission was not consumer-focused from inception.

Notwithstanding the merits of these regulations in providing ample instruments to facilitate the regulatory functions, it appears that there are many similar provisions relating to consumer interest in the Act and the various regulations as shown in the Tables, 9 and 10, above. This seems to complicate things as provisions are spread in a large number of documents. In addition, it seems that there is repetition of the same provisions without any elaboration as to how these consumer interests can be conceptualised and actualised. The number of regulations the Commission has put in place for consumer protection does not indicate the efficiency of the administration (Saleth and Dinar, 1999). If these numerous subsidiary legislations are not matched with corresponding effort to put them into effect, they will appear to be empty provisions and licensees will be inclined to disregard them completely and thereby increasing the burden on the enforcement institution.

#### **5.4.1 Mobile Administration: Definition of consumer interest is not consistent across the organisation**

In mobile administration, the Consumer Affairs Bureau (CAB) is the principal organ for dealing with consumer issues. The Commission has also put in place a five-year operational plan – the Strategic Master Plan 2014-2018 (SMP) – to focus and direct its activities. Hence, the Commission’s procedural definition of consumer interest is more clearly reflected in the provisions of the SMP and the activities of CAB.

In the Strategic Master Plan (SMP), the Commission did not use the term ‘consumer interest’ when referring to factors relating to consumer interest issues but rather employed terms such as ‘consumer needs’ and ‘consumer demand’. Hence in its Strategic theme 1, the Commission states:

“On the demand side, the theme emphasises the Commission’s role in ensuring that the growing and changing needs and demands for communication services by our consumers are met. This entails ensuring availability of a wide range of choices and services to consumers, easy migration for maximum satisfaction, fair and competitive pricing and tariff etc.” (NCCSMP, 2014: 23).

In addition, in the Strategic Theme 2, the Commission stated that its response “to the needs of stakeholders such as consumers” would cover issues such as availability, ease of access and quality of service, protection, enlightenment, education and empowerment (NCCSMP, 2014:24). Hence, under the term ‘needs and demand’ of consumers the following factors relating to consumer interest are visible: Choice, Fair price and tariff, Accessibility, Affordability, Quality, Protection, Information, (education, enlightenment, empowerment).

The Consumer Affairs Bureau has as its mission “the protection of the rights and privileges and interests of telecoms consumers” and states its mandate to include “protecting the consumer against unfair practices in the industry, to inform the consumers and to empower the consumer by educating on the rights and obligations”. The Bureau did not state what the privileges of the consumers are nor did it indicate what constitutes the consumer interest; rather it gave a list of what it termed ‘consumer expectation’ as: access to robust services, acceptable quality of

service, affordability, availability of services, transparent tariff regime, redress when wronged and compensation when wrongly billed/loss of service.

It is noticeable that there are discrepancies between the ‘needs and demand’ and the ‘consumer expectations’. For example, information and protection against unfair practices – which are part of the CAB mandate – are not included in the ‘consumer expectations’ but are listed among the ‘needs and demand’ in the SMP while ‘redress’, which featured in the expectations, was not listed in the needs and demands.

Hence, in mobile administration, there is inconsistency in the definition of consumer interest, which is also referred to under various terms such as consumer expectation, consumer privileges, consumer needs and demands. This lack of consistency in terminology also leads to variation in the scope and meaning attached to the concept of consumer interest; hence “the perceived consequences of policies will differ as well” (North, 1990: 101). Consequently, the level of awareness and the degree of importance attached to consumer interest issues would vary across the organisation with adverse effect on the Commission’s mandate to promote and protect the interest of consumers. For example, the Commission’s erroneous definition of consumers’ ‘right to be heard’ has a far-reaching impact on its conceptualisation of consumer representation. This issue is discussed in detail in section 6.4.4 of the next chapter.

The Act in establishing the Commission as an independent regulatory agency determined her organisational structure and made ample provisions of instruments to facilitate the regulatory functions. Hence, it can be concluded that the Commission has adequate administrative provisions and instruments to implement the provision of the Act as it relates to definition and promotion of consumer interest. However, the application of the administrative procedures falls short of achieving their objectives partly due to inconsistencies in the procedural definition of the interest of the consumer and as a result, neither the Commission nor the services providers hold the consumer interest at a level consistent with the law.

#### **5.4.2 Prepaid Service: Disclosure of terms and conditions at point of sales is essential**

The Act is clear in its definition of a consumer: by purchasing a subscription medium (SIM card) a person is deemed to have subscribed to a communications service (refer to Section 5.2.1).

However, there are no disclosure guidelines that make it mandatory for the licensee to supply information on the tariff rate, quality level, and the terms and conditions of the pre-paid service to the consumer at the point of sale as is applicable to services contract. The implication is that the vast majority of consumers on the pre-paid platform are left out of the provisions of the General Code Sections 6(2) and 8(3), which stipulates, “a licensee shall provide specific information regarding any compensation, refund or other arrangements, which may apply if contracted quality levels are not met...” (NCC, n.d.-c).

The lack of disclosure guidelines for prepaid services at the point of sales militates against the ordinary consumers’ interest in the availability of information that will enable informed choice and fair redress mechanism. If the non-inclusion of pay-as-you-go consumers in these provisions is rectified, it will go a long way to curb the lack of transparency and subsequent consumer complaints of dissatisfaction that are prevalent in the industry today by enhancing the ordinary consumers’ capacity to make informed choices and seek redress when wronged. This will also have a significant impact on the market because the pre-paid services are predominant in the telecoms market and over 90% of the ordinary consumers are on the prepaid service platform (NCC.CSS, 2012).

#### **5.4.3 Vulnerable Consumers: More than meets the eye**

The Act restricts the concept of vulnerable consumers to the disabled and the elderly persons and enjoins licensees to comply with any specific obligations the Commission may impose in respect of special services arrangement for subscribers with disabilities (Act, section 1 (h); General Code, Sections 5(1 – 2)).

It would appear that no special attention is accorded to other vulnerable consumers, for example, those with little education, low socio-economic groups, and those in difficult-to-access rural areas. In addition, there is yet no evidence that the Commission has given effect to the provisions in 5(2) of the General Code above. This regulatory gap has provided services providers a hiding place in their failure to make any concrete provisions for vulnerable and disabled consumers as will be discussed in the next chapter.

#### **5.4.4 Quality of Service (QoS) Regulations 2012: Many indicators less quality**

The QoS Regulations enjoined licensees to publish the quality of service measurements. It specified that the parameters that are reportable shall be set out in tabular format and shall include comparison of service quality and information to help the Commission or subscriber to assess the performance of competing services providers- QoS Regulation, 2012, Sections 7(d, e), 10(f)- (NCC, n.d.-c). In schedule 1 of the QoS Regulation, the Commission gave a list of 42 threshold Targets and Key Performance Indicators (KIPs) for wireless services and the target resolution times in the event of a failure. The KPIs range from accounts related complaints, time to load credit and credit run-out alert, time to resolve complaint to unsolicited messages, meeting advertisement commitment and waiting time to be physically attended to by relevant staff at customer care centres.

The long list of KPIs presents considerable challenge to consumers and operators. A huge list of targets, which the consumer cannot comprehend and which are not enforced, does not serve the interest of consumers. It is a disincentive to operators who may be overwhelmed by the effort required to monitor, measure and report on these targets (NCC.CSS, 2012:65). It is unlikely that the Commission can monitor and enforce all the KIPs hence the licensees tend to ignore most of them. In practice the department of Consumer Affairs Bureau monitors and reports only four out of the 42 threshold targets and KPI in the effort to determine the performance of the Consumer Care Centres. These four are rate of failed call attempts, rate of connection of calls to live agent, rate of connection of calls to Interactive Voice Response (IVR) and average waiting time before connecting to live agent. Although the Commission publishes each services providers score in each of the four parameters, it is not immediately obvious to the ordinary consumer which of the services providers is the best overall performer because the scores are neither weighted nor aggregated. Therefore, the report of the monitoring of the Customer Care Centres does not offer useful information that help the ordinary consumer make a choice. Reporting on more KIPs will definitely create more confusion for the ordinary consumers.

Studies in Europe indicate that it is expedient to reduce the list of quality of service indicators to those that are of current concern to consumers and easy for operators to measure and monitor.

The recommended list of service performance indicators includes, service connection, fault rate per connection, fault repair time, call failure rates, billing, response time for operator services, dial tone delay, transmission quality statistics and availability of public pay phones. It is further recommended that a regular review of these indicators is necessary to ensure that consumers' concerns are adequately addressed (Milne, 1997).

The provisions in the General Code and the Quality of Service Regulations apart from the few provisions discussed in the fore going sections are generally consistent in establishing the rules and structures that facilitate the promotion and protection of the interest of ordinary consumers. This trend is also visible in other pro-consumer regulations. The Act has made substantial provisions aimed at the definition, protection and promotion of the interest of consumer. It has also provided the administrative structures and enforcement mechanisms to give 'full effect and force' to the promotion and protection of consumer interest. However, the Act cannot perform by itself nor act in isolation to influence institutional performance. It is the interactive transactions that continuously go on between the four components of the Nigerian communications institution – Policy, Law, Administration and Enforcement – in formulating and implementing the rules of the game that determine the level of performance, and the extent the mobile law has contributed in the definition of and promotion of the ordinary consumers' interest (North, 1990; North, 2005; Saleth & Dinar, 1999; Saleth & Dinar, 2004). The following sections examine the extent to which the Mobile administration has enabled or not the realisation of the objectives of Act and policy.

### **5.5 Mobile Enforcement: Compliance monitoring is incentive to performance**

The Act (Section 89) and similar provisions in regulations gave the Commission the mandate to monitor all significant matters relating to the performance of all licensees and publish annual reports thereon. The issues to be monitored, apart from overall performance of all licensees and compliance with the Act include parameters relating to consumer interest such as, service quality, tariff rates and charges paid by consumer for services. Other include breaches of code provision and remedial actions taken, the adequacy and availability of services in all parts of Nigeria, complaints resolution and other consumer issues. In carrying out this mandate, the Commission may specifically invoke any of its expansive powers of investigation and

information gathering and powers of enforcement as per the various legislative provisions listed in Table 11.

However, the Commission does not appear to be adequately equipped to carry out this function of compliance monitoring. This is reflected, for instance, in the Compliance Monitoring and Enforcement 4<sup>th</sup> quarter 2013 Report which recommended that the Commission should “acquire tariff monitoring equipment in order to [...] facilitate an effective tariff monitoring regime in ensuring that operators’ charges are within the approved tariff” (NCC, n.d.-b, Otubu, 2013). The implication is that some violations of the provisions in the Act will escape detection and operators are most likely capitalising on this to perpetuate violations.

In addition, licensees and the Commission are enjoined to publish the results of the monitoring exercises in a comparative format that will help consumers to assess the performance of the services provides. It is expected that the exposure inherent in this strategy will put pressure on the licensees to compete based on performance. This strategy however has not yielded significant result because the performance indicators apart from not been widely publicised are sometimes suppressed (Ubochioma, 2013) nor have the consumers been educated on how to interpret the indicators. In addition, comparative information is usually publicised on the websites and official reports, which are not easily accessible to a large body of ordinary consumers.

**TABLE 11. ENFORCEMENT OF CONSUMER INTEREST**

	<b>Enforcement Action</b>	<b>Legislative provisions</b>
<b>1</b>	Information gathering. Monitor and enforce industry compliance to laws.	Act: sections 65, 66, 89(1 – 4), 90, 92, 94; General Code: sections 9, 51, 55(1 – 5); QoS Regulations: sections 11, 14(b-c); Regulation on enforcement: Part V
<b>2</b>	Imposition of fine/sanction	Act: sections 31(2), 55, 65(1 – 2), 59(5), 111, 131, 133, 140, 141; QoS Regulations: 14(c) & Other regulations

		Enforcement Processes Regulations Part IV; Second schedule part A- B
<b>3</b>	Enforcement of license conditions/ deregistration	Act: sections 31, 37, 45(1a – f), 51
<b>4</b>	Issuing directions	Act, section 53
<b>5</b>	Dispute resolution	Act: sections 73, 76, 78(1 – 2), QoS Regulations: section 14 General Code: sections 39 – 49.

**Source:** Compiled from the Act and regulations

To give full effect to the provisions of the law entails enforcing compliance in order to realise the objectives, which include the promotion and protection of the interest of consumers. Hence, enforcement matters. It is an essential aspect of the regulatory institution. North (1993) asserts that institutions are critical in setting the rule of the game so that when backed up with appropriate enforcement of rules the desired objectives can be achieved. Although the Commission’s annual report does not indicate the percentage of the budget that goes into monitoring and enforcement, the transaction cost involved in obtaining the required information and executing the monitoring and enforcement activity could be a constraining factor. This may explain why the Commission carries out limited number of enforcement tasks annually, recording an average of less than two activities per month as shown in Table 12 below. Each of the monitoring exercise reveals gross violation of consumer interest issues because of gross contraventions of the rules set out in the Act and regulations.

**TABLE 12. COMPLIANCE MONITORING AND ENFORCEMENT: 2013 – 2015**

<b>Period</b>	<b>2013 Activities</b>	<b>2014 Activities</b>	<b>2015 Activities</b>
<b>1<sup>st</sup> Quarter</b>	Nil	5	Nil
<b>2<sup>nd</sup> Quarter</b>	6	7	10



<b>3<sup>rd</sup> Quarter</b>	7	Nil	8
<b>4<sup>th</sup> Quarter</b>	6	8	Nil
<b>Total</b>	19	20	10

**Source:** Compiled from Compliance Monitoring and Enforcement reports 2013-2015

### **5.5.1 Enforcement: In defence of consumer interest**

The Nigeria Communications (Enforcement Processes etc.) Regulations, 2005, states the processes and procedures for exercising the Commission’s monitoring and enforcement powers and provides for the imposition of sanctions in the event of a breach of set rules without prejudice to any other sanctions that may be imposed under any other regulations. Some of the considerations for the determination of the amount of fines to be imposed reflect concern for consumer interest. These include:

- Degree of harm, discomfort and cost occasioned by such contravention to consumers.
- The severity of the contravention and the need for the fines to serve as deterrent.
- The prevalence of the contravention in the industry generally and likelihood of repetition.

The sanctions in the enforcement processes regulations are in two categories: Those calculated based on each contravention range from N 250,000 to N 5,000,000 (US\$ 1,250 to US\$ 25,000) and those calculated on daily basis range from N 50,000 to N 500,000 (US\$ 250 to US\$ 2,500) per day.

In addition, all the pro-consumer regulations include penalty or sanction for non-compliance with the provisions contained therein as indicated in the schedule of fines in Table 13. These penalties/sanctions are in addition to or in the alternative to any other penalties that may be contained in the Act or the Enforcement Regulations 2005. Furthermore, where there is any difference or conflict between fines specified in the Enforcement Process Regulations 2005 and

any other regulations the fines in the most recent of the regulations shall prevail- Quality of services Regulations, 2012, Schedule 3- (NCC, n.d.-c).

Hence, it would appear that the Commission has numerous options for penalty and sanction to deal with contraventions of the Act and regulations. However, each of the monitoring exercises carried out by the Commission's Compliance Monitoring and Enforcement department, revealed gross violation of consumer interest issues because of gross contraventions of the rules set out in the Act and regulations. These contraventions include violation of tariff plans; violation of Mobile Number Portability Regulation; violation of Advertisement and Promotion guidelines; failure to meet Quality of Services key performance indicators; marketing of non-type approved mobile devices; unlawful telemarketing and violation of consumers' privacy with unsolicited SMS; violation of Registration of Telephone Subscribers Regulations and anti-competition practices. Other contraventions of a general nature are unauthorized use of spectrum, operating without authorisation, violation of License Term and noncompliance with enforcement directive.

These contraventions are pervasive and increasingly attaining the status of 'tools of the trade'. All the four network/services providers and Value Added Services (VAS) providers are implicated in the violations. In some of these cases, the Commission undertook some enforcement measures including issuing directives, warnings, sanctions and imposition of fines. Generally, the perceived attitude of the Commission is to ignore the violation of its regulations (Otubu, 2013; Ndibe, 2013). This is evidenced by the scope of these serious contraventions of the provisions of the Act, which suggests that the offenders were relying on the Commission's history of non-responsive enforcement strategy and ineffective enforcement regime. These in turn have been attributed to the Commission's soft-hand approach (Abdullahi, 2015) and the fact that the fines are not stiff enough to serve as deterrent (Isaac, 2015) because the fines fall below the provisions in the schedule of fines in terms of either the rate or the duration. Hence the evidence suggests that enforcement actions do not provide sufficient incentive for compliance because how the game is played depends not only on the formal rules but also on the effectiveness of enforcement (North, 2005).

All these issues point to the presence of a huge agency problem. First, the prevailing conflict of interest accounts for the Commission's strategy of turning a blind eye to the violation of its regulations (Otubu, 2013; Ndibe, 2013). Secondly, the Commission's activities are inherently difficult to monitor because the annual reports are usually three or more years late; the 2013 annual Report is the last published report. Thirdly, the principal (legislators) is inherently unable to monitor the agent (Commission and Licensees) because of the corruption and cronyism prevalent in the socio-political environment in Nigeria, which was discussed in chapter 3.

The Commission has responded to the perceived weakness by pointing to the need to review the Communications Act 2003:

“There are certain provisions on sanctions and fines that need to be reviewed from the 2003 era. This is because the provisions for penalty and fines are so low that they no longer serve as deterrents to errant operators” (NCC Annual Report, 2010; NCC Annual Report, 2011:57).

The Commission's argument is in itself an indictment of the Commission. The Act gives the Commission not only the power to review regulations whenever it deems necessary but also in many instances to determine the level of fines to impose (Act Sections 72, 53, 55). For example, the Commission has power to prescribe appropriate financial penalties on licenses for exceeding approved tariff rates (Act Section 111). Documentary evidence indicates that the unabated violations of set rules are a result of laxity in the enforcement of rules as the following two examples reveal.

#### **i) Failure to meet Quality of Service KPI: When piracy pays, the consumer loses**

Poor quality of service has been a major and growing concern for consumers since the advent of mobile telecommunications in Nigeria in 2001 (NCC.CSS, 2012). In the 1<sup>st</sup> quarter 2014, for consistent failure to meet the key performance indicators (KPI) as specified in the QoS Regulation, the Commission, in line with Section 14 of Quality of Service Regulation 2012, imposed a total fine of N 647,000,000 (US\$ 3.9 M) plus sanctions on three network providers. Earlier in 2012, the Commission had imposed a total of N1.7 billion (US\$ 10.6 M) as fines on

the four mobile service providers for same failure to achieve the minimum level of quality of service.

The fines imposed on the licensees are questionable because there are exceedingly low and not in line with the Quality of Services regulations 2012. Schedule 3 of the Quality of services Regulations states that failure by a licensee to meet and maintain a target for the parameter of the Key Performance Indicators (KPI) shall attract a fine of N15,000,000 (US\$ 88,000) for each contravention and N25, 000,000 (US\$ 125,000) for each day the contravention continues to occur. On that basis the fines imposed on the licensees barely covered 11 days' violation of one parameter of KPIs, while the failure to meet the various qualities of service parameters has been going on for several months (NCC.CSS, 2012:25). It appears that it is easier for licensees to pay the fine than to solve the quality problems. That may explain why the imposition of fine in 2012 did not deter the operators from continuous violation of the quality of services rules. North asserts that to effect the required solution, requires the establishment of institutions and enforcement structures that will alter the payoffs to achieve compliance because "if the highest rate of return in an economy is to piracy we can expect organisations will invest in skill and knowledge that will make them better pirates" (North, 2005:61).

Nevertheless, in the above instances the Commission appeared to have acted decisively to stem a long-standing issue that has been a concern for consumers. However, there is no evidence that the Commission implemented the provision of section 14(b) of the Quality of Service Regulations, 2012, which enjoins it to:

"Directing licensees to compensate subscriber or consumers for poor quality of service"  
(NCC, n.d.-c).

On the issue of paying compensation to consumers, the Commission's Executive Vice-Chairman, said "There is nothing in our law that empowers NCC to share money, which is paid as penalty..." to consumers (Cellular News, 2014). He added that the paying of compensation seemed to be less of a sanction for the mobile networks, who would find it less of a burden to offer free airtime, than pay cash to the government. The Commission's argument misrepresents the law and subordinates the consumer interest to other interests. The provision for

compensation to consumers in Quality of Services Regulations, 14(b) is distinct and in addition to the imposition of fines in Section 14(c).

The failure of the Commission to ensure that licensees pay compensation to consumers is in itself a violation of consumer interest in fair redress mechanism. The ordinary consumers suffer the multiple loss of frustration and economic loss because of poor quality of service including sometimes complete loss of service and lose their compensation. The difference between the law and what the consumer is getting is a consequence of the prevailing laxity in the enforcement of rules (Bardaragoda, 2000).

**TABLE 13. SCHEDULE OF FINES**

<b>Item</b>	<b>Regulation</b>	<b>Schedule of fines</b>
<b>1</b>	Nigerian Communications (Enforcement Processes etc.) Regulations 2005	Category A. N250, 000 to 5,000,000 (US\$ 1,250 to US\$ 25,000) on the basis of each contravention.  Category B. N 50,000 to 500,000 (US\$ 250 to US\$ 2,500) per day for each contravention
<b>2</b>	Quality of Services Regulations 2012	N 15 million for each act of contravention and N 25 million for each day that contravention continues.  Directive to licensees to pay compensation to subscribers and consumers for poor quality of service ( QoS Regulation 14(b-c))
<b>3</b>	Mobile Number Portability Regulations 2014	N 2million for each act or omission and N 200,000 for each day that the contravention continues to occur.  N 200,000 and/or 1 year imprisonment for unauthorised porting
<b>4</b>	Consumer Code of Services Regulations 2007	As per 1 above
<b>5</b>	Competition Practice Regulations 2007	As per 1 above

6	Registration of Telephone Subscribers Regulations 2011	N 200,000 for each subscription medium per contravention N 1 million per subscription medium for utilisation of consumer information for commercial purpose
7	Guide Lines on Advertisement and Promotions	N 1 million per violations of guidelines. N 2 million for unauthorised promotion N 5 million for failure to register promotion with Consumer Protection Council

**Source:** Author. Compiled from regulations (Rate = N200 to US\$1 – as of Q1 2016)

**ii) The MTN Fine: No more business as usual. Enforcement of rules leads to compliance**

The recent case of US\$5.2 billion fine imposed on MTN is another case to the point. MTN had violated the SIM card registration rules by failing to disconnect non-registered SIMs in addition to failing to comply with the direction of seven-day dead line fixed by the Commission in August 2015 to remedy the breach (Isaac, 2015). SIM registration is a public interest issue because it has implication for national security.

The fine of US\$5.2 billion was for failure to deregister 5.1million SIM cards at a penalty of N 200,000 (US\$1,000) per SIM per contravention- Telephone Subscribers Regulations 2011 (NCC, n.d.-c). Also in the 3<sup>rd</sup> quarter, 2015, the Commission sanctioned MTN with a fine of N80, 400,000 (US\$402,000) for failure to deactivate 420 improperly registered SIM. These were achieved without a change in the existing enforcement rules but rather by the commitment of the new leadership of the Commission to play by the law by enforcing the existing rules (Osuagwu, 2015). MTN, as is the wont in the industry, had taken the Commission’s laxity in rule enforcement for granted (Otubu, 2013). In this instance, Umar Danbatta, the new Executive Vice Chairman/Chief Executive Officer of the Commission asserted, “the regulator cannot just stand by and watch as these various infringements are being committed with impunity. No responsible regulator will stand by and watch” (NCC.Communicator, 2015:10).

In contrast in the 2<sup>nd</sup> quarter 2015, the Commission under the previous leadership, imposed four sanctions totalling only N22 million (USD110,000) on MTN for various violations including the sale of pre-registered SIM cards, unapproved promotions and violation of Mobile Termination Rate (MTR) (Compliance Monitoring and Enforcement Report, Q2 2015). These fines, which fell far below the existing, rules/fines highlighted in Table 13, did not obviously achieve the expected deterrent effect and the consequence is the present MTN predicament. This confirms that the set rule along with appropriate enforcement mechanism is crucial in engendering cooperative solutions (North, 1993) which facilitates the promotion of ordinary consumer interests which is part of policy objective.

The MTN Group (MTNG) in South Africa described the fine as “A fine Mess” while Dobet Pater of African Analysis says it was quite hard-fisted, “but there seems to be no outright objection from MTN in the announcement of the fine” (Tshabalala, 2015); which indicates that due process and transparency were reflected in the enforcement action which was meant to alter the payoff in order to deter reoccurrence. Pater also conceded that the heavy fine was imposed as a “way to discourage uncompetitive behaviour and encourage compliance” (Tshabalala, 2015).

MTNG in its 3<sup>rd</sup> November Press release reported that the Commission has approved the renewal and extension of the tenure of MTN’s operating spectrum to 2021. The renewal of the licence is conditional to MTN fulfilling its regulatory obligations. This indicates the Commission’s readiness to issue the red card – revocation of license. The Commission, through its Director of Public Affairs, stated “If you don’t make room for punishment, it can lead to impunity” and “There is a signal now that it won’t be business as usual” (Osugwu, 2015).

The imposition of the fine on the errant operator and the threat of red card have sent a strong message to the industry, which will engender greater level of compliance to rules (North, 1993). Consequently, it will enhance consumer interest because if through weak enforcement mechanisms the system creates room for rogue operators, they will abound (North, 2005) and the consumer will be the loser.

### **5.5.2 The Unfolding Fine Saga**

Early in December 2015, following a plea for leniency by MTN and pressure from officials of South Africa and subsequent intervention by President Buhari, the fine was reduced by 25% to N 780 billion (USD 3.4bn) and the deadline shifted from November 16 to December 31, 2015. However, on December 17, 2015, MTN announced its decision to challenge the fine in court, stating, “the manner of imposition of the fine and the quantum thereof is not in accordance with the Commission’s powers under the Nigerian Communication Act” (Adaramola & Nurudeen, 2015). MTN also stated that both parties should stay further action in line with the *ils pendens* rule until the matter is finally determined. Meanwhile the imposition of the fine had sent a strong message across the sector even as it awaits the outcome of the litigation.

As was stated earlier, monitoring and enforcement activities facilitate performance and constitute a defence of consumer interest and in so doing indicate what is construed as consumer interest. However, in spite of the Commission’s expansive enforcement powers the Enforcement Institution is being overwhelmed by pervasive contravention of the provisions of the Act. All the findings point to laxity in the enforcement institution and processes, confirming that besides the presence of appropriate rules, the efficacy of the enforcement mechanism influences to different degrees the efficiency of the telecommunications institution in different settings (North, 2005).

Effective enforcement in telecommunications is a key and complex task. It entails frequent monitoring to collect accurate data, high-level expertise to interpret the data accurately and the strong will to enforce compliance. This is important because the performance of the market depends on the enforcement outcomes. Without an effective and responsive enforcement institution, the rules set out in the Act and regulations are of no avail or at the best remain mere optional guidelines.

### **5.6 Conclusion**

In this chapter, an attempt has been made to answer the question: if and how have the legislators, regulator and market players in Nigeria defined the ordinary consumer interest in the field of mobile communications?



This study addressed the question by evaluating how each of the components of the decomposed Nigerian communications institution – mobile policy, mobile law, mobile administration and mobile enforcement – has enabled or not enabled the realisation of the consumer interest and a summary is presented here.

The NTP while setting the policy direction and the characteristic of the envisioned communication services telecommunications sector had the interest of the consumer in view.

The mobile law established a regulatory framework and an independent regulatory Commission with the mandate to promote and protect the interest of consumers. These are vital for a sustained campaign for the promotion and protection of ordinary consumer interest. The interests of the consumer, which the Act specifically undertakes to promote and protect are not explicitly defined or listed in the Act but are embedded in and are deducible from several provisions of the Act and regulations.

However, some provisions of the mobile law are not in the interest of the consumer:

- 1) The directive on the structuring and setting of tariff rates and levels solely to attract investments does not align with the mobile policy objective of affordable tariffs for ordinary consumers and the directive that it is appropriate to consider consumers' interest in regulating prices before full-blown competition is achieved. Unaffordable tariffs will adversely affect the accessibility of basic telecommunications services particularly for those in low-income groups.
- 2) There are no disclosure guidelines that make it mandatory for the licensees to supply information on the tariff rate, quality level, and the terms and conditions of the pre-paid service at the point of sale as is applicable to services contract. This lack of transparency militates against the ordinary consumers' interest in the availability of information that will enable informed choice and fair redress mechanism.
- 3) The mobile law restricts the concept of vulnerable consumers to the disabled and the elderly persons. It would appear that no attention is accorded to other vulnerable consumers, for example, those with little education, the low socio-economic group, and those in difficult-to-access rural areas.
- 4) The failure of the Commission to ensure that licensees pay compensation to consumers is in itself a gross violation of consumer interest in fair redress mechanism (Quality of Services Regulations,

14(b)). The ordinary consumers suffer the multiple loss of frustration and economic loss because of poor quality of service including sometimes complete loss of service and lose their compensation. The difference between what the consumer is gets and what the law provides is a consequence of the prevailing laxity in the enforcement of rules (Bardaragoda, 2000).

The Consumer code of practice regulations, 2007 (General Code) was enacted in 2007, six years after the liberalisation of the sector. During this period, the ordinary consumer was exposed to the activities of the services providers without any law defining how the services providers should engage with the ordinary consumers. This evidence clearly shows that the Commission was not consumer-focused. It also explains how the neglect of consumer interest became entrenched as a norm in the mobile sector, which the late introduction of the General Code is unable to reverse.

In Mobile Administration the concept of consumer interests varies across the mobile organization (the actors) both in content and terminology and engendering different levels of awareness and the degree of importance attached to consumer interest issues in both the policy and law. This creates the opportunity for some stakeholders to take advantage of the lapse in how the concept of consumer interest is construed to violate consumer interest rules. The result is that the Commission and the industry players are not consistent in their practice in upholding the consumer interest at a level in line with the policy and law rather they routinely undermine consumers interest; subordinating the consumer interests to their interests by violating the existing rules.

Under the mobile enforcement institution (monitoring and enforcement processes and procedures), the Commission has exclusive power and competence to monitor and enforce compliance of all persons to the provisions of the Act and its regulations. However, the monitoring and enforcement institution lacks the technical facilities to carry out effective monitoring of the Nigerian telecommunications landscape on a regular basis probably due to the transaction cost it entails.

More importantly, there has been an obvious lack of political will to impose appropriate sanctions on erring operators. Consequently, in spite of the Commission's expansive enforcement powers the Enforcement Institution is being overwhelmed by pervasive

contravention of the provisions of the Act. The contraventions of consumer interest issues range from violations of tariff rule, failure to meet Quality of Services key performance indicators and provisions of the General Code to noncompliance with enforcement directives. These contraventions thrive because of the endemic laxity in the enforcement process that allows gaps between the mobile law on one hand and the mobile administration and enforcement on the other hand because how the game is played depends not only on the formal rules but also on the effectiveness of enforcement (North, 2005). The evidence of reoccurrences suggest that enforcement actions do not provide sufficient incentive for compliance but rather the soft-handed- pussy-footed strategy of the Commission creates room for impunity and it prevails. These are some of the symptoms of the prevailing conflict of interest, which is part of the huge agency problem afflicting the Commission discussed in chapter 3.

Therefore, regarding the first research question, this study holds that the legislators have defined the interest of the consumer through the instruments of the National Telecommunications Policy and the Communications Act and the establishment of an independent regulator invested with exclusive powers and legal instruments to execute the communications institution. In practice, the Commission is not fully consumer focused because it suffers from acute agency problems and conflicts of interest. The services providers in turn exploit the compromised regulatory institution to violate consumer interests with impunity. Hence, consumer interest is greatly undermined by the inefficient mobile administration and the prevalent violations of the provisions in the Act and regulations, which the soft-handed strategy of the enforcement institution is unable to curtail. Therefore, the policy and legal objectives in this regard are yet to be realised.

In the next chapter, this study looks at the extent the ordinary consumers are able to contribute to regulatory decisions that affect their interest.

## **CHAPTER 6 Ordinary consumer influential participation in the regulatory process**

### **6.1 Introduction**

This chapter focuses mainly on the evaluation of institutional structures and processes for the ordinary consumers' influential participation in the regulatory process and seeks to answer the question: focusing on regulatory structures and processes, how have ordinary consumers been represented since the liberalisation of the Nigerian mobile market in 2001?

In chapter 4, it was stated that consumer representation involves engaging consumers in five main areas. These are provision of information, consultation, compliant resolution, and provision of choice, and efficient framework for consumer representation (Muzzini, 2005; ITU 2006). The provision of choice is usually inherent in liberalised telecommunications markets. Here the focus is on provisions that facilitate ordinary consumers' choice making in such a manner that it enhances their welfare; the issues to be looked at include the availability, presentation, and accessibility of information. These factors are essential if information is to achieve the intended objective. Consultation (including research) is a veritable means of ensuring ordinary consumers' involvement in the regulatory decision process. In this study, the attention will be not only on the provisions made in this regard but also on the ordinary consumers' capacity to use those provisions. Ordinary consumer complaints management will be the focus of the next chapter and hence it will not feature in the present chapter. Therefore, this investigation will examine the structures and processes, which are specifically provided to facilitate the realisation of the four key dimensions of consumer representation as have been explained above.

In addressing the research question this study, will employ the extended Institutional Decomposition Model framework, which was used in chapter 5. The analysis will be based on the four main components of the telecommunications institution– mobile policy, mobile law, mobile administration and mobile enforcement - and their main aspects in order to ascertain their individual contributions to the four dimensions of ordinary consumer representation.

The three aspects of NIE, which guided the investigation in chapter 5, are also applicable under slight different aspects in this chapter: transaction cost, agency and property rights. The

transaction cost covers the ‘costliness’ of actualising the provisions in the mobile law. Agency problem will arise if the regulator circumvents those provisions in the pursuit of interest other than the consumer interest or acts in a non-transparent manner in the application of those provisions. In the context of the current research question, property rights refer to issues regarding consumer advocacy bodies. It covers the “concept of a representative body reflecting the interests of constituent groups” (North, 1990:49) such as the ordinary consumer groups, who facilitate exchanges between consumers and their mobile service providers and the Commission.

Starting with the National Telecommunications Policy (NTP) this study will seek to find out if the NTP in its vision of the proposed telecommunications sector had issued any directions that relate to the four dimensions of consumer representation listed above and if there are directives on how these will be achieved in practice. Thereafter attention will be shifted to the mobile law (the Act and its secondary regulations) to assess if the provisions in the mobile policy have been given adequate legal backing. Rules are crucial to define how the game should be played (North, 2005). Specifically, this study will attempt to ascertain if there are provisions in mobile law for formal structures and processes to facilitate the actualisation of the provisions of the law and to ensure that ordinary consumers’ opinions and interests are adequately captured in the regulatory decision-making processes. Finally, this study will also examine how the mobile administration and enforcement components of the mobile institution have contributed to influencing the realisation of the policy objectives as it relates to the representation of the ordinary consumer. It is helpful to recall that the Mobile Administration is conceptualised to encompass facilities, processes, procedures, standards, and accountability mechanisms established to facilitate the implementation of the mobile policy, mobile law, and mobile enforcement. The mobile enforcement includes the enforcement mechanisms for monitoring, assessment and enforcement of appropriate sanctions to achieve compliance to mobile law.

## **6.2 Mobile Policy: Consumer representation is in focus**

The National Telecommunications Policy (NTP) created the framework for an independent regulatory institution for the telecoms sector. This condition, which is fundamental for facilitating the inclusion of consumer’s voice in regulatory decision--making process is further

strengthened with the provision of a window for the creation of institutional framework for consumer representation. The NTP provides that stakeholders – operators and consumers – “shall be afforded access to the Commission’s proceedings and the right to submit opinion in support of their interest.... Parties shall have the right to appeal such decisions through transparent administrative and legal channels” (NTP, section 3.1.4.1). The NTP with this provision reemphasised two fundamental consumer rights: the right to be informed –through access to proceedings, and the right to be heard – that is to submit opinions. These fundamental rights are also guaranteed by the Nigerian Constitution and based on them consumer advocates may engage in any campaign of their choice to raise consumer awareness and amplify the voice of consumers (CI, 2014).

Establishing a right is one thing and having the wherewithal to facilitate the realisation of the right is quite another. The NTP did not only state that consumers have a right to the Commission’s proceedings, it emphasised that consumers shall be afforded access. In a formal sense, it means that consumers shall be assisted and provisions made to enable them to exercise this right. The implication is that consumer representation, as a means of assisting consumers to exercise their rights is a policy injunction. The extent to which the mobile law, administration and enforcement institutions have responded to this policy directive is the issue to be examined in the following sections.

### **6.3 Mobile law: Legal provision for consumer representation is crucial**

Implementing the NTP provision for consumers and other stakeholders to be informed and make input to the Commission’s proceedings, necessarily involves the establishment of appropriate laws, structures and processes that will facilitate the effective engagement with consumers and their representatives. The Act gave effect to the provision of NTP as it relates to consumers right to be informed and to be heard, stated above through its directives on 1) public inquiry, 2) gathering and publication of information, and 3) other regulations on issues relating to consumer engagement. However, there is no provision in the Act for independent statutory consumer representation bodies.

### **6.3.1. Public Inquiry: A high jump for consumers**

Apart from mandatory public inquiries, for example, before enacting new regulations or reviewing existing regulations (Act, sections 71, 72), the Act also enjoins the Commission to hold public inquiries in response to a written request from a person or on its own initiative on any matter that relates to the administration of the Act and is of significant interest to the public. The Act also stipulates that all public inquiries shall be adequately publicised, in the manner the Commission deems appropriate, with regards to timing, nature of the subject matter and the period within which members of the public are invited to make submissions (Act, sections 57, 58(1)). It enjoins the Commission to consider any submission made within the time limit with the proviso that submissions made by members of the public shall be “in the form and the nature specified by the Commission” (Act, Section 58(3)). This means that all submissions to public inquiries must conform to the format and standard prescribed by the Commission. Furthermore, the Act in section 60 affords consumers access to the Commission’s proceedings by directing that the Commission shall publicise its findings in respect of any public inquiry within 45 days of the conclusion of the inquiry. It is also stated that a person whose interest is adversely affected by any decision of the Commission may request in writing to the Commission for an explanation of the reason for the decision. These provisions of the law are to ensure that consumers’ and other stakeholders’ inputs are solicited and taken into consideration in the Commission’s decision making process in a fair and transparent manner, however meeting the requirements poses considerable challenge to consumers.

Public inquiry gives consumers the opportunity to participate in the Commission’s decision-making process and influence the way their interests are promoted. Hence, information regarding public inquiries is very important for effective consumer engagement. The Commission’s usual manner (which is also applicable to services providers) is to publicise on its website and in two national newspapers (General Code, section 7). This may be adequate for literate consumers who have access to the internet and the print media but it excludes a large portion of the consumers who do not have access to electronic media or who are illiterate. Hence, the mode of publicising information adopted by the Commission is clearly inadequate

because it does not cater for all categories of consumers. The outcome of inadequate communication about public inquiries is examined in the next section on mobile administration.

The directive that submissions made by members of the public, to public inquiries shall be “in the form and nature specified by the Commission” (Act, section 58(3)) is a difficult hurdle not for services providers but only for consumers. This requirement presumes a well-articulated and informed input, which may be beyond the capacity of the ordinary consumers. It points to the need for the ordinary consumers to have resort to the services of a representative who is able to articulate and amplify their diverse voices and present it at a quality (form and nature) that meets the prescribed criteria and is comparable to the well-researched input of service providers. Participating in a public inquiry is not an easy task for the ordinary consumer. It implies substantial transaction cost for the ordinary consumer and their representatives - time, research and secretarial costs, - which constitute a grave impediment to consumers’ participation in public inquiries. Hence, there is need for legislative provisions aimed at mitigating these costs.

### **6.3.3 Consumer advocacy is missing in the Act**

In its provisions, the Act established a broad framework aimed at empowering and educating consumers through the provision of adequate information and for making their input into the Commission’s decision-making processes. As was discussed in section 6.2, the NTP indicated that formal provisions should be made to enable consumers to participate in the Commission’s decision-making process. It has been argued in section 6.3.1 that participating in these laudable provisions, with the conditions, requirements and the costs involved, presents enormous practical difficulties for ordinary consumers. It necessarily implies the active involvement of well-informed and well-resourced consumer representation/advocacy bodies. However, in spite of this obvious requirement the Act made no specific provision for any framework for the establishment, inclusion or support of independent consumer advocacy groups. This is in sharp contrast to the Consumer Protection Council Act which “encourages the formation of voluntary consumer groups” as one of its prime objectives (CPC Act, section 2(h)); though it is a weak provision. Providing legal backing to consumer representation is crucial because institutions matter. Institutions are essential to create the ‘rules of the game’ (North, 1999). Without legal



provisions the role of the consumer representative bodies remains undefined, and by implication, irrelevant.

Informing and educating consumers, expedient as it may be, is not sufficient to guarantee that ordinary consumers will be able to participate in the Commission's decision making process nor that consumers will be able to make the right choice when faced with difficult choices. Ordinary consumers need support and guidance in order to play an effective role in the industry. Consumer representation is also about facilitating the realisation of the Commission's mandate to promote and protect the interest of consumers; providing a legal backing to consumer representation is in the best interest of both the consumers and the regulator. It is a necessary condition to guarantee that consumers benefit from the provisions of the Law and that the regulator and services providers are held accountable for the implementation of their mandate and license conditions. This issue is of utmost importance in Nigeria with very little history of civil societies and advocacy groups.

#### **6.4 Mobile administration: Mechanisms, procedures and processes for consumer representation**

##### **6.4.1 Informing consumers: 'Plain English' is not 'clear language'**

Apart from public inquires, the Act mandates the Commission to provide information to consumers through the publication of Annual Reports. The Act stipulates that the annual report shall include: operation and administration of the Act, efficiency of licenses in the provision of services, quality of services, tariff rates and charges paid by consumers, adequacy and availability of services in all parts of Nigeria and other relevant matters (Section 89). The publication of some of this information is mandatory as prescribed in the Quality of Services Regulations (QoS) and General Code (sections 7, 9, 10 and Part 2 respectively).

The General Code mandates service providers to provide information on their services that is "complete, accurate and up to date and in simple, clear language in print and electronic format" on the services providers' web site and retail outlets (General Code, section 6(1), 2a). The QoS further stipulates that the Commission may publish some or all the Key Performance Indicators (KPI) not more than two months after the end of a reporting period in a tabular format. It further

requires the Commission to publish “any other information or comparison of services quality to help the Commission and/or consumers to assess the performance of competing Licensees” (QoS Regulations, 9(2), 10f). Again all information shall be publicised in a manner that the Commission deems appropriate which is plain English in electronic and print media.

Simple plain English is not ‘clear language’ for consumers who do not understand English. For example, in 2011, the data from the Commission’s contact centres show that only 23% of the complaints received were in English while 73% were made in local languages as depicted in Table 14 below.

**TABLE 14. COMPLAINTS RECEIVED AT COMMISSION CONTACT CENTRES IN CLEAR LANGUAGE**

<b>Language</b>	<b>No. of complaints</b>	<b>%</b>
English	10784	<b>23</b>
Hausa	31238	<b>67</b>
Igbo	579	<b>1</b>
Yoruba	1843	<b>4</b>
Pidgin	1943	<b>4</b>

**Source:** CAB Annual Report for 2011

If the purpose of these provisions for information in a prescribed manner is to ensure that consumers will be able to access and assess the information and thereby be educated, empowered and sufficiently discerning to make informed choices of services and service

providers and to protect the interest of consumers from unfair practices, then the information ought to be also available in the three main Nigerian languages (Hausa, Igbo and Yoruba): in the language the illiterate and those with poor education will understand: in this regard radio programmes in vernacular is also a viable option. In that way, it will be assessable to a larger body of ordinary consumers. The inadequacy of the print and electronic media alone for disseminating information to ordinary consumers was noted above. On information to consumers, the Mobile Law in Section 6(2d) of the General Code includes a curious provision whose implementation presents practical difficulties to the ordinary consumers. The section enjoins the licensee who seeks a change to tariff rates to notify their consumers “in an effective manner that lets them comment to the Commission on the proposed changes....” It is not clear, how and in what manner the consumers are to make their comments to the Commission. If we presume that the affected consumers have been well informed and are able to understand the intricate calculations that go into the determination of tariff rates, the question remains: if and how does the Commission intend to handle the comments of a few million individual consumers who may be willing to do so, without the involvement of consumer bodies? Moreover, the burden of justifying changes to tariff rates should not be laid on the ordinary consumer; the burden ought to be laid on the licensee who seeks such changes.

#### **6.4.2. Consumer Codes: No room for consumer input**

The Consumer Code of Practice Regulation 2007 and the General Consumer Code of Practice (General Code), govern the provision of telecommunications service to ordinary consumers. They set out the minimum requirements and the minimum standard and related issues pertaining to how services providers shall deal reasonably with consumers (Act, section 104b). With respect to individual codes, the Consumer Code of Practice Regulations provides that a licensee may, at any time, prepare and submit an individual consumer code to the Commission for approval with the proviso that:

“Individual consumer codes prepared and submitted by licensees shall include at least the terms and conditions of the General Code or equivalent terms and conditions that are no less favourable to consumer than the General Code” (NCA, 2003: Section4(3)).

The General Consumer Code of Practice covers a wide range of consumer interest and related issues, such as provision of information to consumers, consumer billing and charging and tariff setting rules. Other consumer interests addressed in the general code include quality of service, resolution of consumer complaints and protection of consumer information.

Neither the Communications Act nor the General Code made any direct provision for consumer input in the development or review of individual consumer code as would be expected if the codes were to address the ordinary consumers' needs and interests. Hence, the mobile operators, in practice, did not carry along their ordinary consumers during the development of the consumer code of practice. The implication is that the mere existence of the codes may not serve the consumer interest or guarantee their effective implementation. Hulsink (1999) asserts that policy and its effective implementation are the result of negotiations between organisations and this is missing in this case.

The NCA (2003: section 106(6)) provides for an annual review of the consumer code and ratification by the Commission before publication whilst the General Code (section 5) enjoins "...the commission would expect to consult on any such changes". This provides the window for consumer input to code development but unfortunately, the window has remained closed for there is no evidence that the General Code has been reviewed since its enactment in 2007. There is also no evidence that any individual industry code has been reviewed or that the Commission has held any public consultation on any consumer code as directed (sections 57 and 58 of the Act). This implies that consumers are exposed, without any safeguards, to new harm and challenges, which continue to develop in the fast changing telecommunications market because the outdated codes cannot adequately address the prevailing circumstances of the ordinary consumers.

#### **6.4.3. Administration of Public Inquiries: Are consumers not to be heard?**

As stated earlier the Commission is mandated to carry out public inquiries before the enactment or review of regulations/guidelines and consumer codes (Act, Sections 71, 72). From 2001 to 2015, the Commission has enacted a total of 11 regulations and 16 guidelines. The Commission carried out twelve public inquiries, between 2009 and 2015, during which it received 49

submissions: 1 from a consumer body; 1 from Consumer Affairs Bureau (CAB); 2 from legal firms; 2 from Government; 3 from industry bodies; 2 from installation companies; and 38 from services providers. Out of the 12 public inquiries, only three inquiries have bearing on consumers' immediate concerns, the Mobile Number Portability Regulations, SIM card registration and SIM replacement. The other public inquiries pertain to network issues as shown in Table 15. It is also of note that the Commission received zero submissions in the two public inquiries on satellite communications scheduled on July 15, 2009. This may have been a reflection of the general apathy towards the Commission's public inquiries.

**TABLE 15. PUBLIC ENQUIRIES 2009-2015**

<b>Date &amp; Place</b>	<b>Title</b>	<b>Purpose</b>	<b>No of Responses</b>	<b>Publications &amp; Notices</b>
<b>22 March 2013 NCC Abuja</b>	Draft Mobile Number Portability Regulations	Incentive for SP to improve QoS and consumer satisfaction	<b>4</b> (all Service Providers (SPs))	NCC websites 2 Newspapers 18/03/2013 & 15-17/3/2013
<b>21 February 2013 NCC Abuja</b>	Draft Annual Operating Levy Regulations	Administrative purposes & clarify doubts	<b>6</b> (all SPs)	NCC websites 3 Newspapers 5/2/2013 & 6/2/2013
<b>9 December 2010 NCC Abuja</b>	Registration of SIM card Regulations	Enhance the security of lives and property, Ensure database	<b>5</b> (3 SPs, 1 industry body, 1 consumer body)	NCC websites 2 Newspapers on 7/12/2010
<b>9 February 2010 NCC Abuja</b>	Guidelines on common and premium short codes operation	To provide operational guidelines for short codes	<b>4</b> (all mobile SP)	NCC websites 2 Newspapers on 9/1/2010
<b>14 July 2009 NCC, Abuja</b>	Guidelines on technical specification for installation of Masts & Tower	To set standards for the industry compliance	<b>4</b> (2 SPs and 2 installation companies)	NCC websites 2 Newspapers on 12/06/2009 & 15/06/2009

<b>15 July 2009 NCC Abuja</b>	Satellite Network filing processes and procedures	Procedures for management of satellite filing	No submissions were received	NCC websites 2 Newspapers on 12/06/2009 &15/06/2009
<b>15 July 2009 NCC Abuja</b>	Commercial Satellite Communications guidelines	Provisions to facilitate the regulation of satellite communications	No submissions were received	NCC websites 2 Newspapers on 12/06/2009 &15/06/2009
<b>12<sup>th</sup> July 2009 NCC Abuja</b>	Advertising and promotions guidelines	To set minimum requirements and standards to ensure ethical marketing and promotions	<b>6</b> (4 SPs, ALTON and CAB)	
<b>7 July 2015 NCC Abuja</b>	Licencing regulation	Rules to ensure efficient/effective licencing process	<b>4</b> (3 SPs and 1 legal firm)	NCC web site 3 Newspapers on 24, 25, 30 June 2015
<b>7 July 2015 NCC Abuja</b>	Lawful interception of communications regulation	Rules on type, privacy issues, collection of info/disclosure and penalties	<b>5</b> (3SPs, National Human Rights Commission and 1 consumer)	NCC web site 3 Newspapers on 24, 25, 30 June 2015
<b>14 July 2015 NCC Abuja</b>	Enforcement Processes Regulations	To provide robust regulatory enforcement framework	<b>6</b> (4 SPs, 1 Industry body & 1 legal firm)	NCC web site 3 Newspapers on 24, 25, 30 June 2015
<b>14 July 2015 NCC Abuja</b>	SIM replacement guideline	To ensure secure process for SIM replacement	<b>5</b> (5 SPs)	NCC websites 2 Newspapers on 24/06/2015 & 55/06/2015

**Source:** Author: Extracted from Reports on Public Inquiry published by the NCC Legal Services Directorate (2009-2015)

The public inquiries have not been effective in soliciting consumers' input into the Commission's decision-making process because of two main reasons. First, under the mobile administration, there is no clear definition of consumer rights, as was noted in Chapter 5 and the consumer's right to be heard is misconstrued by the Commission. In its Fact Sheet on Consumer Bill of Rights, the in-house Consumer Affairs Bureau (CAB) defines the consumer's 'right to be heard' as:

**Right to be heard:** "right to get fair, inexpensive and quick redress of grievances. Consumers must have accessible knowledge of the complaint process and steps needed to lodge a complaint. Consumers have the right to a consumer-oriented response for complaints and as prescribed by the consumer code of practice regulation", and

**Right to Timely Redress:** "consumers have the right to timely dispute resolution by service providers. Service providers must provide clear information on customer bills of exchange explaining how and where consumers can complain. Consumers must have their complaints addressed in a timely manner without harassment" (NCC, n.d.-a).

This definition by CAB is erroneous and restrictive. It is about complaints and their resolution after a problem has occurred. CAB's definition of 'the right to be heard' is not in alignment with the National Telecommunication Policy (NTP) directive that consumers shall be accorded "*the right to submit opinion in support of their interests*" (NTP, Section 3.1 – 4.1). Equating the 'right to be heard' to the 'right to redress' is a misrepresentation. It portrays that the Commission does not recognise the consumer's 'right to be heard' and it has implications for the way the Commission envisages the role of the consumer.

In contrast, the Communications Commission of Kenya (CCK) in its Consumer Bill of Rights makes clear distinction between:

- "The **right to make representations** to those delivering or regulating and/or governing the provision of communications services on matters pertaining to the services offered to them" and
- "The **right to complain** with regards to quality, delays in provision of rectification, quantity and prices of such goods and services offered" (KCC, 2011).

Consumer complaints are important verifiable indicators of consumer experience but they are not substitutes for consumer meaningful participation in regulatory decision-making process. CAB's perception of the consumer 'right to be heard' explains the Commission's apparent indifference to consumers' non-participation in public inquiries and other regulatory decision making process. In the CAB's perception, consumers are passive recipients. This is collaborated in the research report in Box 4.

The second reason why consumers are not heard is that the theme of the inquiries did not address consumers' immediate concerns. As was noted earlier, out of the 11 public inquiries held by the Commission since 2009, only three (SIM card registration, Mobile Number Portability and SIM card replacement) were related to consumer interest. This is a direct consequence of the dearth of consumer advocacy bodies; a result of the exclusion of consumer advocacy from the Act.

#### **BOX 4. CONSUMERS ARE REDUCED TO MERE SPECTATORS**

This work has...conceded that consumers benefit from the activities of regulatory agencies via improved quality of products and services, the fact remains that lack of active participation or involvement of consumers in the scheme of things reduces them to mere spectators. This denies them the opportunity to act as real and recognised drivers to influence the market place as envisaged by this project.

This state of affairs is created by gaps in the statutory framework as well as nonchalant attitude of many consumers to the enforcement of their rights. Most of the existing laws in the field of consumer protection do not involve consumers directly either as members of governing bodies or as parties to be consulted by product or service providers. . .

**Source:** Research report on the state of consumer protection in Nigeria: A review of consumer protection in the telecommunications sector in Nigeria (CI, 2014:156).

Without active and well-resourced consumer representation bodies, consumers' concerns and issues that lead to consumer detriment will not be escalated to the Commission's attention. This confirms that ordinarily the regulator cannot represent the consumers (Cannock, 2002). Consumer representation is not the function of the regulator. The regulators mandate is to enable the consumers to voice their opinions and to consider the consumers' views in its rule making process (Act, sections 57, 71, 72). Without independent, well-informed and adequately



resourced consumer input, it will be difficult to balance the well-informed and well-resourced industry representation.

#### **6.4.4. Consumer Outreach Programme: Consumers out there are beyond the reach**

The Consumer Affairs Bureau outreach programme is the Bureau's flagship instrument for engaging consumers. It is organised in three tiers, targeted at different consumer cohorts as follows: the first tier, Telecoms Consumer Parliament (TCP) aims at city dwellers, is scheduled to hold monthly in a state capital; the second tier, Consumer Outreach Programme (COP), a bi-monthly event, is held in an urban city; and the third tier, Consumer Town Hall Meeting (CTM) also a bi-monthly event, targets rural dwellers. Hence, the Commission plans a 60 outreach programmes per annum. At the present level of scheduling it will take 3 years to reach out to each of the 36 states capitals through the TCP and 33 years to hold one CTM event in each of the 774 local government areas of the country. Apart from its limited reach, the outreach programmes translate to a one-off event for consumers without the possibility of a follow up because of its extremely few events per year and consequently long cycle period. Therefore, the outreach events have made no significant impact on consumers.

Although the Commission has four zonal offices, all the outreach programmes are designed, and executed from the Commission's head office at the Federal Capital, Abuja. This partly accounts for the inconsistency in the execution of the outreach programmes: each year the actual number of events executed falls grossly short of the plan of 60 events per year as shown in Table 16.

**TABLE 16. CONSUMER AFFAIRS BUREAU OUTREACH PROGRAMME**

<b>Event</b>	<b>Plan</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Telecoms consumer Parliament	<b>12</b>	7	5	5	3	3	-
Consumer outreach Programme	<b>12</b>	6	11	7	8	8	6
Consumer Town hall Meeting	<b>12</b>	2	4	-	4	3	2
<b>Total</b>	<b>24</b>	<b>15</b>	<b>20</b>	<b>12</b>	<b>15</b>	<b>14</b>	<b>8</b>

**Source:** Author Compiled from CAB Consumer Portal (2015)

At almost the end of 2015 and in its 12 years the Commission has hosted 76 Telecoms Consumer Parliaments (TCPs), 75 Consumer Outreach Programmes (COPs), and 16 Consumer Town hall Meetings (CTMs) totalling to 167 events. There are no statistical records of the attendance at the outreach events. If one assumes a high average attendance figure of 250 participants per event, the Commission in its 167 (TCPs + COPs + CTMs) events would have reached out to only 41,750 consumers in 12 years. There are no records to suggest that information/proceedings of the outreach programmes are extended beyond the event centres through leaflets or other means of grass root campaigns. Hence, the reach of the outreach events is severely constricted. Apart from the inadequacy of the structure of the outreach programmes as a means of reaching the consumers, there is also a dearth of information to the consumers. For instance, in 2011, CAB organised 20 outreach events. The theme for 18 of those events was “SIM Card Registration”. The implication was that apart from whatever ad hoc issues that might have cropped up at the outreach events, 90% of the information delivered to the consumers in

that year was on SIM registration. Consumer awareness of the SIM card registration exercise would have been more effectively communicated via radio, TV and the print media.

The outreach programmes were primarily designed as an interactive platform where consumers, services providers and regulator meet to share information on consumer related issues. However, due to very high incidences of consumer complaints the emphasis was shifted to resolving complaints and the events increasing accorded more attention to the resolution of minor/low cost consumer complaints rather than to informing and educating the consumers. Resolving minor complaints on the spot gave the service providers the opportunity to play to the gallery while neglecting the root causes of the complaints or the primary need to inform and educate the consumers. Consequently, the outreach programmes have achieved very limited impact in raising the level of consumer awareness. The Commission recently became aware of this fact as the Head of Legal and Regulatory Services confirms that, “Despite all the awareness programmes and campaigns by the Commission over the years – Telecoms Consumer Parliament, Consumer Outreach Programmes and Consumer Town Hall meetings – we have found out that telecommunications subscribers are still not well informed as we want them to be” (Ogbodo, 2014).

The cause of this short fall is that the information dissemination structures and processes of the Commission, and its overall strategy are inadequate to reach consumers out there. Hence, the consumers remain largely uninformed and uneducated with regard to their rights. In 2012, this fact was collaborated in the report of the Consumer Satisfaction Survey (NCC.CSS, 2012). For example, consumers showed a very low level of awareness of their rights and that leads to their detriment. 31.6% are unaware that they can opt out of unsolicited SMS while 42.5% wrongly believes that they cannot opt out (NCC.CSS, 2012). Again, the Commission’s Head of Legal Services and Regulation reiterates, “consumers across the country get ripped off or get into trouble with their service providers because they are not sufficiently informed” (Ogbodo, 2014). The consumers’ low level of awareness of key quality of Services parameters is shown in Table 17.

**TABLE 17. CONSUMER LEVEL OF AWARENESS OF RIGHTS**

	<b>Lack of awareness of rights % of total sample</b>	<b>Knowledge of right % of total sample</b>
<b>Max waiting time (customer care centre)</b>	10.6	28.8
<b>Time to load credit</b>	10.4	11
<b>Max waiting time (call centre)</b>	10.1	37.4
<b>Period before losing number</b>	22.6	19.5
<b>Opt-out of unsolicited messages</b>	31.6	25.8
<b>Aware of number portability</b>	22.3	-

**Source:** Adapted from Consumer Satisfaction Survey (NCC.CSS, 2012:117)

In an attempt to redirect the outreach programmes to improve consumer outcomes, the Commission introduced the repackaged version of the Telecommunications Consumer Parliament (TCP) programme in 2014. The new strategy is focused on making the forum a platform for services providers to show “graphic illustration to better convince the consumers” of what they are doing to address consumer issues (Okonji, 2014). Although it is early to assess the outcome of the repackaged TCP, providing comparative information that will enable consumers make better choices is more important than advertising services providers’ activities.

**TABLE 18. CONSUMER LEVEL OF AWARENESS**

	<b>Can you opt out of getting unsolicited SMS (%)?</b>	<b>Are you aware of toll free no. you can use to contact NCC call centre (%)?</b>
NO	42.5	88.0
YES	25.8	11.3
DON'T KNOW	30.8	-
NO ANSWER	0.8	0.7

**Source:** Adapted from Consumer Satisfaction Survey (NCC.CSS, 2012: 118)

The provision of information to consumers does not appear to be a priority for service providers either. In spite of the provisions of the General Code and Quality Services Regulation 2007, the NCC Consumer Satisfaction Survey conducted in 2012 reports the unavailability of consumer contracts and code of practice on operators' websites: "Our inspection of GSM operators' websites located no customer contracts and only one customer code of practice" (NCC.CSS, 2012:65). This study confirms that AIRTEL is the only network operator whose consumer code is on its website. This is of note that this issue, which was reported in the Commission's first ever Consumer Survey had not featured in the trumpeted Telecommunications Consumer Parliament (TCP) and has not, attracted any sanction by the Commission. This is another example of the Commission overlooking the contravention of the General Code of Practice.

## **6.5. Mobile Enforcement**

### **6.5.1 ‘Minor infractions’: Eroding the enforcement institution**

Lack of awareness, which results from an inadequate and ineffective information disseminating process was noted by the Commission, in the previous section, as a major cause of consumer detriment. The Consumer Affairs Bureau (CAB) in its 2011, 2012 and 2013 Annual/Quarterly Reports consistently highlighted the breach of the General Code and of the Quality of Services Regulations 2012, which deal with the provision of information to consumers and some parameters of the thresholds on Call Centres respectively. The breaches of consumer rights and set rules include, Insufficient Customer Care Centres (CCC) spread across the country and inaccessibility of Customer Care help lines of service providers. These issues are examined in detail in the next chapter. However, there is no evidence that any enforcement action has been taken against any service providers for any of these breaches.

The breaches are by no means minor because they have implications for consumers’ everyday experience. For example, CAB in 2011 revealed that some states had only one CCC while some states have none. The reports equally highlighted the inadequacy of having CCC only in state capitals. Furthermore, customer care lines are practically inaccessible with the rate of failed call attempts to the Customer Care help lines ranging from 57% to 91% among the services providers. The Commission’s contact centres did not fare any better: the report stated that the rate of failed call attempts to the Commission’s contact centres stood at 25%. When this failed call attempt rate is viewed in the light of the consumers’ low level of awareness (11%) of the Commission’s contact centre (NCC.CSS, 2012), it is easy to appreciate that only very few consumers get through to the Commission. The implication is that the consumers are on their own: they cannot get attention or help when they need it and this impact negatively on their quality of experience.

It would be of benefit to consumers if tables of comparison of these factors, which may constitute the ‘minor’ infractions, are published, distributed and discussed at the outreach programmes. This will further consumers’ awareness of their rights and empower them to make informed choices of service providers. This fact is supported by the NCC.CSS (2012) finding

that consumers from the South-West zone who have a higher socio-economic status and higher level of satisfaction expressed a greater likelihood of changing service providers. The survey report suggests that this may be associated with “high level of awareness with consumer rights and an understanding of what is involved in changing providers” (NCC.CSS, 2012:56).

Awareness influences expectation and drives the assertion of rights. Publishing the ‘minor’ breaches is a sure way of empowering consumers and encouraging compliance. On the other hand, failure to publish them will eventually erode the enforcement institution because the service providers will be inclined to ignore completely those thresholds on the ground that they are unimportant.

### **6.5.2. ‘Major’ contraventions: Bane of the enforcement institution**

The contraventions that fall into the category of “major” monitoring and enforcement activities, which the Commission publishes quarterly on its website, are listed in Appendix 2. These contraventions include anti-competitive practices, infractions against license conditions, unapproved tariff rates, slamming, unapproved advertisement and promotions, violations of the MNP and registration of SIM card regulations. This thesis notes, in the previous chapter, that these major contraventions are wide spread across the network providers and the value added service providers and the contraventions are recurrent. It also noted that these factors reveal the weakness in the Commission’s monitoring and enforcement institution, structures and processes.

In many instances, the Commission had responded to these infractions by issuing warnings, directives and in a few cases imposition of fines, which is the highest level of sanction imposed by the Commission. The fines, which are imposed by the Commission have been criticised by stakeholders for not being sufficiently heavy to serve as deterrent. The Commission has also been criticised for collecting the fines for the government while neglecting the payment of compensation to consumers (refer to the last chapter, section 5.5.2i). The Consumer Satisfaction Survey recommends that compensation should be paid to consumers for poor quality of service (NCC CSS, 2012:65). The view of the Director General of the Consumer Protection Council of Nigeria (CPC) on this issue is presented below:

“Fines are legal but we want to move beyond fines to see what we can do to ensure that consumers get value for money.... ordinarily it is a deterrent measure to prevent reoccurrence. However, it does not seem that it is reflective in the overall objective of the fines because infractions continue. I believe the time has come for the operators to recognise the fact that they have an obligation to the consumers to make sure they get value for money” (Akinsuyi, 2014).

In the same vein, the industry body representing telecommunications services providers, the Association of Telecomm Companies of Nigeria (ATCON) has also called for stricter sanctions for erring operators and “payment of compensations to consumers if a network performs consistently below standard” (Okonji, 2012). The Association denounced rogue operators who cut corners while pledging support for those who play by the rules to provide high quality services.

**a) Unsolicited telemarketing: Violation of consumer privacy**

Unsolicited messages and telemarketing is a major concern for consumers. The 2012 Nigeria Consumer Satisfaction Survey (NCC.CSS, 2012) commissioned by the Consumer Affairs Bureau (CAB), reported that 77% of the whole sample said they receive unsolicited messages. Although the General Code in section 20 prohibits ghost telemarketing and enjoins providers to conduct telemarketing in accordance with any ‘call’ or “do not call” preferences of the consumer, the problem of unsolicited messages remains rampant.

Section 23 of the QoS Regulations, 2012 in a similar vein, directs service providers to provide opt-out option for subscribers where such messages originate from the service provider or its third party partners, and to make reasonable effort to “block and filter bulk unsolicited and offensive messages from other source”. In spite of these provisions, consumers have been continuously inundated with unsolicited messages. Two services providers and twelve (12) VAS providers were indicted, in first quarter 2014, for contravening these provisions.

The Commission also responded with warning letters and a directive to all services providers to restrict unsolicited messages and telemarketing to 8am–8pm. This curfew on unsolicited



telemarketing has been effective in reducing the nuisance of unwanted calls and messages in the night hours.

However, the ‘opt-out’ option has not been effective in addressing the nuisance of unsolicited telemarketing for two main reasons: 1) it is not being utilised because it is not visible to the consumer. The NCC.CSS, (2012) report also confirmed that 31.6% of consumers were not aware of the “opt out” option. 2) The Commission has not established a specific register for consumers to call when they wish to opt out. The President of NATCON who emphasised the need for establishing a code to which the consumer can call to opt out (Akinsuyi, 2014) highlighted this issue at the repackaged edition of the Telecommunication Consumer Parliament. Without an opt-out register, the Commission will be unable to track and identify service providers’ abuses on unsolicited messages.

The need for ‘opt-out register’ manifests clearly when considering the curious advice of the Commission’s Director, Public Affairs, to aggrieved consumers: “Send stop to the number that sent the message and it will stop and if they don’t stop walk over to our office in Lagos and complain. You can call us on 622, our toll free number to lodge your complaints” (UNILAG FM, 2015). This advice is not consumer focused; the Commission does not indicate any commitment to addressing the main issue it is shifting the burden to the ordinary consumer. It does not represent the interest of the consumer. It reflects the Commission’s soft hand approach to enforcement of rules which results in the subordination of ordinary consumer interests to other stakeholders’ interests.

## **6.6 Conclusion**

This chapter set out to answer the question: focusing on regulatory structures and processes, how have ordinary consumers been represented since the liberalisation of the Nigerian mobile market in 2001.

It deployed the extended Institutional Decomposition Analytical framework (IDA) and the NIE analytical approach to assess 1) how the four components of the Nigerian telecommunications institution – mobile policy, mobile law, mobile administration and mobile enforcement – have

influenced the representation of the ordinary consumer and 2) the effectiveness of the existing structures and processes for consumer representation.

The findings of the investigation are presented in this section.

The National Telecommunications Policy (NTP) explicitly addressed two key dimensions of consumer representation in its provisions that consumers and operators “shall be afforded access to the Commission’s proceedings and the right to submit opinion in support of their interest,” (NTP, 3.1.4.1): thereby affirming the consumers’ constitutional right to information and right to express their opinion. The NTP also laid the basis of the Commission’s corporate values by directing that all deliberations of the Commission shall be undertaken with considerations for fairness, equity and transparency. These provisions lay the framework for the Commission’s engagement with consumers. Engaging consumers in a fair and transparent manner will also imply that consumers are adequately represented and their interests are taken into consideration in the regulatory process. These policy statements indicate that consumer representation in the regulatory decision making process is not optional; it is a policy injunction and an important aspect of policy objective. In practice, nevertheless, the Commission is circumventing these provisions.

The mobile law, through the instrument of the Act and other secondary regulations, established rules for ordinary consumer engagement and participation in the Commission’s decision-making processes through the directives on public inquiries and dissemination of information. However, the mobile law did not make any provision for any structure to facilitate the ordinary consumer utilisation of these provisions: ordinarily, ordinary consumers lack the capacity and capability to exploit these provisions hence as they stand, they are null provisions.

From 2009 to 2015, the Commission carried out twelve public inquiries and received only one submission from a consumer body in relation to the inquiry on Registration of SIM card Regulations. Participating in public inquiries is a difficult hurdle for the ordinary consumer because it involves considerable transaction cost to generate a well-articulated and informed input comparable to the well-resourced input of service providers. Ordinary consumers’ input to public inquiries requires the services of consumer representatives. However, there is no

provision in the mobile law for the establishment, inclusion or support of independent consumer advocacy groups. Consumer representation is missing in the Act. Providing legal backing to consumer representation is crucial because institutions are essential to create the rules for the active engagement of consumer bodies with the regulator and service providers (North, 1993). Without legal backing, the role of the consumer and consumer representation bodies remains undefined and irrelevant in the telecommunications decision-making process.

Neither the Act nor the Mobile Administration made any provision for consumer input in the development or review of individual industry consumer code as would be expected if the codes are to address the ordinary consumers' interests, hence the mobile operators, in practice, do not carry along their ordinary consumers in the development of the Consumer Codes. Thus, with regard to consumer representation, public inquiries have been ineffective in soliciting consumers' input into the Commission's decision-making process.

It was noted in chapter 5, that the procedural definition of consumer interest by the Commission's Consumer Affairs Bureau (CAB) is at variance with the NTP and the Act. The CAB definition distorts the consumers' 'right to be heard' by equating it to 'right to complain'. This gross misrepresentation of the consumers' right to be heard is not in alignment with the provisions in the Act and the NTP direction that consumers shall be accorded 'the right to submit opinion in support of their interest' (NTP, 2000: Section 3.1.4.1). CAB's conception of consumers' right to be heard implies that consumers may complain but may not hold an opinion; consumers are passive recipients. This has implication for the way the Commission construes the role of the ordinary consumer. It partly explains why the Commission does not solicit consumers input into regulatory process but rather circumvents this provision of the Act.

Apart from public inquiries, the Commission's main structures and processes for the engagement of the ordinary consumer include Consumer Outreach Programmes and information dissemination machinery. The Commission's outreach programme, which is the main structure for engaging consumers, has very limited reach and an extremely long event cycle. Moreover, the outreach programme communicates little information because it is focussed more towards resolving minor consumer complaints without addressing systemic issues, for example, the lack of awareness or unfair trade practices. Hence, the Commission's

main structure for engaging the ordinary consumer and its overall approach are grossly ineffective and inadequate to reach ordinary consumers out there.

The dissemination of information to consumers through the publication of annual reports and comparative information about licensees' performance is mandatory as prescribed in the Act, Quality of Service Regulations and the General Code (General Code, Section 6(1), 2a). However, the manner of publication, which the Commission deems appropriate (and which is applicable to licensees), is to publicise on its website and two national newspapers. Publicising information in this manner excludes a large portion of ordinary consumers who do not have access to electronic media or who have poor knowledge of the English language. Simple plain English is not 'clear language' for consumers who do not understand English. If the purpose of these provisions for information is to facilitate the ordinary consumer's access to information, then the information ought to be also available in the three main Nigerian languages; in the language, those with minimal education will understand. In this regard radio programmes in vernacular is a viable option as it will be accessible and assessable to the body of consumers.

The Commission's 2011, 2012 and 2013 quarterly reports have been consistent in highlighting the recurring breaches of the rules set out in the General Code and Quality of Service Regulations, which relate to the poor spread and inadequacy of Consumer Care centres, inaccessibility of service providers help lines and provision of information to consumers. The implication is that consumers cannot get attention or help when they need it. In spite of the detrimental effects of these prevalent issues on the interest of ordinary consumers, there is no evidence in regulatory documents that any enforcement action has been taken against any services providers for the above breaches.

The Many provisions in the mobile law and mobile administration on consultation and dissemination of information are not sufficient to guarantee the ordinary consumers' influential participation in the regulatory decision making process. This is because these provisions did not take into consideration the ordinary consumer's limited resources and capability to harness those provisions. This is compounded by the absence of independent consumer bodies and the prevalent ineffective enforcement mechanism, which means that consumers are unable to hold the Commission and services providers to account. Providing legal backing to consumer

representation is in the best interest of both the consumer and the regulator. It is a necessary condition for guaranteeing that consumers derive full benefits from the provision of the law and that the regulator and service providers are held accountable for the implementation of their mandate and license conditions. This issue is of utmost importance in Nigeria with very little history of civil societies and advocacy groups.

Therefore, regarding ordinary consumer representation, the Commission's main structures besides processes and its overall strategy for engaging the ordinary consumer are grossly inadequate and ineffective to reach ordinary consumers, who remain largely unengaged and uninformed and unrepresented. Consequently, the policy objectives with regard to giving ordinary consumers access to the Commissions' proceedings and the opportunity to submit opinion in support of their interest have not been realised.

In the next chapter, this study will examine the process for the ordinary consumer complaint management, which is an important aspect of consumer representation.

## **CHAPTER 7 Ordinary Consumer Complaints Management: Providing redress or cause for complaints**

### **7.1 Introduction**

Complaints resolution is one of the key dimensions of consumer representation. The other components – provision of information, consultation, and provision of choice and efficient framework for consumer representation – were discussed in the previous chapter. In this chapter, the focus is on the question: What processes have been established in the Nigerian mobile sector for the resolution of ordinary mobile consumer complaints and how effective have they been?

In addressing the research question this chapter employs the extended Institutional Decomposition Model, which was used in the previous two chapters. The analysis will be based on the four main components of the telecommunications institution– mobile policy, mobile law, mobile administration and mobile enforcement - and their main aspects in order to ascertain if they have influenced ordinary consumer complaints management.

In drawing conclusions, the chapter will also rely on the transaction cost, agency and property rights aspects of NIE. Accessing the complaint-handling platform and going through the process involve considerable cost for the ordinary consumer. In chapter 5, this study revealed that the cost of arbitration is beyond the capacity of the ordinary consumer; this will be elaborated in this chapter. As the analysis in the last two chapters has shown, agency problem exists within the Commission. It accounts for the Commission lack of commitment to the enforcement of rules and the circumvention of the provisions in the mobile law in pursuit of interests other than the consumer interest.

First, the chapter will examine the provisions in the NTP to find out what is its vision for consumer complaint management. Then the chapter will take a critical look at the mobile law and the General Code. The General Code defines how the Commission and the services providers engage with the ordinary consumer and lays out the procedures for resolving dispute and complaints arising from this encounter. It will deduce from the mobile law and the General Code and from the services providers' individual consumer codes the main features of their complaints handling processes and compare these with the indices of best practice in complaints

management. It will ascertain from this comparison the adequacy or otherwise of the codes with regard to ordinary consumer complaints. Attention will also be focused on the Commission's second level complaint platform to ascertain its effectiveness. The effectiveness of the Commission's application of the mobile administration (regulations, structures, processes, standards and thresholds) and the effectiveness of the enforcement institution to influence industry compliance with the complaints process will be evaluated. The result of the analysis will be presented in the concluding section.

## **7.2 National Telecommunications Policy, 2000: No directive on consumer complaints**

In its statement of general objectives, the National Telecommunications Policy, 2000 (NTP) stated that the envisaged telecommunications service "should accordingly be efficient, affordable, reliable and available to all" (NTP, 2000: Section 2.0:23). Consumer complaints arise whenever these criteria are compromised or whenever in the consumer's assessment, his/her actual experience falls below his/her expectation. In spite of this fact, the NTP gave no explicit direction with regards to consumer complaints management. The task of addressing the issue of consumer complaint handling is taken up in the Communications Commission Act 2003 and its regulations and guidelines.

## **7.3 Mobile Law: Provision for the ordinary consumer complaint management**

### **7.3.1 The Act and General Code: Aligned with best practice but not in practice**

The 2003 Act empowers the Commission, upon a written complaint of a person, to investigate any matter in which the Commission believes an infringement, civil and/or criminal, of the provisions of the Act or its regulations has been, is or will be committed. Consequently, the Act confers on the Commission the powers to resolve any dispute between persons in any matter under the Act or its regulations (Act, Sections (61, 62 and 73)). Under these expansive powers, the Act made further provisions for the protection of consumers, by directing all service providers to meet such minimum standards of quality of service as the Commission may specify and publish. Thus, the Act enjoins licensees to: "Deal reasonably with consumer and adequately address consumer complaints" (NCA, 2003: Section 104).

Dealing reasonably with consumers implies the application of the principles of responsiveness and fairness in attending to consumer issues: it involves the willingness to accept feedback from complaints and a credible commitment to resolving complaints. These factors are essential if consumer complaints are to be adequately addressed. Adequately addressing a complaint will additionally involve finding out the cause of the complaint, rectifying the situation and compensating the consumer for any loss he/she may have incurred. The extent to which these indices are put into practice is a reflection of the degree of consumer-oriented focus of the complaint management system (WAO, 2010). Services providers' complaints handling process will be evaluated with these key indices.

The Act enjoins the Commission to resolve complaints received from consumers in matters relating to customer service, consumer protection, and quality of service and breach of consumer code of practice (Act, Section 105 (2)). Hence the Act directs the Commission to establish guidelines for the lodging, receipt and handling of consumer complaints regarding the conduct or operations of licensees and to designate an industry body to prepare a consumer code which shall include “model procedures for handling consumer complaints and for the compensation of customers in case of a breach of the consumer code” (Act, Section 106(1-3)). However, this study did not find evidence of the existence of any industry body assigned with this function. In addition, the licensees' individual consumer codes are required to include terms and conditions no less favourable to the consumers than those expressed in the General code.

The Act further provides that consumer codes shall be subject to annual review and ratification by the Commission. These criteria of periodic review of the codes and publishing the code – making it visible and accessible – are part of the indices for evaluating the complaint process. The Commission is also empowered to institute alternative dispute resolution processes including an inexpensive arbitration process other than a court for handling consumer complaints and disputes which had not been satisfactorily resolved with the provision that:

“the licensee's dispute resolution procedures shall first have been exhausted by the customers without resolution of the complaints before presentation of the complaint to the Commission” (NCA, 2003: Section 105 (2)).



The unsatisfied consumer ordinarily has to escalate his/her complaint to the Commission's second level intervention process before proceeding to arbitration. The weakness of 'one code serving all' is clearly exposed here, as the requirements for arbitration are too stringent for the ordinary consumer as will be discussed in the section 7.4.6.

The Act, still focusing on the issue of a streamlined, standardised procedure for handling of consumer complaints directs that Consumer Codes shall include further recourse available to a consumer who is dissatisfied with the licensee's complaint handling procedures, together with specific details of compensation and refund scheme. The individual consumer codes shall also include information to customers regarding services, rates and performance levels, customer charging, billing, collection and credit practices, provision and fault repairs of services (NCA, 2003: Section 106(4)).

These provisions allude to the importance of educating consumers by providing them easily understood information about their rights and the remedy available to put right any wrong they may suffer. They refer to matters that are capable of causing grave concern to the ordinary consumer because a breach of any of these issues, resulting from the conduct or operations of service providers, engenders consumer complaints and if not timely, reasonably and adequately resolved leads eventually to consumer frustration, disempowerment, economic loss and detriment. More importantly, unresolved complaints may lead to consumers' apathy and eventual withdrawal from the complaint management process. This is more likely to happen among the more vulnerable group of consumers.

In the above section, the review of various points in the Act has facilitated the capture of the main provisions in the mobile law that relate to the envisaged consumer complaints handling process. These provisions encapsulate important principles of effective complaint management: a well-defined, visible and easy to access procedure for complaints management, the provision of remedy when a complaint is upheld and regular review and improvement of the complaint handling process. In the sections that follow, these indices will form the bases for evaluating the adequacy and effectiveness of existing processes for ordinary consumer complaints.

## **7.4 Mobile Administration: Processes, procedure and structures for the Ordinary Consumer Complaint Management**

In the following sections, this study will examine the important sections of the General Code that provide additional directives on the complaint process. It will also assess the extent to which the services providers' complaints processes align with the mobile law and indices of best practice in complaints management.

### **7.4.1 General Consumer Code of Practice: Several provisions but few in use**

The General Consumer Code of Practice (Sections 39-49) sets out the procedures and substantive requirements for consumer complaints handling which also serves as the model and minimum standard for licensees' individual code for consumer complaint handling process.

The General Code directs that licenses shall provide easy to understand information on complaint handling processes in various media and formats and ensure that consumers can easily identify how a complaint may be lodged at the service provider's office either physically or through telecommunication. It specified that information about complaint handling shall contain: "consumer right to complain, how the licensee can be contacted in order to lodge a complaint and the information the consumer needs to furnish when making a complaint" (NCA, 2003: section 39(3)). This directive on the provision of not just visible, but also accessible and easily understood information on complaint process- is another important index for evaluating the effectiveness of the complaints resolution process.

Licensees are enjoined to act on written complaints within the time frame set out in the Quality of Services Regulations, 2012 (NCC, n.d.-c). This rule ought not to be restricted to written complaints only but should also be applicable to complaints lodged via telephones because most complaints by ordinary consumers (90%) are lodged via the telephone, which is an approved medium for complaints (NCC.CSS, 2012).

When a consumer is not satisfied by the outcome of her/his complaint, the consumer shall have the option of pursuing the complaint through an escalating process involving the re-examination of the complaint by a suitably qualified person in the licensee's organisation. In the event that

the complaint has not been resolved to the satisfaction of the consumer in spite of the escalation process within sixty days, the licensee shall inform the consumer that he/she may refer the complaint to an identified person in the Commission. Section 41(3) states that “in any event, no consumer complaint shall remain unresolved for more than three (3) months”. For complaints that remain unresolved, the Commission may apply the processes set out in the Dispute Resolution Guidelines 2004. Unlike the arbitration process, the complaints process is free of charge but the licensee may, with the consent of the consumer, impose a reasonable charge where the investigation involves retrieval of record more than 12 months old -General Code, Section 42- (NCC, n.d.-c).

The General Code further directs that service providers shall establish appropriate systems for recording, categorising and analysing complaints and their outcomes as required by Quality of Service Regulations 2012. Regular reviews and updating of the complaints management process is also mandatory. The outcomes of these reviews shall be communicated to the Commission and to the consumer and the Commission is required to audit the complaint handling and tracking procedures of the licensees -General Code, Sections (40, 45-49)- (NCC, n.d.-c). This study did not find any evidence of the review of the General Code or any complaint management process since it was gazetted in 2007. The failure to review the General Code in the last eight years raises the question of its relevance as a working document.

The General Code makes a distinction in the procedure for lodging complaints. Individual consumer complaints are to be first lodged and dealt with by the services providers while industry complaints – those made by a consumer body against a services provider and those made by a licensee against another licensee – are lodged directly with the Commission (General Code, Sections 53 and 54). However, regarding alternative dispute resolution (ADR), the provisions are the same for the ordinary consumer and the corporate consumer and licensee, thus placing the ordinary consumer at a relative disadvantage. This issue is further explored in the section (7.4.6) on ADR.

The General Code is in synergy with the Act in its provision for consumer complaints handling. It expatiates some of the provisions in the Act to include areas like complaints tracking and escalating procedures, complaints recording, analysing and categorising requirements and

complaints resolution time limit. These requirements are part of the criteria for assessing the performance of the licensees' complaints handling process. The extent to which the Commission and the licensees have met these requirements and the degree of consumer awareness and ease of access to these procedures will be the focus in the following sections.

#### **7.4.2 Service Providers Complaint Handling Process: Consumers are not able to complain but suffer in silence**

The General Code established the minimum standard for the complaints process that shall be implemented by licensees. In response, the major network/service providers to varying extents have incorporated these rules in their individual consumer codes but in practice, there are gaps as shown in Table 19. There is no documented evidence of consumers' input to code development or review, as was discussed in the previous section. The evidence suggests that the process of approval did not pass through a transparent process. The following section evaluates the extent to which the services providers' complaints processes align with the mobile law and indices of best practice in complaints management. It examines how the interactions between the consumers and the services providers are influenced more by the rules in use than the rules in the Codes.

One major challenge confronting all categories of consumers is the dearth of accessible information about service providers' complaint handling processes. In the competitive mobile telecoms market service providers place numerous adverts daily on radio, via SMS (unsolicited) and the print media. However, this study did not find any awareness campaign aimed at informing consumers about complaint handling process by service providers. Neither is the complaint process visibly displaced in their websites and customers care centres (see Section 7.4.4 for an interview with the industry on these issues). In Chapter 6, it was noted that the Consumer Satisfaction Survey 2012, reported that, with the exception of AIRTEL, service providers' consumer individual codes are not available on their websites. This situation is still prevailing and this study confirms it. In addition, this study observes that the mobile service providers' Individual Consumer codes of practice are in English only and have not been translated into the three main Nigerian languages, and therefore are not assessable to all groups of consumers. Furthermore, the consumer code of practice, complaints handling process and

Consumer Contract Terms are neither at the customer contact centres nor in the pay-as-you-go starter pack.

The implication is that the services providers' complaints process is not visible to consumers. This means that the ordinary consumer remains largely uneducated about his/her rights, uninformed and unaware of the service providers' complaint handling procedures. The low level of consumers' awareness of their rights was also highlighted in Table 17 of the previous chapter. Hence, it would appear that the service providers' complaint management processes do not anticipate nor welcome nor aspire to make good use of feedback from complaints. In other words, the service providers' complaint processes do not meet the first requirement of being customer-focused as shown in Table 19.

**TABLE 19. COMPARATIVE ANALYSIS OF SERVICE PROVIDERS' INDIVIDUAL CONSUMER CODE OF PRACTICE**

<b>Indicators</b>	<b>Provision in the law</b>	<b>MTN Consumer Code</b>	<b>AIRTEL Consumer Code</b>	<b>ETISALAT Consumer Code</b>	<b>GLO</b>
<b>Consumer-focused</b>  Openness to feedback from complaints and commitment to resolution of complaints	Act (section 10 4)	No evidence  No complaints data	No evidence  No complaints data	No evidence  No complaints data	No evidence  No complaints Data
<b>Visibility</b>  Information about how and where to complain including all	General Code (sections 39 (1-3), 41(6,7)); and Act	Not visible  Consumer Code & complaint process not on web,	Consumer Code on web only; not on customer contact	Not visible  Consumer Code & complaint process not on web,	Not visible  Consumer Code & complaint process not on web,

options are well publicised to consumers, personnel and stakeholders	(section, 106(4))	customer contact centres nor starter packs	centres nor starter pack	customer contact centres nor starter packs	customer contact centres, starter pack
<b>Accessibility</b>  Complaint process is easy to access and understand. In various media and formats; Assistance is available to consumers to make complaints	General Code (sections 39, 40(1)(2))	Inaccessible	Inaccessible	Inaccessible	Inaccessible
<b>Responsiveness</b>  Complaints are acknowledged in timely manner, addressed promptly. Consumers are treated courteously and informed of progress	General Code (sections 41(1-8))  Act (section 104)	Feedback in ≤ 48 hours.  Tracking system.	Targets 80% First Call Resolution.  Feedback in ≤ 72 hours.  Tracking system.	- -	Complaints are Monitored  Tracking system.  -
<b>Charges</b>  Access to complaints	Act (section 106(3))	Free	Free	Free	Free

handling process is free of charge	General Code (section 57)				
<b>Confidentiality</b> Personal information of the complaint and people who are subject of the complaint is kept confidential	General Code (section 57), Act (sections (59, 60, 86(3))	Confidentiality clause included	Confidentiality clause included	Confidentiality clause included	Confidentiality clause included
<b>Remedy</b> If complaint is upheld remedy/ compensation is provided	Act (sections 106(3))	Remedial action and/or restitution/compensation	Reimburse full sum of value lost by customer	- -	Refund / commensurate compensation
<b>Accountability</b> Accountability for complaint handling is established. Complaint are monitored and reported	General Code (section 47)	Yes, Officer in charge identified.  Complaints are Monitored	Officer in charge not specified.  Complaints are Monitored	Officer in charge not specified.  Complaints are Monitored	Identity of officer provided on customer request.  Complaints are Monitored

<b>Review</b> Complaint handling process is internally and externally reviewed	General Code (sections (45, 46, 47, 519))	No data	No data	No data	No data
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**Source:** Author - indicators adapted from Western Australia Ombudsman (WAO, 2010)

All service providers have listed in their consumer codes of practice multi-channels through which consumers may reach their complaint handling process in order to lodge complaints. These channels include Interactive Voice Response (IVR) systems, toll-free lines, e-mail, terrestrial mail and walk-in contact centres but in practice, consumers are experiencing difficulties in the use of these channels to activate the complaint process.

In the 75<sup>th</sup> edition of its Consumer Outreach Programme (COP) Consumer Affairs Bureau reported the inaccessibility of customer care helplines and poor spread of customer care centres among the prevailing challenges meaning that the consumer contact help desks are beyond the reach of most consumer (Okonji, 2014). This issue had been a regular feature in CAB’s annual report since 2011 and was highlighted in the research on consumer protection in Nigeria by Consumer International (2014).

The magnitude of this challenge is reflected in Table 20, which shows the average accessibility rate to consumer contact centres of the four network/service providers for the 1<sup>st</sup> quarter of 2011 and 2012 respectively. For example, the average failed call attempts to service providers’ customers care lines stands at 73% as against the set threshold of 2%. That means that the chances of a consumer to be connected to a help line are less than 3 in 10. In other words, only 3 out of 10 consumers are connected to a consumer care line as against the threshold of more than 9 in 10. For consumers on the GLO (a network/services provider) network, failed call attempts for the period March 2011 to July 2011 was 99.2%. This meant that, during that period,



consumers on GLO network had 1 in 100 chance of connecting to their service providers' help lines. GLO attributed this situation to a system upgrade project.

**TABLE 20. ACCESSIBILITY OF SERVICE PROVIDERS' COMPLAINT HELP LINES (1ST QUARTER 2011/2012)**

Consumer complaints	Failed attempt to customer help line		Connection to live agent		Connection to IVR	
	2011	2012	2011	2012	2011	2012
Quality of service threshold	2%		98%		95%	
AIRTEL	67	85	45	45	71	85
ETISALAT	30	72	69	28	92	93
GLO	96	92	15	7	52	94
MTN	64	77	14	23	92	89
<b>AVERAGE</b>	<b>73</b>		<b>31</b>		<b>83</b>	

**Source:** Developed from Consumer Affairs Bureau 1st quarter reports 2011 and 2012

The average rate of connection to a live agent of the four service providers is exceedingly low at 31% compared to the set threshold of 98%. Hence, a consumer has a frustrating 1 in 3 chances of speaking to an agent of his/her service providers. These situations meet the definition of inaccessible complaint process. It means that most of the aggrieved consumers are unable to reach the customer care centre help desk by telephone and are therefore unable to access and activate the complaint management process. In these circumstances, consumers have no option but to suffer in silence.

The chances of a consumer to be connected to the service providers' toll-free Interactive Voice Response system (IVR) are reasonably good at 83% (4 in 5 chances) when compared to the Quality of Service threshold of 95%. The IVR of service providers gives consumers the option

to lodge complaints in English or any one of the four local languages. The option for the different languages is relayed consecutively. This implies that the consumer has to listen patiently through the voice instructions until he/she can hear his/her preferred language. The task on the consumer's patience could be reduced if automatic language filters are incorporated to select the consumer's language as soon as the consumer utters a few words of his preferred language. This will also reduce the equipment holding time and consequently improve access to the IVR. A major shortfall of the IVR system is that it is not a dedicated platform for complaints. All four mobile network/services providers use their IVR for advertisement. Very often, a consumer who wishes to lodge a complaint has to hold on listening to advertisements for several minutes, beyond the set threshold of five minutes, without connection to a live agent. The IVR relays advertisement when the live agents are busy. The fact that this happens more often than not points to the inadequacy of the number of live agents as shown in Table 20 above.

Overall the consumer complaints handling process is grossly ineffective because it is inaccessible to consumer. It is bogged down by three major handicaps: consumers' poor awareness of their rights which is compounded by the non-availability of information on the service providers' complaints handling procedure either in the pay-as-you-go starter pack or customer care centres or on the service providers' website; the inaccessibility of customers' care-help lines and inadequate number of live agents of service providers.

In addition, the number of the customer care centres and outlet shops commissioned by the mobile service providers in the six geo-political zones of the country given in Table 21 shows that the contact centres are grossly inadequate and unevenly spread. With an average of six States per zone, the implication is that some States have only one or two contact centres while some have none. In all the zones, the contact centres are located in the commercial areas of major cities while the suburbs and rural areas are neglected. The relatively high number of contact centres in the South West is due to the status of the city of Lagos as the commercial hub and former Federal capital as well as the political disturbances and insurgency in the North East Zone accounts for the low number of contact centres in that zone.

**TABLE 21. MOBILE SERVICE PROVIDERS’ CUSTOMER CARE CENTRES IN THE SIX GEO-POLITICAL ZONES**

<b>Geo-Political Zones</b>	<b>MTN</b>	<b>AIRTEL</b>	<b>GLO</b>	<b>EMTS (ETISALAT)</b>	<b>TOTAL</b>
North East	7	3	4	2	<b>16</b>
North West	17	2	11	4	<b>34</b>
North Central	24	4	8	7	<b>43</b>
South West	56	14	36	30	<b>136</b>
South East	18	7	11	9	<b>45</b>
South South	20	4	11	6	<b>41</b>
<b>Total</b>	<b>142</b>	<b>34</b>	<b>81</b>	<b>58</b>	<b>315</b>

**Source:** Collated from the Mobile Service Providers’ websites

The low number and uneven spread of customer care centres in the six geo-political zones show that most consumers have grave difficulties in physically accessing the customer care centres in addition to not being able to contact the help lines of their service providers.

An interviewee explained the situation as follows: “NCC has only KPI (Key Performance Indicators) which will guide the licensee to provide enough agents to meet such KPI. Only access (to customer care centre) is specified not the location. However, Licensees are expected to have a care centre in every state of the federation and every city of the state and in each local government. Some use channel (trade) partners as care centres” (Interviewee-CAB 1, 6 February 2015).

The interviewee's reply indicates that their obligation is to provide access for example contact numbers and IVR and not necessarily to facilitate physical access.

### **7.4.3 Kiosks/Umbrella People: Freelance business**

Some mobile service providers' complaints handling process contain certain provisions that impose undue burden on consumers. For example, MTN customers' complaints procedure involving prepaid airtime cards or starter packs present some practical problems. MTN advises prepaid consumers in the first instance: "To contact the outlet service where the purchase was made and allow the outlet reasonable time to address the inquiry" (MTN Individual Code of Practice, 2010: 17).

This presents a number of challenges to consumers. First, whatever meaning is attached to 'reasonable time to address the inquiry' it is likely to exceed the period established in the Quality of Services Regulation, 2012. Secondly, many consumers on the prepaid platform often purchase a starter pack and airtime on the go from hawkers (kiosk/umbrella people) who have no fixed address or location, which makes tracking these outlets practically difficult. Thirdly, the Commission is yet to establish any guidelines for these outlets and, moreover, they are not operating under General Code; hence, it will be difficult to hold them to account. Furthermore, even if the consumer is able to trace these moving outlets, these umbrella people/kiosks are unlikely to have the capability to resolve consumer complaints such as 'inability to recharge' or the 'correctness of airtime balance after a recharge attempt'. In addition, the consumer cannot easily ascertain who is an accredited representative of the service provider. Although the relationship between the service providers and these umbrella outlets is not clear, it is reasonable for the consumer to assume that these 'umbrella people' have some sort of business relationship with the service providers since they are generating revenue for the service providers. Therefore, the service provider in fairness cannot shift the burden of resolving complaints arising from starter-packs and pre-paid airtime cards to the kiosk/umbrella people to the detriment of the ordinary consumers.

Two interviewees, CAB1 and CAB2, clarified that the Kiosk/Umbrella people are neither licenced by the Commission nor operating under the Commission's rules or guidelines. They

are supposed to belong to Sales and Installation categories of Class licenses, but because of their low volumes, the Commission exempts them from being licensed. They can freely set up and operate in line with the policy on availability and deepening of service/universal access (CAB 2, 2015; CAB 1, 2015). However, both interviewees offered no response to the question: what happens if an issue develops between a mobile prepaid consumer and the kiosk vendor/umbrella people? Therefore, patronising the kiosk vendor/umbrella people is a risky business for the ordinary consumer.

#### **7.4.4 Vulnerable Consumers: Need for more attention**

The General Code also mandates licensees to make adequate provision to ensure that people with disabilities or special needs are able to access their complaints handling process. The licensees are to ensure that these groups of consumers, if need be, can be represented by their authorised representatives and are also given assistance when they request assistance in lodging complaints (General Code, Sections 15(1), 40). However, in practice, the attention given by some service providers to these provisions to enable consumers with disabilities to access the complaint process does not appear to go far enough. For example, concerning these provisions, EMTS (trading as Etisalat) in its Consumer Code of Practice states:

“It is our policy to support customers with disabilities in being able to benefit from communications. Customers with disabilities affecting their use of telecoms services should enquire about services available to assist their special needs.

It is our policy to comply with specific obligations that NCC may impose on operators in respect of special services or service agreement for our customers with disabilities. Our customer service centre can advise you about these obligations” (EMTS Consumer Code of Practice, 2010: 5).

This statement does not reflect an effective commitment by EMTS to making its complaints handling process accessible to consumers with physical disabilities. It offered no information to consumers with disabilities affecting their use of telecommunications on how or where “to enquire about services available to assist their special needs” (EMTS Consumer Code of Practice, 2010: 5) in order to lodge complaint. EMTS recommends that they physically present

themselves at their customer care centres first, to enquire about available services and secondly to be advised about obligations imposed by the Commission.

Advising consumers with disabilities about obligations (if any) imposed by the Commission completely missed the point. Implementing whatever obligations there may be and making it accessible to the consumer is the issue. It would be justified to conclude that EMTS has made no specific provisions in their complaint process for consumers with disabilities. EMTS reference to ‘obligations’ may be an allusion to the failure of the Commission to impose any specific obligation on operators in respect of consumers with disabilities as provided for in section 15(2) of the General Code which states, “licensees shall comply with any specific obligation the Commission may impose on operators in respect of services for subscriber with disabilities”. This study did not find any evidence in the General Code (which has not been reviewed since 2007) or the licensees’ individual consumer codes, that the Commission has complied with the directive to impose obligations on licensees in respect of consumers with disabilities.

EMTS statement in its Consumer Code of Practice about consumers with disabilities (quoted above) presents further challenges with a loosely worded code, containing no specific commitment: how shall the Commission that approved that code measure the extent of compliance or enforce compliance?

With regard to enabling consumers with disabilities to access its complaint handling process, two network providers – MTN and GLO stated in its Consumer Code of Practice their proposals to commence SMS-based customer assistance centre operations for customer with disabilities – hearing and speech impairment – to enable them access their call centres to lodge complaints. Although this proposal does not cover consumers with sight impairments, it represents a concrete commitment (unlike EMTS). MTN and GLO also reported the installation of ramps in some of their walk-in customer centres to aid consumers on wheelchairs. Making this information, including the location of the customer centres with ramps, available in various media will be useful to consumers with physical disabilities.

Airtel's Consumer Code of practice states that for consumers with special needs and physically impaired subscribers, Airtel contact centres, Interactive Voice Response system (IVRs) and web channels are optimised through speech and visual support to meet their needs.

There are no provisions for such access to information, as in braille or audio format in local languages, for consumers with sight impairment. Hence, it would appear that sufficient effort has not been made by all the mobile service providers to improve access to the complaint handling process for customers with disabilities.

The General Code section 40 injunction to licensees to ensure that consumers with disabilities can be easily represented in order to make a complaint extends to all consumer groups. Awareness should be created to encourage consumers including parents and teachers among others, to represent and lodge complaints on behalf of not only consumers with disabilities but also for the elderly, those with little education and the young consumers who may not be able to stand up for their rights.

#### **7.4.5 The Rules in Use**

To throw more light on why the rules in practice are not aligned to the rules in the law, an interview with the senior officer of Association of Licensed Telecoms Operators of Nigeria (ALTON) and the reaction of the Director General of Consumer Protection Commission (CPC) is reported in Box 5. The industry view is quite revealing, by attempting to justify why the rules in practice are not aligned to the rules in the law; it shows that the practice has become an established norm, with grave negative impact on the promotion of consumer interest and the representation of the ordinary consumer as was highlighted in in chapters 5 and 6 of this study.

The challenges of doing business in Nigeria were discussed in chapter 3. These challenges include non-transparent bureaucracy, inadequate electricity supply, vandalism of existing infrastructure and multiple taxations. However, the existing business environment in Nigeria is not peculiar to the telecommunications sector and hence, cannot justify the violation of set rules as was aptly explained by the Director General of the Consumer Protection Council (CPC), in Box 5.

## **BOX 5. GENERAL CODE VERSUS THE RULE IN PRACTICE**

Why is there a gap between what is stated in the legal/regulatory framework and what obtains in practice with regards to consumer protection? The researcher put this question to the interviewee – Senior officer, Association of Licensed Telecoms Operators of Nigeria (ALTON) and he said:

“The Legal and Regulatory frame work is to guide the operators on the right of the consumer. However, in Nigeria there are some factors responsible for the operators in not meeting the legal and regulatory framework, no matter how they tried to. The issue of Power Generation, Insecurity, Accessibility, Infrastructural Gap and Multiple Taxation has created a huge gap between practical consumer protection and the existing legal/regulatory framework. The above mentioned factors has limited the operators in fulfilling their obligation to their respective consumers as they focus more on tackling the problems created by the environment in which they operate.

Unless the issues mentioned above are resolved the gap will continue to exist because more attention is focused to how to maintain the networks, which requires double cost, how to deal with the accessibility issue that prolong the downtime period more than necessary”.

Director General, Consumer Protection Council (CPC) presents the consumers’ view

“What comes out from our side is that the operators use the challenge of doing business as a reason why they cannot give value for money.

From the consumer side, we say it is not fair because if providers are in business and are making profit and that profit emanates from the resources that consumers put into that business; as long as they are in business it means it is profitable, as long as no operator has filed for bankruptcy it means the business is good. Therefore, in the light of the above, the concern for CPC is how do operators plan to assuage consumer complaints?” (Akinsuyi, 2014)

**Source:** Interviewee-ALTON and Director General (CPC)’s Comment on QoS

### **7.4.6 The Commission’s Complaint Management System: Second level support for consumers**

One of the functions of the Commission stated in the Act is to examine and resolve complaints, objections and disputes filed by operators, subscribers or any other person involved in the communications industry (Act, section 4(p)). In order to give effect to this provision, the Commission has established structures within the Consumer Affairs Bureau including two toll



free lines (0800 MY CONSUMER, 0800 CALL NCC) and two consumer contact centres for the management of consumers' complaints. Through these contact centres, the Commission provides the second level support to aggrieved consumers whose complaints have not been satisfactorily resolved by their services providers. Utilisation of this provision also suffers from low consumer awareness which concerning the Commission's toll-free number, stands at an average of 11% but is as low as 5% in some states in the country (NCC.CSS, 2012:55).

The General Code stipulates that the Commission shall monitor compliance with complaints handling rules and publish quarterly progress reports on complaints and their resolution. It also directed that the Commission's annual report will contain a summary of all the progress reports of the relevant year (General Code, section 51 (2-3)). This study is awaiting the publication of Commission's 2014 annual reports. However, from the available reports, the Commission apart from not being consistent in reporting the complaint statistics does not include any information regarding the nature/categories of the complaints as shown in Table 22. The reports show that seven (20%) and 845703 (94%) of complaints received by the Commission in 2010 and 2012 respectively were left unresolved by the end of the year. This in itself is a violation of the provisions of the General Code, which stipulates, "in any event, no complaint shall remain unresolved after 90 days" (General Code, Section 41(3)). This study could not ascertain the reason for the huge difference in the number of complaints received in 2010 and 2012.

The report credited to the Director of Consumer Affairs Bureau, at the 2014 fourth quarter Industry Consumer Advisory Forum (ICAF): "that the regulatory agency received about 40,000 complaints each day from consumers across the country on various breaches perpetrated by network operators" (Okonne, 2014) appears to be erroneous because it is not consistent with available data. It would appear that there is no reliable statistical data on consumer complaints either from the Commission or from the services providers.

**TABLE 22. EFFICIENCY OF COMMISSION’S COMPLAINT MANAGEMENT PROCESS**

	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Consumer Complaints</b>	-		-		
Number of complaints	-	35	-	903098	264
Resolved	-	28	-	57395	-
Outstanding	-	7 (20%)	-	845703 (94%)	-
<b>Compliance Complaints</b>	-	47	44	-	-
Resolved	-	8	8	-	-
Outstanding	-	33	30	-	-
In court		6	6	-	-

**Source:** Compiled from the Commission’s Annual Reports (2009 – 2012)

#### **7.4.6.1 Consumer Affairs Outreach Programme: Little Effect**

Consumer Affairs Bureau outreach programmes are also used by the Commission as an interactive platform for addressing consumer complaints. In these events consumers meet face to face with their service providers to lodge their complaints, many of which are resolved on the spot. The outreach events address very few consumer complaints as depicted in Table 23. The 2013 outreach programme recorded 294 consumer complaints in 15 events at an average of less than 20 complaints per event.

**TABLE 23. COMPLAINT HANDLING AT 2013 OUTREACH PROGRAMME**

<b>Outreach Programme</b>	<b>Number of events</b>	<b>Number of complaints</b>	<b>Complaints per Event</b>
<b>Telecoms Consumer Parliament</b>	3	55	18
<b>Consumer Outreach Programme</b>	8	153	19
<b>Consumer Town hall Meeting</b>	4	86	22
<b>Total</b>	<b>15</b>	<b>294</b>	<b>&lt;20</b>

**Source:** CAB Annual Report (2013)

Apart from the paucity of complaints addressed at these events, there is no evidence of reports on the nature/categories of the complaint or the nature of their resolution. Hence, the outreach programme does not generate useful feedbacks that would facilitate a review of service providers' performance. Nevertheless, the interactive sessions are a veritable means of raising consumer awareness albeit to a handful of consumers.

#### **7.4.7 Alternative Dispute Resolution: Not a viable option for the ordinary consumer**

In line with the provisions of the Act (Sections 4(P) and 75(2)), the Commission established the Dispute Resolution Guidelines, 2004. It is specifically an arbitration procedure for small claim disputes involving amounts not exceeding one million Naira (N1, 000,000.00 /US\$5000). The main objective of the guideline is to “obtain a fair resolution of consumer disputes by an

impartial arbitration without unnecessary delays and expense” (Dispute Resolution Guidelines 2004, sSection1.2). The guidelines also include the option of mediation.

When disputes remain unresolved after exhausting the ordinary complaints resolution process i.e. the service provider’s complaint process and the Commission’s second level intervention, the Commission or the consumer may initiate the processes set out in the Dispute Resolution Guidelines, 2004. The arbitration rules provide for a ‘document-only’ determination by an arbitrator(s), appointed by the Commission whose decision shall be final and binding on the parties.

Although the 2004 Dispute Resolution Guidelines state that, the arbitration process is designed to be simple, quick, informal and inexpensive; in practice, it actually entails a rigorous process, which may exceed 12 weeks. In addition, about it being inexpensive, the actual cost of arbitration includes a registration fee, administration fees, arbitrators’ fees and expenses, and those of experts. In addition, each party to the arbitration shall bear its own costs of preparing and submitting its case. Furthermore, registration fees are payable by the claimant while “the cost of arbitration shall be borne by the losing party but subject to the overriding discretion of the arbitrator as to which party bears what costs” (Dispute Resolution Guidelines, section 7(2-4)). These provisions as they stand are intimidating to the ordinary consumer and are likely to deter the ordinary consumer from recourse to arbitration.

The schedule of fees indicates a range of registration fees from a minimum of N5, 000 (US\$ 25) to a maximum of N20, 000 (US\$100) and arbitrators’ fees ranging from N20, 000 to N50, 000. This scale of fees may be ‘inexpensive’ for the corporate consumer but it is a tall order for the ordinary consumer. For example, the minimum registration fee of N5, 000 is 28% of the national minimum monthly wage of N18, 000 and represents a significant cost for low-income consumers (Minimum Wage (Amendment) Act 20011, Section 2). Besides, preparing the arbitration documents (claim and reply documents) entails five separate submissions of documents which may involve substantial resources – funds, time and expertise – beyond the capacity of the ordinary consumer and which may well outweigh his/her small claim.

It is stipulated in the guidelines that the arbitration documents shall contain:

- All allegation of facts or matters of opinion;
- Evidence in proof of the facts;
- Law to be relied upon;
- Signed and dated affidavits containing statement of evidence of any witnesses;
- Relief sought or remedies claimed; and
- Detailed calculation of any sums claimed.

Viewed from the perspective of the corporate consumer these requirements are unlikely to present any challenge but from the standpoint of the ordinary consumer, it presents a herculean task whose cost is most likely to outweigh its benefits. As was discussed earlier, neither the Act nor the Dispute Regulation Guidelines 2004 made any distinction between the ordinary consumer and the corporate consumer nor did they take into consideration the specific circumstances of widely differing groups of consumers. Most ordinary consumers (98 %) are on the prepaid platform and usually purchase small airtime at a time – portraying the endowment bias. Analysis of consumer claims reported in the CAB 2011, 1<sup>st</sup> quarter report, showed that the maximum claim was N,2000 – which is less than half (40%) of the minimum arbitration registration fee. Hence, it does not make economic sense for the ordinary consumer to incur an expenditure that is higher than the expected claim.

The present arbitration process as it stands is not a viable option for the ordinary consumer. It was apparently designed with focus on the corporate consumer rather than the ordinary consumer. There is yet no evidence that an ordinary consumer has ever escalated his/her complaint to arbitration. This status was confirmed by an interviewee (CAB1, 2015). The implication is that if an ordinary consumer complaint is not resolved by the normal complaint resolution process, it remains unresolved.

### **7.5 Enforcement Institution for Complaint Management: Monitoring without Enforcement is ineffective**

The Commission has the mandate to monitor compliance with the provisions of the General Code and the individual consumer codes in achieving the objectives of complaint monitoring and management and to publish quarterly reports which shall include: 1) recurring complaints and actions taken to address these; 2) statistics on complaints and their resolution; and 3)

breaches of the applicable code provisions and remedial action taken (General Code, sections 51 and 55). This study however did not find any report on services providers' complaints handling statistics.

Since the introduction of mobile telecoms in 2001, the ordinary consumer has continuously bemoaned the quality of services. The nationwide consumer satisfaction survey (NCC.CSS, 2012) reported in its findings that the percentage of respondents that rated the Quality of services Indicators as 'poor or very poor' ranged from 12% to 46%. With regards to complaint handling the survey recorded that time to answer complaint calls and time to resolve complaint were rated as 'poor or very poor' by 46% and 40% of respondents respectively; alignment of charging with advertising and correctness of charging was rated as 'poor or very poor' by 26% of respondents (NCC.CSS, 2012:59).

CAB undertakes the task of monitoring and investigating compliance with the Quality of Services Regulations and General Code with emphasis on consumer complaint management. The Bureau carries out these functions by daily monitoring of customer help lines and by monitoring the activities at some Customer Care Centres because the Bureau lacks the capacity to monitor all the customer care centres across the country. Although CAB has developed a 13-items-checklist for evaluating Consumer Care Centres, it usually audits the complaint handling and tracking procedures using only three out of the 13 items namely: complaint ticket number issued to consumer who comes to complain; most persistent complaints received from consumers; and average number of complaints received per day/per week. This is yet another example of a long list of indices, which are developed without any commitment to put them into effect.

In addition, CAB carries out investigation of complaints lodged with the Commission by unsatisfied consumers. The results of these monitoring and investigation exercises are reported internally every quarter. These reports have never ceased to highlight a number of recurring breaches of the General Code and complaint handling process. For example, in the 75<sup>th</sup> edition of its Telecoms Consumer Parliament (TCP) CAB's Deputy Director recounted the prevalent consumer complaints to include unsolicited text messages/telemarketing, inaccessibility of

customer care helplines, poor spread of customer care centres, unlawful deduction of credit for value added services, poor data services and disruption without compensation (Okonji, 2014).

CAB reports always include recommendations, to the Commission, in general terms without any indications for sanctions on offenders. The recurring recommendations include:

- Services providers should endeavour to make their help lines as accessible as possible;
- Enforcement of gazetted Quality of Service Regulation, 2012;
- Management should enforce the right number of contact centre agents and channels on services providers according to their subscriber base;
- Services providers should be monitored to ensure that their complaints status displays the latest action taken on complaints.

The action of CAB falls short of the QoS Regulations which directs that where a licensee contravenes any of the parameters or fails to resolve a consumer complaint within the resolution time stated in the regulations, the licensee shall compensate the consumer in addition to paying any fines that may be imposed by the Commission -QoS Regulations, 2012: Section 14- (NCC, n.d.-c).

From the Commission's quarterly publications on Compliance Monitoring and Enforcement reports and other documents that were analysed this study did not find any evidence that sanctions or penalties had been imposed for any breach of the complaint handling guidelines. The prevailing inefficiencies and consequent ineffectiveness of the ordinary consumer complaint handling process is a result of the Commission's soft-handed approach to the enforcement process. This situation is envisaged by the theoretical framework which states that the rules of the game also provide for rule of enforcement as well as penalties for rule violation which provide some measure of incentives to discourage rule violations (North, 1990). In this regard, Bandaragoda (2000:28) confirms that: the difference between what the law states and what obtains in practice is attributable to "laxity in rule application and enforcement".

The frustration of consumers in this prevailing situation can be discerned from the report of the investigation by the National Mirror Newspaper: Consumers are expecting more commitment of the Commission in the area of enforcement so that they may get value for money spent on

telecommunications service and appropriate compensation when their rights are violated (Erhawarien, 2015).

## **7.6 Conclusion**

This chapter set out to answer the third research question: What processes have been established in the Nigerian mobile sector for the resolution of ordinary mobile consumer complaints and how effective they have been? To answer this question, it employed the Institution Decomposition Analytical framework and sought to explore the role of each of the components of the decomposed Nigerian Communication institute – mobile policy, mobile law mobile administration and mobile enforcement – in the management of ordinary consumer complaints.

The results of the analysis are summarised in this section:

The National Telecommunications Policy gave no explicit direction about consumer complaint management. This task is undertaken by the National Communications Act 2003 and its regulations namely the General Consumer Code of Practice, the Quality of Service Regulations, the Dispute Resolution Guidelines and Industry Code of Practice.

The Act defined the Commission's functions to include the investigation and resolving of complaints and disputes between operators, subscribers and any other persons involved in the communication industry (Act, Sections: 4(p), 62 and 73). It further directs the Commission to establish procedures and guidelines for making, receiving and handling of consumer complaints that would form the model procedure for licensees' individual complaint handling processes.

The provisions in the Act and its regulations, particularly the General Consumer Code of Practice regulations and the Quality of Service Regulations, largely covered the essential principles of best practice for consumer complaint handling. The provisions enjoined service providers to provide visible, accessible and assessable information about the complaint process; backed with responsiveness, objective and consumer focused disposition. Others include protection of consumer information and regular review of the complaint handling process. In this regard, the licensees in their individual consumer codes of practice are expected at the



minimum to conform to the model established in the General Code. However, when compared with indices of effective complaint handling all four mobile service providers' complaint processes were found to be inadequate and ineffective particularly with regard to being visible, accessible and consumer focused.

Information about the complaint process is not available on the web, pay-as-you-go starter pack or at the customer care centres and outlets. The consumer helplines have a very high average failed call attempt rate of 70% as against the threshold of 2%. A consumer has less than 3 in 10 chances of being connected to a helpline and a frustrating 1 in 3 chances of speaking to an agent of his/her service provider. This means that most aggrieved consumers are unable to reach the customer care help desk and consequently are unable to activate the complaint management process. Although the service providers' Interactive Voice Response (IVR) systems offer multi-language options, they are not dedicated to complaint handling but are also normally used for advertisement. This study was unable to receive any statistical data on consumer complaints from any of the services providers.

The provisions in Section 40 of the General Code that enjoin service providers to make adequate provisions for consumers with disability to access the complaint process have not received adequate attention. Two mobile operators MTN and GLO have initiated the installation of ramps to facilitate access to their customer care centres for consumer with disabilities. AIRTEL claims that its website is optimised for sight and speech and ETISALAT made no provisions in this regard in its vaguely worded consumer code. However, there is no evidence of any information in braille or any other provision for consumers with sight impairment. There is also no evidence that the Commission has imposed any obligation on service providers with respect to consumers with disability as was directed by the Act.

The Commission offers consumers a second level support through two consumers contact centres and a multi-channel multi-lingual toll free line and outreach programmes. However, this second level support is not efficient. The Commission is not consistent in reporting consumer complaints statistics in its annual reports. The complaints statistics reported vary widely without any explanation, hence the reports appear to be unreliable. For example,

845,703 (94%) complaints, which were escalated to the Commission in 2012, remained unresolved at the end of the year (NCC Annual Report, 2012).

The provisions for arbitration involve substantial transaction costs – fund, time and expertise, which outweigh the ordinary consumers’ small claims and hence arbitration is not a viable option for the ordinary consumer. It entails five separate submissions of documents and a minimum registration fee of N5, 000 (28% of the national minimum monthly wage) which represents a significant cost for low-income consumers. It was apparently designed with focus on the corporate consumer rather than the ordinary consumer. There is yet no evidence that an ordinary consumer has ever escalated his/her complaint to arbitration.

The Consumer Affairs Bureau (CAB) oversees the service providers’ compliance with quality of service Key Performance Indicators (KPI) by daily monitoring of customers’ helplines and contact centres. Although the Commission has developed a 13-items-checklist for evaluating Consumer Care Centres. This is yet another example of a long list of indices, which are developed without any commitment to put them into effect. CAB usually audits the complaint handling and tracking procedures using only three (Failed call attempts, connections to live agent and connection to Interactive Voice Response – IVR) out of the 13 items. CAB’s quarterly reports on the services providers’ complaint handling process highlights a number of recurring breaches, which include failure of network/service providers to meet the Quality of Service threshold on consumer complaints handling procedures; inadequate spread of customer care centres across the six geo-political zones of the country and slow response to complaint inquiries/investigation.

This study did not find any evidence, from reports of the Commission’s enforcements actions and others documents, that sanctions or penalties had been imposed on any services provider for any breach of the complaint handling guidelines. The prevailing inefficiencies and consequent ineffectiveness of the ordinary consumer complaint handling process is largely the result of the Commission’s soft-handed approach to the enforcement because beside the set rules the effectiveness of the enforcement mechanism influences the efficiency and outcome of the telecommunications institution. (North 2005).

Therefore, from the evidence exposed in this chapter, this study concludes that in spite of the ample provisions in the mobile law and the processes and structures established by the mobile administration, the consumer complaints handling processes remain to a very large extent inaccessible to the consumer and therefore ineffective. The situation creates feelings of frustration, disempowerment and apathy among consumers who have learnt to suffer in silence.

In the next chapter, a summary of the thesis will be presented.

## **CHAPTER 8 Conclusions**

### **8.1 Introduction**

The key objective of this thesis was to assess how ordinary consumers are represented in liberalised mobile telecommunications markets. The case for this study was Nigeria, chosen based on increasing number of recorded consumer complaints. The study was facilitated by the following three research questions:

1. If and how have the legislators, regulators and market players in Nigeria defined the ordinary consumer interest in the field of mobile communications?
2. Focusing on regulatory structures and processes, how have ordinary consumers been represented since the liberalisation of the Nigerian mobile market in 2001?
3. What processes have been established in the Nigerian mobile sector for the resolution of ordinary mobile consumer complaints and how effective have they been?

This chapter offers concluding reflections by indicating not only how the above questions were answered but also the key strengths of the study and areas of further research.

### **Rethinking Mobile Consumers in a Wider Context**

Not many studies have critically looked at the interests of mobile telecommunications consumers. The aim of Chapter 2 was to situate the thesis in a wider context and to set the theoretical and analytical framework to guide this study. Traditionally, telecommunications fall under public interest. Because liberalisation of mobile markets does not automatically serve policy objectives, regulation is needed to achieve policy objectives that include the promotion and protection of ordinary consumer interest. Hence, this thesis is situated in the broader context of public interest and policy failure (what happens after policies are enacted and adopted). The research focused on aspects of compliance monitoring and enforcement.

The primary data collection technique employed in this case study has been document analysis. This is complemented by semi-structured interviews and other interviews. The study drew from the literature on the New Institutional Economics - the study's theoretical framework - including its analytical tools namely: transaction costs and property right which determine the

simultaneous causal links between institutions and economic performance to guide the empirical section. This study acknowledged a link between the regulatory environment and the course of history. Therefore, in order to capture the impact of the 30 years of military dictatorship preceding the liberalisation of the sector on the underlying focus of the key players – legislator, regulator and service providers – this study also relied on the Principal-Agent and Path Dependency concepts drawn from the literature on the New Institutional Economics (NIE) framework.

The NIE framework adapted the Saleth and Dinar (1999) Institutional Decomposition Model, which the study extended to include the enforcement component of institution. Hence, the mobile institution was decomposed into four main components, namely: mobile policy, mobile law, mobile administration and mobile enforcement. Thus, it facilitated the study to assess if the regulatory reform is supported by appropriate institutional arrangements, to ensure that the interests of the ordinary consumers are adequately protected in the Nigerian competitive mobile market.

Nigeria, the largest economy in Africa with a telecommunications industry that is one of the fastest growing in the world is still writhing in the aftermath of the 3 years of civil war (1967-1970) and the 30 years of military rule. These events left a cultural legacy of bureaucratic corruption and cronyism, which has not abated in the 16 years of democratic rule. The prevailing weak institutions, weak civil societies, lack of infrastructural development, tracing the pattern of path dependency have left their marks on the liberalised mobile telecommunication industry. The main argument here is that the present regulatory framework cannot be completely detached from the course of history and that the regulator is influenced by the historical legacy and is susceptible to political corruption. It is burdened by agency problem and conflict of interest that leads to the subordination of the ordinary consumer interest to the interests of the political elites and the industry as was discussed in Chapter 3.

Chapter 4 assessed the current trend in institutional arrangements for consumer representation and complaints management. Considerations from this chapter informed the bench marking and interpretation of findings in the empirical chapters 6 and 7 of this study in evaluating the representation of the ordinary consumer and the management of ordinary consumer complaints

respectively. In this regard, the chapter argues that the effectiveness of the various options depends on the prevailing socio-political environment and advocates a mixed approach for developing countries.

The following sections present the main findings of the empirical chapters in answer to the three research questions:

## **8.2 Research Question 1**

If and how have the legislators, regulators and market players in Nigeria defined the ordinary consumer interest in the field of mobile communications?

*Ordinary consumer interest is in the law: without effective administrative and enforcement institutions, the law is of no avail.*

The NTP while setting the policy direction and the features of the envisioned communication services in the telecommunications sector had the interest of the consumer in view. The mobile law established a regulatory framework and an independent regulatory Commission with the mandate to promote and protect the interest of consumers. These are vital for a sustained campaign for the promotion and protection of ordinary consumer interest. However, in practice, the prevailing socio-political environment, which is heavily weighed down by bureaucratic corruption and cronyism infiltrates the Commission through its institutional framework; its leadership is appointed by the politicians. This infection spreads through the organisation because the favoured agents create their own internal clientele network. The result is that the Commission's commitment towards the attainment of policy objectives as it relates to consumer interest is compromised.

The interests of the consumer, which the Communications Act, 2003 specifically undertakes to promote and protect are not explicitly defined or listed in the Act but are embedded in and are deducible from several provisions of the Act and regulations. There are however certain provisions in the Act that are not in the best interest of the consumer. The researcher summarises three examples discussed in the thesis.

First, the directive on the structuring and setting of tariff rates and levels solely to attract investments does not align with the mobile policy objective of affordable tariff for consumers and the mobile policy's directive that it is appropriate to consider consumers' interest in regulating prices before full-blown competition is achieved. The result is that the cost of running a mobile in Nigeria is about 5% of personal income, which is significantly above the threshold value of 2-3% of personal income (GSMA 2014). Unaffordable tariffs adversely affect the accessibility of basic telecoms services particularly for those in the low-income group.

Second, consumers on the pre-paid platform accounts for 97% (130 million) of total mobile subscriptions. However, there is no disclosure guideline that mandates the licensees to supply information about tariff rate, quality level, and the terms and conditions of the pre-paid service, to the consumer at the point of sale as is applicable to services contract. This lack of transparency militates against the ordinary consumers' interest in the availability of information that will enable informed choice and fair redress mechanism.

Third, the mobile law restricts the concept of vulnerable consumers to the disabled and the elderly persons. It would appear that no attention is accorded to other vulnerable consumers, for example, those with little education, the low socio-economic groups, and those in difficult-to-access rural areas. For instance, the Universal Service Fund-USPF<sup>10</sup> (2013) identified two hundred and seven (207) clusters, with an estimated population of thirty six million and eight hundred thousand (36.8m) people, as areas that have no access to basic voice telephony because they live in the rural communities in Nigeria.

The Consumer code of practice regulations (General Code) was enacted in 2007, six years after the liberalisation of the mobile segment. During this period, the ordinary consumer had no

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<sup>10</sup> USPF is established by the Nigerian Federal Government to facilitate the achievement of national ICT policy goals for universal access and universal service in rural, un-served and under-served, areas in Nigeria.

safeguards from the activities of the services providers. First, this evidence shows that the Commission is not consumer-focused. It also explains how the neglect of consumer interest became entrenched as a norm in the competitive mobile market, which the late introduction of the General Code is unable to reverse.

In Mobile Administration, the definition of the consumer is not aligned with the Act; the notion of consumer interests varies across the mobile organisation (the actors) both in content and in terminology. The result is that different levels of awareness and degree of importance is accorded to consumer interest issues and this detracts the force implied by the mobile law. It also creates the opportunity for some stakeholders to take advantage of the lapse in how the concept of consumer interest is construed to violate consumer interest rules. The outcome is that the Commission and the industry players are not consistent in their practice in upholding the ordinary consumer interest at a level in line with the policy and law rather they routinely undermine the ordinary consumer interest; subordinating the ordinary consumer interest to their interest by violating the existing rules.

Under the mobile enforcement institution (monitoring and enforcement processes and procedures), the Commission has exclusive power and competence to monitor and enforce compliance of all persons to the provisions of the Act and its regulations. However, the monitoring and enforcement institution lacks the technical facilities and willpower to carry out effective monitoring of the Nigerian telecommunications landscape on a regular basis, which creates room for violations.

More importantly, there has been an obvious lack of commitment to impose appropriate sanctions on erring operators. This is confirmed by evidence exposed in chapters 5, 6 and 7. In addition, the failure of the Commission to ensure that licensees pay compensation to consumers for failure to meet quality of services key performance indicators is in itself a violation of consumer interest in fair redress mechanism (Quality of Services Regulations, 14(b)). The ordinary consumers suffer the multiple loss of frustration and economic loss because of poor quality of service including sometimes complete loss of service and loss of their compensation. The difference between what the law provides and what the consumer is getting is a consequence of the prevailing laxity in the enforcement of rules (Bardaragoda, 2000).



Consequently, in spite of the Commission's expansive enforcement powers, pervasive contravention of the provisions of the Act overwhelms the Enforcement Institution. The contraventions of consumer interest issues range from violations of tariff rule, failure to meet Quality of Services key performance indicators and the provisions of the General Code to noncompliance with enforcement directives. These contraventions thrive because of the endemic laxity in the enforcement that allows gaps between the mobile law on one hand and the mobile administration and enforcement on the other hand because how the game is played depends not only on the formal rules but also on the effectiveness of enforcement (North, 2005). The evidence of reoccurrences of the violation the General Code suggest that enforcement actions do not provide sufficient incentive for compliance but rather the soft-handed-pussy-footed strategy of the Commission creates room for impunity and it prevails. These are some of the symptoms of the prevailing conflict of interest, which is part of the huge agency problem afflicting the Commission, which was extensively discussed in chapter 2.

Therefore, in answer to the first research question, this study holds that the legislators have defined the interest of the consumer through the instruments of the National Telecommunications Policy, 2000 and the Communications Act, 2003 and the establishment of an independent regulator invested with exclusive powers and legal instruments to execute the communications institution. In practice, the Commission is not consumer focused because it is not wholly independent and it is afflicted with acute agency problems and conflict of interest. The services providers in turn exploit the compromised regulatory institution to violate consumer interests with impunity. Hence, the consumer interest is greatly undermined by the inefficient mobile administration and the prevalent violations of the provisions in the Act and regulations, which the 'soft-handed-pussy-footed' strategy of the enforcement institution is unable to curtail. Therefore, the policy and legal objectives in this regard are yet to be realised, which is a clear indication of failure to achieve the policy objective concerning the interest of the ordinary consumer.

### **8.3 Research Question 2**

Focusing on regulatory structures and processes, how have ordinary consumers been represented since the liberalisation of the Nigerian mobile market in 2001?

*Legal provision for statutory independent consumer representation is crucial to enable ordinary consumer influential participation in the regulatory process.*

The NTP provided a window for the establishment of a framework for consumer representation by its directive that stakeholders including consumers shall be accorded access to the Commission's proceeding and the right to submit opinion in support of their interest (NTP, section 3.1.4.1). Nevertheless, the Act made no legal provision for the establishment of an independent statutory consumer body or support for independent consumer representation bodies. Consumer advocacy is missing in the Act. This omission has adversely affected consumer representation in the telecommunications sector because institutions are essential to create the rules and structures of the game; the rules for the influential participation of independent consumer representation bodies in the regulatory process. An institutional framework has a major role in the establishment of a firm platform for the interactions between consumer bodies and the licensees (North, 2005). Without legal provision, the role of consumer representation bodies remains undefined and irrelevant in the telecommunications regulatory process.

A consequence of the absence of legal provisions for independent consumer representation is the Commission's lack of visible commitment in soliciting consumer input to its regulatory process. This is reflected in the fact that the Commission received only one (1) submission to its public inquiry form a voluntary telecommunications consumer body between 2009 and 2015. This submission was for the SIM Card Registration inquiry in 2010. This insignificant effort from consumers is a direct consequence of the dearth of active well-resourced consumer advocacy bodies that are able to bring to the Commission's attention consumer concerns and issues that lead to consumer detriment. It is of note that out of the nine public inquiries held by the Commission in that period (2009 to 2015), only the SIM card Registration and the Mobile Number Portability inquiries had any bearings on consumer immediate concerns. The other public inquiries were on network and licensing issues. This is another example of subordinating the consumer interest to other interests, which was highlighted in section 8.2 above.

Participating in a public inquiry is a difficult hurdle for the ordinary consumer. It implies substantial transaction cost for the ordinary consumer (time, research and secretarial costs),

which constitute a grave impediment to consumers' participation in public inquiries. This is another reason for legislative provisions for independent consumer representation body.

The Commission's outreach programme, which is the main structure for engaging consumers, has very limited reach and an extremely long event cycle. The manner of information publication, which the Commission deems appropriate (and which is applicable to licensees) is to publicise on its website and two national newspapers. Publicising information in this manner excludes a large portion of ordinary consumers who do not have access to electronic media or who have poor knowledge of the English language. Hence, the Commission's main information dissemination structures, procedures and its overall strategy are grossly ineffective and inadequate to reach ordinary consumers out there, who remain largely unengaged and uninformed.

In the previous section, it was noted that the concept of consumer interest varies across the mobile organisation with far reaching implications for consumer representation. The Consumer Affairs Bureau (CAB), in its Facts Sheet on Consumer Bill of Rights defines the consumer 'right to be heard' as follows:

**Right to be heard:** "right to get fair, inexpensive and quick redress of grievances. Consumers must have accessible knowledge of the complaint process and steps needed to lodge a complaint. Consumers have the right to a consumer-oriented response for complaints and as prescribed by the consumer code of practice regulation" (NCC, n.d.-a).

Equating the 'right to be heard' to 'right to redress' is a gross misrepresentation in glaring contrast to the definition of the 'right to be heard', which the United Nations (UN) has defined as the right to have the interest of the consumer represented in government policy (UN guidelines for consumer Protection, 1985). In addition, CAB's definition does not align with the NTP directive, which states that consumers should be accorded the right to submit opinion in support of their interest. Mobile organisation misconstrues the consumer's 'right to be heard' and envisages the consumer as a passive recipient who may complain, but may not be heard.

Hence, the consumers' input is neither sought for nor taken into account in the Commission's regulatory process.

Another example of the side lining of the ordinary consumer is seen in the development of consumer codes. Neither the Act nor the Consumer code of Practice Regulation (the General Code) made any specific provision for consumer input in the development or review of individual consumer codes as would be expected if the codes were to address ordinary consumer needs and interests. Hence, the mobile service providers, in practice, did not involve their consumers in the development of their consumer codes of practice nor did the Commission have it as a condition for code registration. Effective development of codes is usually the result of negotiations between organisations (Hulsink, 1999), otherwise their effective implementation cannot be guaranteed.

Mobile Number Portability (MNP) was implemented in Nigeria in the first quarter of 2013. Available data reveal very low levels of porting (NCCStat, 2014). Two major reasons account for this: 1) the ordinary consumer with feasible insight from experience (North, 2005) and information gathered from hearsay has come to know that there is not much difference in the level of performance of the four mobile network providers. The Consumer Satisfaction Index is 59.1% with a spread of 3.1 point across services providers (NCC.CSS, 2012). Hence, the little differentiation between the network providers' performance does not provide sufficient incentive for switching. 2) The comparative report published on the Commission's web site is not consumer friendly and very infrequent, for instance the Technical Standards website has January 2014 Performance Indicator Comparative Report (mobile telephone service) still tagged as new (latest) in March 2016. Secondly, the reported performance indicators are neither weighted nor aggregated hence the ratings of the mobile service providers are not obvious to the ordinary consumer. Hence, the published information does not empower the ordinary consumer to make an informed choice.

CAB in its Annual Reports has been consistent in highlighting the recurring mobile service providers' breaches of the General Code and Quality of services Regulations, which relate to the: provision of information to consumers, inadequacy of locating Consumer Care Centres only in state capitals and inaccessibility of customer help lines. Inadequate information is a

major obstacle to consumer engagement. In spite of the negative impact of these issues on consumer engagement, there is no evidence from the Commission's enforcement reports, which the Commission publishes every quarter on its website nor any other regulatory document so far, that any enforcement action was taken against any mobile service provider for any of the above breaches.

Several pro-consumer provisions in the law, for example provisions on public inquiries and provisions of information, do not take into consideration the limited resources, literacy and knowledge level of ordinary consumers. Hence, the consumers are not benefiting from these provisions because they lack the capacity to exploit those provisions; they do not have the support of active independent consumer representation bodies. Therefore, despite the directives of the National Telecommunications Policy (NTP), which states that stakeholders – operators, consumers – shall be given access to the Commission's proceedings and the right to present opinion in support of their interest, the Commission failed to establish the critically required administrative structures and strategies, which would ensure consumers' effective engagement and participation in the regulatory process. This is another clear indication of failure to achieve policy objective relating to the interest of ordinary consumer.

#### **8.4 Research Question 3**

What processes have been established in the Nigerian mobile sector for the resolution of ordinary mobile consumer complaints and how effective have they been?

*Inaccessibility of the Complaint handling process is a major setback to complaint management.*

The General Consumer Code of Practice 2007 (General Code) made ample provisions detailing the procedure and requirement for the management of consumers' complaints. The General Code also directed licensees to provide easily understood information about their complaints handling process in various media and formats and to make adequate provisions in their complaints procedures for consumers with disabilities. However, when compared with indices of effective complaint handling all the four mobile service providers' complaint processes were found to be inadequate and ineffective particularly about being visible, accessible and consumer focused. With the exception of Airtel, the individual codes of service providers are on neither

their website nor the Commission's website. In addition, information about the complaint handling processes of the network services providers is not at their customer care centres or retail outlets or pay-as-you-go starter packs. Earlier research (NCC.CSS, 2012), the only national consumer research undertaken by the Commission, also referred to the inaccessibility of these individual codes. Furthermore, this study particularly observed that the mobile service providers' individual consumer code of practice is yet to be translated into the three main Nigerian languages. The implication of the inaccessibility of the individual codes is that ordinary consumers are unaware of the service providers' complaint handling procedures and therefore remain largely uneducated about their rights (CI, 2014). In spite of these obvious shortcomings, the Commission, without any input from consumers as was earlier highlighted, approved the service providers' complaints handling processes.

The General Code directed that consumers should first exhaust the licensee's complaints procedures before escalating the complaints to the Commission. This directive appears as a difficult hurdle for aggrieved ordinary consumers because the mobile service providers' complaints handling platform is not easily accessible to consumers. Analysis of the commission's 2011 and 2012 annual reports reveal that consumers have less than 30% (1 in 3) chances of connecting to a help line and a frustrating 31% (1 in 3) chance of speaking to a live agent of their mobile service provider. This implies that consumers have daunting challenges reaching the Customer Care help desk and are therefore unable to activate the complaint handling process of their service providers. Although call to the help lines are free of charge, the cost of time associated with their use makes them unattractive to the ordinary consumer. The interview conversation held with Vendor<sup>11</sup> (2015) confirmed this finding.

The Commission offers consumers a second level support through the outreach programmes, two consumers contact centres, web channels and a multi-channel multi-lingual toll free line to aggrieved consumers whose complaints have not been satisfactorily resolved by their service providers. Utilisation of this provision also suffers from low consumer awareness, which

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<sup>11</sup> Vendor - a Kiosk GSM recharge card vendor at Ibeju Lekki, Lagos, is an interviewee (face-face).

regarding the Commission's toll-free number, stands at an average of 11% but is as low as 5% in some states in the country (NCC CSS, 2012:55). Furthermore, the second level support is ineffective and inefficient. The Commission's outreach programmes handle less than 400 complaints per annum. In 2012, the Commission received 903,098 complaints via the contact centres; by the end of the year, only 57,395 (6%) were resolved while the remaining 845,703 (94%) complaints were pending (NCC Annual Report, 2012:47). This reflects the gross inefficiency in the consumer complaints management process; the General Code stipulates, "in any event, no complaint shall remain unresolved after 90 days" (General Code, Section 41(3)). In addition, the Commission is not consistent in reporting consumer complaints statistics in its annual reports, as stipulated in the General Code. Concerning service providers, this study was unable to obtain the services providers' complaints statistics/records to deduce the efficiency of their complaint processes. Information on consumer complaints is not readily available either from the Commission website or from the individual mobile service providers' websites. The ordinary consumer complaints handling is yet another example that the rules in use are different from the rules set out in the mobile law (Bardaragoda, 2000), that is, the mobile administration does not sufficiently mirror the mobile policy and the mobile law as an integral component of the mobile institution.

The Act, 2003, the General Code and the Dispute Regulation Guidelines, in the provisions for arbitration, made no distinction between the ordinary consumer and the corporate consumer nor did they take into consideration the specific circumstances of widely differing groups of consumers. The same arbitration rules are applicable to all categories of consumers; one code serves all, marginalises the weaker one.

Meeting the requirements for arbitration from the standpoint of the ordinary consumer, presents a herculean task. Preparing the arbitration documents (claim and reply documents) entails five separate submissions of documents which may involve substantial resources – funds, time and secretarial expertise – which are beyond the capacity of the ordinary consumer and is likely to outweigh his/her small claim. For example, the minimum registration fee of N5000 for arbitration is 28% of the national minimum monthly wage of N18000 (US\$ 90) and represents a significant cost for low-income consumers (Minimum wage (Amendment) Act 2001, Section

2). The actual cost of arbitration also includes administration fees, arbitrators' fees and expenses, and those of experts. In addition, each party to the arbitration bears its own costs of preparing and submitting its case.

These provisions are intimidating to the ordinary consumer and are likely to deter the ordinary consumer from recourse to arbitration. The present arbitration process as it stands is not a viable option for the ordinary consumer. There is yet no evidence that an ordinary consumer has ever escalated his/her complaint to arbitration. The implication is that if the normal complaint resolution process does not resolve an ordinary consumer complaint, it remains unresolved.

The Commission has developed a 13-items-checklist for evaluating Consumer Care Centres, but usually audits the complaint handling and tracking procedures using only 3 (namely: Failed Attempt to customer help line, Connection to Live Agent, Connection to Interactive Voice Response (IVR) out of the 13-items-checklist indicating a lack of commitment to enforcement. Although the results of these monitoring exercises including prevalent breaches of the provisions of the General Code are included in the internal quarterly reports, this study did not find any evidence, in any of the documents reviewed, that any sanctions have been imposed on any mobile service provider for any breach of the complaint handling rules. This also reflects the weakness, flaws and prevailing laxity in the enforcement institution and the lack of Commission's commitment to its mandate to promote and protect the interests of the ordinary consumers, which were highlighted in detail in the empirical Chapters 5 and 6 of Part II.

Therefore, given the invisibility and inaccessibility of the mobile service providers' complaints process, the intimidating arbitration process and the non-responsive enforcement institution, the complaints handling processes and procedures are grossly inadequate for effective management of ordinary consumers' complaint. As a result, consumers have developed apathy towards the mobile service providers' complaint process, and suffer in silence. This is collaborated by Focused Group Interview conducted in Nigeria by Consumer International (CI) and the Nigeria based Consumer Awareness Organisation (CI, 2014). Hence, with regards to effective management of ordinary consumer complaints, the Commission has failed to achieve the policy objective.



## **8.5 Suggestions for Further Research**

### **Fixed Telephony Segment: a substitute for the mobile service**

The Commission issued licences for PNL-Microwave Radio, Fixed Wireless Access and CDMA. It was anticipated that these services would constitute substitute services for the GSM services and through competitive pressure facilitate to lower the tariff of the GSM services. However, the reverse has been the case. The subscriptions to these services have dwindled rapidly in spite of the potential of the fixed networks to drive broadband (ITU, 2013).

The time now beacons for a research on this segment of the telecommunications industry. The research may focus on the following:

To what extent has, the Nigerian Communications legal framework and regulatory interventions enabled the thriving of the fixed telephony segment?

## **8.6 Summary**

Overall, this study has shown that the National Telecommunication Policy (NTP) is consumer-focused in its vision of the liberalised telecommunication sector and the mobile law is largely in synergy with the NTP. However, the non-provision of an independent statutory consumer body leaves a huge gap in the protection of consumer interest, considering that Nigeria has a very little history of civil society. As a result, the ordinary consumers because of their limited capability are neither able to harness the legal provisions nor hold the Commission and the mobile service providers to account. The regulatory framework is highly susceptible to the socio-economic environment characterised by non-transparent transactions and weak institutions. The result is that the Commission is imbued with agency problems and therefore not consumer-focused. The services providers in turn exploit the inefficient mobile administration and weak enforcement institution to violate consumer interest's rules with impunity. The result is that the policy objectives with regard to the promotion and protection of ordinary consumer interest, which aligns with the public interest has not been realised, an indication of telecommunications policy failure.

The public interest in telecommunications policy has so far benefitted mobile telecommunications companies rather than ordinary mobile consumers. The existing policy failure, as discussed in the case study of Nigeria, can be addressed by enforcing compliance to existing rules and by according independent consumer representative bodies influential voice in the implementation of policy objectives.

**APPENDIX A: List of Interviewees**

<b>s/n</b>	<b>Name and Role</b>	<b>Mode &amp; Date of Interview</b>	<b>Interviewee Code</b>
<b>1</b>	Senior officer Association of Licensed Telecommunications Operators of Nigeria (ALTON)	e-mail/phone 19 – 21 August 2014	Alton
<b>2</b>	Senior officer National Association of Telecommunications Consumers of Nigeria (NATCOM)	e-mail/phone 5 July 2014	Natcom
<b>3</b>	Senior Officer Consumer Awareness Organisation (CAO)	e-mail/phone 16 August-11 October 2014	Cao
<b>4</b>	Former-Commission’s Director, Consumer Affairs Bureau (CAB)	Face-to-face/mail 2-hour in-depth 19 August 2014/ –9 March 2016	NCC1
<b>5</b>	Commission’s Zonal Controller	e-mail/phone call 18 May 2014 - 26 March 2016	NCC 2
<b>6</b>	Kiosk GSM card vendor, Ibeju Lekki, Lagos	Face-to- Face 18 August 2014	Vendor
<b>7</b>	Obiageli Ezekwesili World Bank official Ex-Hon Minister of Education & Former Vice President for Africa at the World Bank & Co-Founder of the BringBackOurGirls campaign.	Face-to- Face Al Jazeera Head-to-Head 14 April 2015	Cons 1
<b>8</b>	Private Lawyer Lecturer School of Media and Communication, Pan-Atlantic University, Lagos	Face-to- Face 20 August 2014	Cons 2

<b>9</b>	Engr. Olawale A. Ige Ex-Hon. Minister of Communications & former Commission's Board Executive Commissioner (2000-2010). Currently Chairman, Board of Trustees- Nigerian Internet Group.	Face-to-Face 2-hour in-depth 5 August 2014	Minister
<b>10</b>	Engr. Vincent Maduka Consultant to NCC/Ministry of Communications (1990-1992) DG of Nigerian Television Authority (1977-1982;1984-1986) Currently Senior Fellow at School of Media and Communication, PAU, Lagos	Face-to- Face/e-mail 2-hour in-depth 28 August 2014	Consultant
<b>11</b>	Mr Roger Darlington Chairman, Consumer Forum for Communications (Ofcom)	Face-to- Face/e-mail 2-hour in-depth 14 December 2015	CFC1
<b>12</b>	Mr Chris Taylor Director, Consumer Policy (Ofcom)	e-mail 23 December 2015	Ofcom 1
<b>13</b>	Chris Holland Communications Consumer Panel and Advisory-Member for England- (Ofcom)	e-mail 11 July – 3 December 2015	CCP 1
<b>14</b>	Claire Milne Ex-Chairman, Consumer Forum for Communications (Ofcom). Independent telecoms policy consultant	e-mail 5 June 2015 – 22 September 2015	CFC 2

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